

Data Aggregator Seeks Ruling Allowing It to Scrape Public LinkedIn Data

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UPDATE: On February 22, 2018, the district court granted 3taps’s motion to relate its action to the ongoing [hiQ v. LinkedIn litigation](#). This motion was based upon a local Northern District of California rule that holds that cases should be related when the actions concern substantially the same parties, transaction or event, and there would be an “unduly burdensome duplication of labor...or conflicting results” if the cases were heard before different judges. As a result, the 3taps case, over the opposition of LinkedIn, was reassigned to Judge Edward Chen, who also presided over the lower court proceedings in the *hiQ v. LinkedIn* litigation.

In the latest development in the legal controversy over scraping, 3taps, Inc. (“3taps”), a data aggregator and “exchange platform” for developers, filed suit against LinkedIn seeking a declaratory judgment that 3taps would not be in violation of the Computer Fraud and Abuse Act (CFAA) if it accesses and collects publicly-available data from LinkedIn’s website. ([3Taps Inc. v. LinkedIn Corp.](#), No. 18-00855 (C.D. Cal. filed Feb. 8, 2018)). The basis of 3Taps’s complaint is last year’s hotly-debated California district court ruling ([hiQ Labs, Inc. v. LinkedIn, Corp.](#), 2017 WL 3473663 (N.D. Cal. Aug. 14, 2017)), where the court granted a preliminary injunction compelling LinkedIn to disable any technical measures it had employed to block a data analytics company from scraping the publicly available data on LinkedIn’s website. The *hiQ* ruling essentially limited the applicability of the CFAA as a tool against the scraping of publicly-available website data. [For an analysis of the *hiQ* lower court decision, please read the [Client Alert on our website](#)].

According to the complaint, following the *hiQ* ruling, 3taps sent a letter to LinkedIn informing it of 3taps's intention to scrape data from LinkedIn's publicly-available pages as hiQ had been doing (note: 3taps stated in its complaint that hiQ and 3taps share a common investor). In response, LinkedIn's counsel purportedly asserted that 3taps's reliance on the *hiQ* ruling was misplaced and such scraping activity would violate the CFAA, a position 3taps considered "completely inconsistent" with the *hiQ* decision. This is not 3tap's first experience with this type of litigation, as the aggregator and "open access" advocate was sued in 2012 by craigslist for scraping craigslist content (despite having received a cease and desist letter informing it that it was no longer permitted to access the site) and offering the data to outside developers through an API. (See generally [Craigslis, Inc. v. 3Taps, Inc.](#), 942 F.Supp.2d 962 (N.D. Cal. 2013)). In 2015, [craigslist settled the 3Taps lawsuit](#), with various defendants agreeing to monetary payments and a permanent injunction barring unauthorized access to craigslist content or circumvention of any technological blocks against spidering or scraping activities.

We will be closely watching the current *3taps* suit and the *hiQ v. LinkedIn* litigation, which is currently on appeal to the Ninth Circuit. However, given the appeal, it is possible the *3taps* lawsuit will be stayed pending a ruling by the appeals court in *hiQ*. Beyond that, the Ninth Circuit's upcoming interpretation of the CFAA with regard to the scraping of publicly-available website data is shaping up to be a landmark decision that will affect the openness of website data for both established platforms and new entrants in the marketplace.

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