Lee Johnston in The Computer & Internet Lawyer: 'The Shifting Legal Landscape Surrounding Web Scraping'

January 18, 2022 Lee Johnston

PRACTICES Intellectual Property, Patent Litigation, Litigation, Intellectual Property Litigation

The landmark decision by the U.S. Court of Appeals for the Ninth Circuit decision in *hiQ v. LinkedIn* provided an important win for web scrapers.

In *hiQ*, the Ninth Circuit upheld the trial court's injunction enjoining LinkedIn from using technological measures to prevent hiQ from scraping data from the public profiles of LinkedIn members. To reach this result, the Ninth Circuit found that the prohibition in the Computer Fraud & Abuse Act ("CFAA") against "unauthorized access" to "protected computers" did not apply to web scraping of data appearing on publicly available web pages. According to the Ninth Circuit, LinkedIn's attempts to "revoke" hiQ's authorization to access LinkedIn's members' public profiles – through cease-and-desist letters and technological anti-scraping means – could not establish CFAA liability, since profiles which were freely available and accessible to the public needed no "authorization" in the first place.

LinkedIn filed its Petition for Writ of Certiorari at the U.S. Supreme Court on March 6, 2020. On June 3, 2021, with LinkedIn's petition still pending, the Supreme Court issued its opinion in *Van Buren v. United States*, addressing the scope of the CFAA in the context of a criminal conviction under the CFAA's prohibition against conduct involving the access of a protected computer which "exceeded authorization."

Excerpted from *The Computer & Internet Lawyer*. To read the full article, click on the PDF below.

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