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Copyright Compilations: Sixth Circuit Affirms Copyright Limitations on Compilations to “selection, coordination, and arrangement”

On September 15, 2006, the U.S. Court of Appeals for the Sixth Circuit decided in a copyright case that Lexis Nexis(Lexis) did not infringe on the copyright of the plaintiff corporation LawMode. *Ross Brovins & Oehmke v. Lexis Group*, Case No. 05-1513 (6th Cir., Sept. 25, 2006) More specifically, the court held that Lexis’ compilation did not copy that of LawMode because of independent selection. Additionally, the court held that the appearance of the dialog boxes and the interactive aspect of the computer program by LawMode are not copyrightable material; thus no copyright infringement.

In 1997, LawMode entered into a contract with Lexis, later modified in 1999 to create various templates for filling in the required information for selected Michigan legal forms to be available publicly over the internet. Although the compilation mostly included forms that are publicly available according to the Michigan State Court Administrative Office, some of the forms were independently created. In 2002, Lexis terminated the contract with LawModes to provide such a service, and published its own compilation of forms.

Subsequent to the termination, LawModes filed a 7 count complaint against Lexis including claims for (1) copyright infringement, (2) breach of contract, (3) unjust enrichment, (4) unfair competition, and (5) breach of duty of good faith and fair dealing. LawModes voluntarily dismissed claims (3)~(5), leaving only a claim for copyright infringement and breach of contract. More specifically, under claim (1), LawModes alleges 2 counts of copyright infringement in both the selection of forms in its compilation and the interactive appearance of the computer program.

Following discovery, the district court granted a summary judgment in favor of defendant Lexis on the copyright claims finding that (1) Lexis did not infringe on the copyrighted compilation of LawModes, despite the fact that LawModes had a valid copyright in the compilation material, and (2) Lexis did not infringe on the interactive appearance of the computer program because such interactive appearance involves too little creativity to warrant copyright protection. LawMode appealed.

The Court of Appeals for the Sixth Circuit upheld the judgment on the first copyright claim. With respect to LawMode’s selection of forms in creating the compilation, the court stated that “a compilation is a work formed by the collection and assembling of preexisting materials ... that are selected, coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship”. (17 U.S.C. §101) However, the court found that Lexis did not copy any “protectable” element of the LawMode compilation, as 1) the underlying information was not copyrightable, and 2) Lexis’ own compilation were not substantially similar to that of LawMode. The court, relying on *Feist*, emphasized that “compilation copyright protection is very limited ... usually requires substantial verbatim copying” to constitute infringement. Consequently, in this case, only 61% of LawMode’s entries appear in those of Lexis, indicating significant differences. The only similarities between the

compilation of LawModes and Lexis appear in the “obvious classification headings” and the underlying forms, all of which are uncopyrightable information available to the public.

With respect to the copyrightability of the interactive appearance of the compilation, the court affirmed the District Court’s decision saying that it lacked sufficient originality to warrant copyright protection. First, the appearance of the compilation is not copyrightable because no originality is invoked in selecting the default display setting in creating dialog boxes. Secondly, the interactive aspect of the compilation filling in repetitive entries are also not copyrightable. The placement of input fields, along with the interrelationship thereof, was dictated by the express terms of the forms, thus once again no creativity is involved in the fact that the program interrelated variables permit a user to pick only entries that applicable.

With respect to the breach of contract claim, the Court of Appeals for the Sixth circuit reinstated the breach of contract claim, finding that LawMode did in fact pled a breach of contract cause of action.

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