IP Law Daily, COPYRIGHT—S.D. Miss.: The Ninth Circuit's server test reaches the Deep South, (Aug. 1, 2025)

IP Law Daily

By Matthew Hersh, J.D.

Merely "framing" another company's website within your own website does not constitute infringement of the display right, a Mississippi court holds.

A news aggregator did not infringe on the copyright held by a regional chain of newspapers where it merely made those newspapers' websites visible on its own site by means of a "framing" technique, the federal court for the Southern District of Mississippi has held. The court, adopting the controversial "server test" that originated in the Ninth Circuit, also addressed a lengthy series of other copyright law questions—including the interpretation of the Copyright Office's group registration regulations, whether and under what circumstances the display of a newspaper on a website can constitute "publication" under the Copyright Act, and whether a website URL can constitute protected copyright management information under the Digital Millennium Copyright Act (*Emmerich Newspapers, Inc. v. Particle Media, Inc.*, No. 3:23-cv-00026-TSL-MT (S.D. Miss. July 29, 2025)).

The opinion arises out of a long-running dispute between Emmerich Newspapers, the owner of roughly two dozen newspapers in Mississippi, Alabama, and Louisiana, and a news aggregator named NewsBreak. Emmerich first sued the news aggregator's operator, Particle media, in 2021. Its complaint, filed in January of that year, accused NewsBreak of operating a "parasitic business model" by allegedly stealing roughly one dozen of its news articles and reproducing them on the NewsBreak site in either full or snippet form. The district court dismissed some of the copyright infringement claims because they were based on unregistered copyrights and, later, refused to dismiss NewsBreak's claim of fair use as to those articles that it used only in snippet form. The parties reached a settlement of that case before trial.

Emmerich returned to the same court in June 2023, filing two different copyright infringement complaints against NewsBreak. The two complaints, eventually consolidated into one, this time alleges that NewsBreak's web crawler unlawfully reproduced *tens of thousands* of Emmerich's articles—including articles that were behind paywalls. The lawsuit brings claims of copyright infringement as well as multiple violations of the Digital Millennium Copyright Act.

The parties, after discovery, filed a series of motions for summary judgment. In June of 2024, the court denied Emmerich's motion for summary judgment as to certain of its infringement and DMCA claims. To the extent that the copyright infringement claims were concerned, the court found, Emmerich had not "actually identified for the court or the defendant with clarity the specific number of articles or the specific articles at issue" in the summary judgment motion. With respect to the DMCA claims, the court found, summary judgment was precluded because there was an open factual question over whether NewsBreak's gathering of paywalled content was intentional or, as NewsBreak contended, an accident due to improper coding.

The parties, after further discovery, later brought cross-motions for summary judgment, leading to this opinion.

Group registration of newspapers. The court first found that Emmerich had not properly registered over one thousand of its newspapers. Emmerich registered these newspapers by depositing collections of the "e-print" editions of those papers under the Copyright Office's group registration option. Under that group registration process, the court noted, every newspaper included in the group must have been published simultaneously. But for some of those newspapers, the court noted, Emmerich made the newspapers available online before issuing the e-print

© 2026 CCH Incorporated and its affiliates and licensors. All rights reserved.

edition that formed the deposit copy. Moreover, the court noted, Emmerich offered readers of its online version the opportunity to print or download articles. Although the mere display of those newspapers on the website did not constitute publication of the papers, the court noted, the fact that Emmerich offered a download option *did*. "As Emmerich expressly authorized distribution of its articles by providing a print button," the court noted, "it follows that the articles were published before Emmerich included them in its group registration applications." The group registration was therefore improper.

Group registration of photographs. The court sided with Emmerich, however, when it came to the group registration of photographs. Under Copyright Office regulations, group registrations of photographs are available only when the photographs are all owned by a single person. In one of its group registrations, Emmerich included a photograph that was owned not by it, but by the Associated Press. Did that invalidate the entire registration? NewsBreak argued that it required a referral to the Register of Copyrights to answer that question—but the court disagreed. Critically, the court noted, there remained an open factual question as to whether NewsBreak included the AP article intentionally or mistakenly. "In this case, as the court is not persuaded that [NewsBreak] has demonstrated that Emmerich knowingly included the AP photograph in the group application," the court noted, "it will not, at this time, refer the issue to the Register."

Server test. The court also considerably narrowed Emmerich's copyright claims. Emmerich claimed that NewsBreak infringed its copyrights in two different ways: by reproducing the articles directly on its servers and also by "framing" Emerich's own website within the NewsBreak website—so that visitors to the NewsBreak website could see the Emmerich website as if they had navigated to that same page. NewsBreak claimed that it could not have infringed with respect to the articles "framed" in this way, and the court agreed. Under the so-called "server test" developed by the Ninth Circuit in *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007), the display of copyright content online is not infringement unless the person displaying it has done so from a copy that is hosted on its own server. While that doctrine has been criticized in other jurisdictions, the district court noted, it was a correct reading of the law. Under the plain terms of the Copyright Act, the court noted, one cannot infringe by display unless there has been a display of a "copy" of the work. Here, the court noted, NewsBreak "did not transmit a display of the work, but rather merely sent to the user's browser instructions for where the copy resided." That did not constitute infringement.

Statute of limitations. The court also narrowed Emmerich's claims due to the statute of limitations. Emmerich complained of infringement that occurred between 2018 and 2021, but it did not sue until 2023—leaving its claims for the 2018 and 2019 infringements outside the three-year statute of limitations. Emmerich claimed that it was entitled to have the statute of limitations tolled, under the equitable tolling doctrine, on the grounds that NewsBreak took actions to hide its infringement. The court rejected this argument. Even if NewsBreak had misled Emmerich about its alleged infringement, the court noted, Emmerich did not act with reasonable diligence in pursuing its claims—particularly since it had earlier attempted, in its first lawsuit, to improperly bring copyright infringement claims against NewsBreak on the basis of unregistered articles. "Emmerich has provided no explanation for its decision to pursue clearly unexhausted claims or for the timing of its efforts to register the articles with the Copyright Office," the court noted. It would not be helped by equitable tolling principles.

DMCA claims. The court also rejected Emmerich's DMCA claims. Emmerich argued in its initial complaint that NewsBreak deliberately circumvented its paywall to obtain access to some of its articles. In its summary judgment papers, however, Emmerich abandoned the theory that NewsBreak acted improperly in accessing its paywalled content. Instead, Emmerich argued NewsBreak violated the DMCA by taking this paywalled content and making it available to its own subscribers. But that could not be the basis for a circumvention claim, the court found. Emmerich was complaining, in short, about NewsBreak's "use of its content, not its unauthorized access to the content," the court noted. But the DMCA defines circumvention as an activity undertaken, the court noted, without the authority of the copyright owner, to gain "access" to the work. The circumvention claim, as now reimagined by Emmerich, would

© 2026 CCH Incorporated and its affiliates and licensors. All rights reserved.

fail.

Nor did Emmerich's remaining DMCA claims have merit, the court found. Emmerich argued that NewsBreak violated the DMCA by taking its newspapers' content and reproducing it on the NewsBreak website under a different URL. But Emmerich's original URL was not protected under the DMCA, the court reasoned, because it was not the kind of "copyright management information" covered by that Act. Emmerich tried to analogize its URLs to filenames—but the court rejected that argument. "A file name describes data," the court noted, "while a URL is akin to a roadmap to data on the Internet." And while it was "perhaps conceivable" that Emmerich could have named some kind of file using the same information/characters contained in a URL, the court found, Emmerich had "never purported to identify the type of file, i.e., data, to which it has assigned a URL-file name." The CMI claim would therefore fail as well.

The Case is No. 3:23-cv-00026-TSL-MT.

Judge: Lee, T.

Attorneys: David Malcolm McMullan (Barrett Law Group, PA) for Emmerich Newspapers, Inc. Stephen J. Carmody (Grower & Hewes, PLLC) for Particle Media, Inc.

Companies: Emmerich Newspapers, Inc.; Particle Media, Inc.

Cases: Copyright TechnologyInternet MississippiNews GCNNews

https://prod.resource.cch.com/resource/scion/document/default/ipm010e25dd3721f1457f97f410e59317dffb?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

© 2026 CCH Incorporated and its affiliates and licensors. All rights reserved.