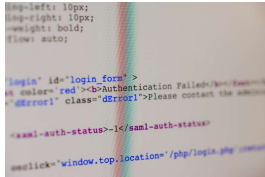


Is an Arrangement of Source Code Protectable?

Compulife Software, Inc. v. Newman, No. 21-14071, 2024 WL 3611013 (11th Cir. Aug. 1, 2024)

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On August 1, 2024, the Eleventh Circuit Court of Appeals issued a ruling that affirmed a trade secret claim, but reversed and remanded a copyright claim related to Plaintiff Compulife’s insurance quote comparison software. First, the Eleventh Circuit reversed the district court’s decision, where the district court held that the Defendants did not infringe Compulife’s copyrights, because the lower court failed to consider whether the arrangement of the source code in Compulife’s software was copyrightable. Second, the Eleventh Circuit upheld the district court’s ruling that the defendants had misappropriated Compulife’s trade secrets by scraping its database. While scraping manually with no limitations for how many quotes pulled may be legal for obtaining publicly available information, it may be improper here because the defendants did not take screenshots of a publicly available site and instead, used another’s license to the software and a bot to take more than humanly possible.

Compulife’s software allows users to generate individualized quotes for life insurance comparison, using data from multiple insurance companies. The arrangement of the variables in its code must be arranged in a certain manner to work. Through improper means, the Defendants “copied the order of Compulife’s copyrighted code and used that code” to obtain millions of public and non-public variable-dependent quotes and created websites using the software, causing Compulife’s sales to decline.

First, the Eleventh Circuit addressed the copyright infringement claim. To establish copyright infringement, a plaintiff must prove: ownership of a valid copyright and copying the work’s original elements. For the first step, the Eleventh Circuit recognized that Compulife’s copyright was valid and undisputed. The second step of the analysis looked at two elements: factual copying (whether the defendant copied) and legal copying (whether those copied elements were considered protected expressions). Both the district court and Eleventh Circuit already determined factual copying. Later, the Eleventh Circuit broke down the code into its constituent structural parts, sifted out all non-protectable material, and compared the protected material with the copycat (the “abstraction-filtration-comparison test”) to evaluate legal copying. The Court observed that the district court only looked at the arrangement of some of the variables before filtering but failed to combine all the variables together in the arrangement. “[R]ecognizing the arrangement of elements of a program can be protectable [as a literal element of a program],” the Eleventh Circuit noted that the arrangement of the source code could be protected. The Eleventh Circuit remanded for further proceedings on that issue.

Next, the Eleventh Circuit analyzed whether the defendants misappropriated Compulife’s trade secret database of quotes via illegal acquisition, disclosure, or use. Here, the Eleventh Circuit determined that each of the defendants acted in concert to commit the trade secret misappropriation by “lying to get Compulife’s web quoter put onto his website,” supervising the scraping attack, investing in these fraudulent websites, and “collecting fees from insurance sales generated by the stolen trade secret.” Overall, the Eleventh Circuit distinguished the improper versus proper way of scraping to obtain trade secrets, and this decision also emphasized the analysis of copyrightable elements in a work that district courts must perform to assess copyright infringement claims.