

A letter from the Database Data Coalition to all Members of the House of Representatives

July 13, 2000

Dear Representative:

There are some in the private sector who are advocating the need for radical new legislation to protect against the theft of databases. We write to bring to your attention recent developments demonstrating that federal and state laws on the books--copyright, contract, the new prohibition on circumvention of technological protection measures, and state misappropriation and trespass laws--appear adequate to prevent theft of databases.

First, recent studies have shown that the Internet has not destroyed the classified ads business for newspapers as predicted just a few years ago. Online advertising is increasing, but—far from being "destroyed"—the print business has continued to thrive. Jupiter Communications, for example, has predicted that online classified ads will only account for 2.2 percent of all classifieds this year and 5.8 percent in 2005. Nor, as feared, have the databases comprised of classified ads been subject to rampant piracy.

Second, Lexis-Nexis, a subsidiary of Reed Elsevier, just used contract law to prevent copying by its competitor Jurisline. Jurisline had acquired a set of Lexis-Nexis CD-ROMs containing court opinions subject to a license agreement not to make the opinions available to others. Jurisline uploaded the opinions on the Internet where they could be accessed for free. In the subsequent litigation, a federal court ruled that although copyright law did not protect the public domain opinions, the copyright law did not preempt the license agreement. Accordingly, Lexis-Nexis was free to pursue a contract action against Jurisline in state court. After the ruling, Jurisline agreed to take down the opinions.

Third, just a few weeks ago, eBay won an important victory in its efforts to block Bidder's Edge from accessing eBay's computer systems by use of an automated querying program without its written authorization. The court held that eBay is likely to succeed on the merits on its claim that Bidder's Edge has engaged in trespass under California law, and thus granted a preliminary injunction. In addition, the court held out the possibility that eBay could prevail on seven other grounds should the Ninth Circuit Court of Appeals disagree with the applicability of state trespass law.

Finally, just as eBay has used the Internet to develop increased online sales, so too has the real estate industry enjoyed increasing success in using the Internet to attract new home buyers. According to a recent study released by the National Association of Realtors (NAR), nearly four in ten U.S. home buyers used the Internet last year to shop for a home. Just four years ago, only two percent used the Internet. This surge in use represented an 18-fold increase. Quoting the President of the NAR, the Washington Post recently reported that real estate agents "initially viewed the Internet 'as a threat.' But the latest figures show that Internet shoppers are actually more likely to use real estate agents than non-Internet shoppers"

Like eBay, realtors also have been able to use existing law to protect their web site. In testimony before the Judiciary Committee, the NAR has conceded that federal courts in California and Maryland have found the NAR's multiple listing service is copyrightable. *Montgomery County Association of Realtors v. Realty Photo Master*, 878 F. Supp. 804 (D. Md. 1995), *aff'd*, 91 F.3d 132 (4th Cir. 1996); *San Fernando Board of Realtors, Inc. v. Mayflower Transit, Inc.*, No. C 91-5872-WJR (Kx)(C.D. Cal.

1993). Moreover, in the Maryland case, which was affirmed by the U.S. Court of Appeals for the Fourth Circuit, the court found the defendant liable for infringing the copyright in the multiple listing service.

Notwithstanding these significant developments, if the House somehow deems current law insufficient, the enactment of H.R. 1858, the Consumer and Investor Access to Information Act of 1999, would do a better job than other proposed alternatives to deter database theft.

For your reference, I have enclosed a list of organizations that have expressed support for H.R. 1858.

Thank you for your consideration of this perspective.

Sincerely yours,

Skip Lockwood

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