

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DATA CARRIER S.A.,

Plaintiff,

v.

WOCCU SERVICES GROUP, INC.,

Defendant.

OPINION & ORDER

16-cv-122-jdp

This is a copyright infringement dispute over transactional switch software, which is a component of a payment processing system. Plaintiff Datacarrier S.A. alleges that the copyright to its switch software is infringed by the switch software owned by defendant WOCCU Services Group, Inc. (WSG).

WSG moves for summary judgment. Dkt. 68. Datacarrier's switch software is written in the Cobol programming language, whereas WSG's is written in Java. There is no genuine dispute that WSG has not literally copied any of Datacarrier's source code. But that leaves the possibility that WSG might have copied some other aspect of Datacarrier's software, so that the two programs are nevertheless substantially similar. Datacarrier contends that WSG has copied three aspects of its software: two message formats used to communicate information about transactions and certain ATM configuration information.

The court concludes that the two message formats are not independently copyrightable because they are derived from pre-existing industry standards, the particular implementation of those standards is driven by functional considerations, and the formats are the digital equivalents of blank fill-in forms, which have long been regarded as not copyrightable. The ATM configuration information is not part of the switch software, and thus it is not copied by

WSG's switch software. Because these three aspects of the switch software are the only substantial points of similarity asserted by Datacarrier, the court will grant summary judgment to WSG and close this case. The court will deny as moot WSG's motion in limine to exclude certain evidence from trial. Dkt. 128.

FACTUAL BACKGROUND

Except where noted, the following facts are undisputed. Additional facts will be provided where pertinent to the analysis.

A. The parties

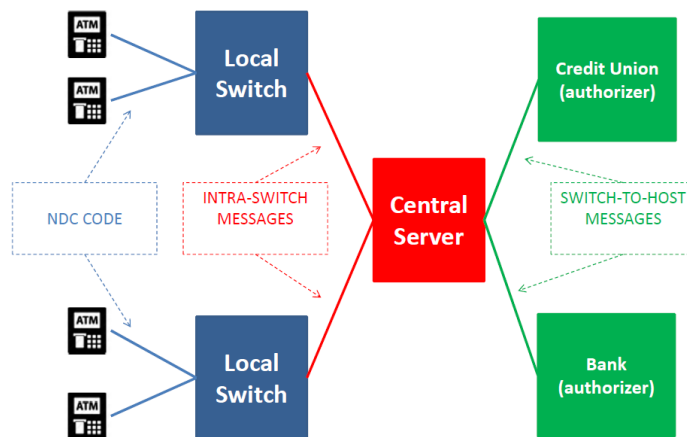
Plaintiff Datacarrier S.A., is an Ecuadorian software company, which owns transactional switch software called TID, the copyrighted work asserted in this case. The TID source code is registered with the United States Copyright Office, Registration No. TX-7-946-574, effective December 15, 2014. Datacarrier is affiliated (though exactly how is disputed) with a Guatemalan software company, Servicios Tecnologicos de Guatemala S.A. (ServiTech).

Defendant WOCCU Services Group, Inc., a Wisconsin corporation, provides services to credit unions in Latin America. WSG has provided transactional switch services to its affiliates in Ecuador, Peru, Bolivia, and Mexico. WSG's transactional switch software, which Datacarrier alleges infringes its copyright, is called Entura.

B. Technical background

Transactional switch software is used to process financial transactions, such as a cash withdrawal from an ATM or a credit card purchase at a store. For purposes of illustration, we will stick with the ATM withdrawal example. Such a transaction involves a network that connects the ATM from which a card holder would like to withdraw cash to the financial

institution that holds the account and issued the debit card. The network requires communication of the transaction request to the financial institution and communication of the response from the financial institution back to the ATM. The parties use the diagram below to illustrate the pertinent components of the network. The three points of similarity on which Datacarrier bases its allegations of infringement are identified in the diagram as “NDC code,” “intra-switch messages,” and “switch-to-host messages.”



The switch software runs on the “central server.” The entity that operates the ATM, and thus receives requests from a card users, is referred to as the “acquirer.” The financial institution that maintains the account and determines whether to approve the request is referred to as the “authorizer,” the “host,” or the “issuer.”

The switch software routes messages between the ATM and the authorizer. If the card user’s account is with the same financial institution that operates the ATM network, that financial institution’s local switch (essentially a local network server) handles the request. But if the user’s account is elsewhere—that is, if the acquirer and the authorizer are different institutions—then the transactional switch on the central server transmits the request to the authorizer’s server. Thus, to work effectively, the switch software must communicate with

different ATM networks and with different financial institutions. The communications to the local switches operating ATM networks are called “intra-switch messages” and the communications to financial institutions are called “switch-to-host messages.”

The International Organization for Standardization developed the ISO 8583 standard to facilitate transactional switching among financial systems. There are three versions of ISO 8583, identified by the year of their release: 1987, 1993, and 2003. ISO 8583 defines a common standard for message formatting with a library of more than 100 data fields. Financial networks typically adapt and customize the data fields in the ISO 8583 standard to the needs of their networks and the institutions that use them.

C. Development of the parties’ switch software

In 2009, a company called Multisoft developed transaction switch software called Sharing. ServiTech supplied Sharing switch software to WSG, which sublicensed Sharing to its affiliated ATM-network operators in Ecuador, Peru, Bolivia, and Mexico. Datacarrier provided Sharing-related maintenance and technical support to ServiTech’s customers.

Sharing had technical problems, so Datacarrier developed a replacement—the TID switch software. One of the programmers who worked on TID was a former Multisoft employee, Maria Fernanda Martinez. At some point, Multisoft’s assets were liquidated in an Ecuadoran legal proceeding, and the Multisoft programmers ended up owning the Sharing software. Martinez had developed a format for switch-to-host messages for Sharing, and she used that switch-to-host message format in TID. Martinez assigned her ownership interest in the switch-to-host message format to Datacarrier. TID is written in the Cobol programming language.

WSG agreed to offer TID to its affiliates. Datacarrier licensed TID to ServiTech, and ServiTech sublicensed it to WSG and its affiliates. But TID had its own problems, and only one of WSG's affiliates—RTC in Ecuador—successfully converted to it. The parties blame each other for the problems with TID, but that the dispute is immaterial to this case.

There was another alternative to Sharing. A Peruvian company, Kuskanet, developed new switch software (which later would be renamed Entura) to address problems that Kuskanet had had with Sharing. The primary programmer was Edwin Ayala, a Kuskanet engineer, who wrote the program in the Java programming language. Ayala began developing Entura in 2010 and it was operational in mid-2011, about the same time as TID was ready for commercial use. Neither Ayala nor anyone on his team had access to the TID program's source code. *See* Dkt. 64. But at some point after Entura was operational, Ayala saw TID in operation at WSG's Ecuadoran affiliate, RTC. Ayala also got a copy of a Datacarrier document—referred to by the parties as the Intercambio Document—that describes the TID program's format for switch-to-host messages. Both TID and Entura use this format, although WSG denies that Ayala made any use of the Intercambio Document in creating Entura, because Ayala received it only after Entura was operational.

In early 2012, Steven Schaefer, WSG's technology manager, visited Kuskanet to evaluate Entura as a potential replacement for Sharing and TID. WSG decided to stop using the TID program and acquire the Entura switch software from Kuskanet. Dkt. 110, ¶ 115. After WSG acquired Entura, it stored the source code on servers in the United States. Entura is actually used, however, outside the United States in the countries where WSG's affiliates operate.

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