

Functional Compilations

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Abstract

The Supreme Court's decision in *Feist v. Rural Telephone* established that works of authorship must be "original" to qualify for copyright protection and that originality requires a modicum of creativity, but it did not say what kind of creativity satisfies this standard. In the years since *Feist* (and to some extent before *Feist*), courts have rejected compilation copyright claims as being too functional to be protectable. Sometimes, they have relied upon copyright's exclusions of methods and systems to say that a systematic or methodical selection and/or arrangement of information is unprotectable. Other times, they have invoked the merger doctrine, as when the selection and arrangement was dictated by functionality. Still other decisions have found that functional selections or arrangements to be unoriginal. Functionality as a general disqualifier from compilation copyrights has yet to be explicitly recognized in the literature. Some judges and commentators have denied that functionality is ever a limit on copyright (except maybe as to pictorial, graphic, and sculptural works that lack physical or conceptual separability). This article demonstrate that functionality does and should limit the protectability of compilations. It classifies the functional compilation cases by the type of functionality that the courts recognized in the cases. Copyright aims to protect not originality per se, but expressive originality. Some compilations satisfy the expressive originality standard, but others do not. Since *Feist* forbids granting copyright protection based on sweat-of-the-brow rationale, functional compilations would seem to lie outside the bounds of copyright protection. This thesis has implications for the scope of protection in computer programs as well.