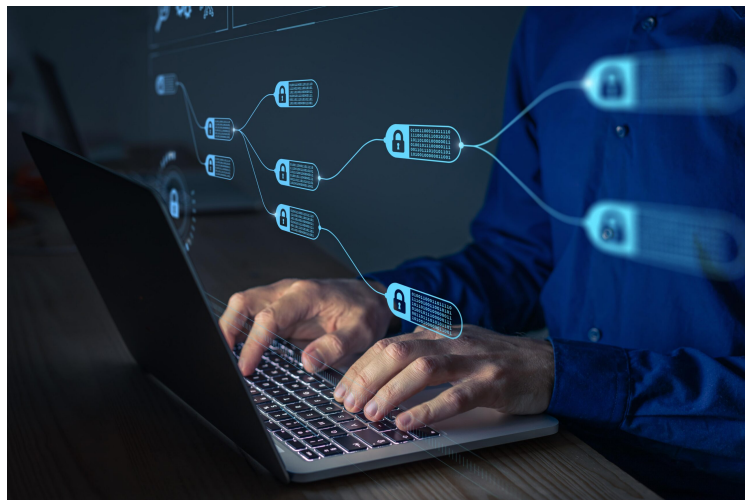


Kluwer Copyright Blog

Copyright in the Bitcoin File Format: a question of content over structure

Jeremy Blum, Marc Linsner (Bristows LLP) · Thursday, June 29th, 2023

Summary



In the case of *Wright & Ors v BTC Core & Ors* [2023] EWHC 222 the High Court was faced with a technical copyright question about whether literary copyright can subsist in the file format used for the Bitcoin System (the “**Bitcoin File Format**”). Justice Mellor concluded that copyright could not subsist in the Bitcoin File Format because there was no evidence that the file format had been recorded in a manner that was identifiable. In other words, the Bitcoin File Format did not meet the requirement for “fixation” in s.3(2) Copyright Designs and Patents Act 1988 (the “**Act**”).

Background and the underlying copyright claim

The decision of Justice Mellor arose from an application made by the Claimants to serve the claim on a number of the Defendants out of jurisdiction. The underlying claim concerned the alleged infringement of database rights and copyright in various aspects of the Bitcoin System.

Dr Wright, the First Claimant, claims to be the creator of the Bitcoin System, specifically the person who wrote the original Bitcoin code and the author of the White Paper, a document entitled *Bitcoin: A Peer-to-Peer Electronic Cash System*, which essentially describes the Bitcoin System. Dr Wright claims to own database rights in various iterations of the Bitcoin Blockchain and literary copyright in the White Paper and in what is referred to in the claim as the “Bitcoin File Format”.

Dr Wright issued the claim because he objected to two “Airdrops”, which he alleged effected significant changes to the Bitcoin System without his consent. Dr Wright alleges that these Airdrops created new branches of the original Bitcoin System, referred to as the “BHC Blockchain” and “BTC Blockchain”. According to Dr Wright, the operation of these parallel branches of the blockchain results in the extraction and/or re-utilisation of all or substantial parts of the Bitcoin System databases in which he asserts database rights. Dr Wright also alleges infringement of the White Paper and the Bitcoin File Format.

Justice Mellor was satisfied that the alleged infringement of the database right and literary copyright in the White Paper raised serious issues to be tried and therefore granted permission for those claims to be served out of jurisdiction. Justice Mellor also accepted that Dr Wright created the Bitcoin File Format and it was the product of his own intellectual creation. The issue for the court to resolve was whether the Bitcoin File Format satisfied the fixation requirement for literary copyright to subsist.

Fixation of the Bitcoin File Format

As Justice Mellor noted, the principle of fixation is a general condition for the subsistence of copyright and is embodied in s.3(2) of the Act. In the course of his judgment Justice Mellor found no discernible difference between the concept of fixation under s.3(2) and the requirement of “sufficient identifiability” from the CJEU decision in *Levola Hengelo* (Case C-310/17). In essence, to satisfy the requirement a work must be recorded in a manner which makes it identifiable with sufficient precision and objectivity.

The Bitcoin File Format effectively describes the structure of each block within the Blockchain System. In other words, the data fields for transaction data stored in the block which is parsed by the software of the Blockchain System. Interestingly, there was no dispute as to what the Bitcoin File Format was – Justice Mellor accepted the evidence from Dr Wright explaining the creation and characteristics of the Bitcoin File Format – however the judge was not satisfied that the Bitcoin File Format had been fixed in a material form.

Before analysing the Bitcoin File Format, Justice Mellor considered a line of previous authorities which addressed the subsistence of copyright in file formats, particularly XML file formats. On his journey through the relevant authorities, the judge emphasised that copyright was found to exist in different types of XML formats where those formats contained “*content as well as structure*”. Justice Mellor recognised that a file format *can* attract literary copyright but distinguished between different types of file format. The judge observed that “[n]ot all file formats are equal” and noted that some file formats contain sufficient content (and not just structure) to sustain a claim to literary copyright.

The Claimants argued that the Bitcoin File Format was fixed when Dr Wright first ran the program underlying the Bitcoin System in 2009 and the “Genesis Block” was written into the Blockchain System in a form that reflected the Bitcoin File Format. In evidence Dr Wright explained, “[w]hen the software runs and the hashing problem is solved, the software creates blocks in the Bitcoin File Format which are added to the Bitcoin Blockchain file.” According to Dr Wright, it was at the point a block was created in the Bitcoin File Format that the fixation requirement was satisfied, more specifically on 3 January 2009, when Dr Wright first ran the Bitcoin Blockchain software.

Justice Mellor accepted Dr Wright's evidence, however he did not accept the argument that the creation of a block in the Bitcoin File Format automatically satisfied the fixation requirement. According to Justice Mellor, the evidence of Dr Wright merely showed that:

“blocks were written to file in the Bitcoin File Format, i.e. the data in a block was stored according to the structure explained in Schedule 2 to the Particulars of Claim (see further below). It does not address the issue of fixation: where was this structure fixed in a material form”.

The judge was not satisfied that the Claimants had identified any evidence to demonstrate that a block contains “contents” indicating or explaining the structure of the Bitcoin File Format. The judge accepted that the blocks were a manifestation of the structure, but did not themselves record the structure of the Bitcoin File Format in a manner sufficient to satisfy the fixation requirement.

Justice Mellor also rejected the Claimants' argument that the fixation requirement was met because third parties had been able to discern the structure of a block in the Bitcoin Blockchain. According to the judge this evidence did not assist because the Claimants had still failed to adduce any evidence that the structure of the Bitcoin File Format had been fixed in a copyright sense either in the text of the underlying software or in any of the early blocks written to the Bitcoin Blockchain. The blocks may have reflected the structure of the Bitcoin File Format, but they did not record the same in a copyright sense. On that basis, the judge felt that the Bitcoin File Format could not be protected because it did not satisfy the fixation requirement.

Conclusion

In light of the judge's findings on fixation, he concluded that there was no serious issue to be tried in respect of the claims for copyright infringement in the Bitcoin File Format and refused to grant permission to serve out of jurisdiction. The Claimants were granted permission to serve an amended particulars of claim out of jurisdiction on the condition that the claims in respect of the Bitcoin File Format were deleted.

Comment

The decision of Justice Mellor appears to confirm that a file format can only satisfy the fixation requirement if it is possible to identify a work containing “*content*” that adequately expresses the structure of the file format in question. Precisely what that “*content*” is and if it adequately identifies the characteristics of the file format in question to satisfy the fixation requirement will turn on the facts of each case and according to the file format in question. The decision also illustrates that the question of fixation is not a formality, and that the requirement is not necessarily satisfied simply because it is possible to identify the work in question.

More generally, a number of recent decisions involving blockchain technologies and crypto-assets have illustrated the willingness of the court and flexibility of the law to adapt to new forms of digital technology. On this occasion, however, the decision of Justice Mellor shows a stricter approach to what the judge himself recognised as a discrete and significant legal issue in the copyright sphere.

Justice Mellor refused permission to appeal, so it will be interesting to see whether the Claimants seek permission and if the Court of Appeal takes the opportunity to further consider this important point of principle.

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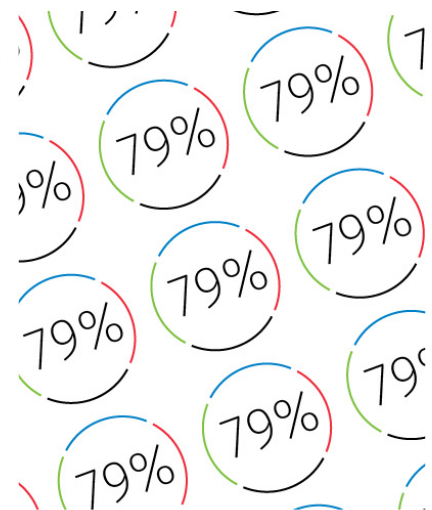
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