



## How legal is content scraping?

May 30, 2011 | [Curtis Smolar](#)

**A reader asks:** I have a business in which we scrape content from other websites to our website. Do we face any significant legal hurdles in doing so?

**Answer:** It really depends on a number of factors. These days, the legality of scraping is something that's in flux – and you'll certainly want to consult with a licensed attorney about your specific situation. That said, here are a few guidelines to keep in mind.

**Terms of Use** – Some websites attempt to prevent scraping by prohibiting it in their online Terms of Service. This doesn't always work, though, because some courts don't like to enforce online terms against users who have not read or agreed to them.

We all know how rarely website users actually reads the terms of service – much less how often a scraper, who hasn't even visited the site, has read them. Whether or not those terms are enforced depends almost entirely on the judge who decides the case.

**Copyright** – The United States Supreme Court has held that while the arrangement, formatting, or a collection of pure facts may be copyrighted,

the facts themselves may not be. However, the Court added, although the facts are not protected, the manner in which they are organized may be. In real world terms, this means that simply having a copyright may not protect the content of a site. (For example, if a phone book was organized in a unique way, instead of alphabetically, the organization of the facts may be protected, meaning no one could copy that method.)

There also appears to be an exception to copyright infringement for search engines based on fair use. In *Perfect 10 v. Google*, the Ninth Circuit Court of Appeals vacated an injunction against Google displaying thumbnail pictures of the Perfect 10 website after the U.S. District Court for the Central District had ruled that the thumbnails are not fair use.

The Ninth Circuit, in reversing the District Court, held that search engines provide an important public benefit of promoting access to creative works and that it is fair use.

**Novel, but possibly useless, theories** – Because it's hard for websites to protect pure facts, lawyers have come up with unique arguments of why the information is protected.

One example is eBay. In 2001, eBay sued Bidder's Edge, an auction scraping site, for "deep linking" into its listings and bombarding its service. Essentially, Bidder's Edge was copying content from the eBay site so it could aggregate auctions. eBay lawyers invoked an ancient theory called the "trespass to chattels" to protect what it claimed was its property. The "Trespass to Chattels Doctrine" is a theory that you can be liable for interfering with the use of a person's movable property (not including real estate).

In 2001, the United States District Court for the Northern District of California held that if the conduct complained of does not amount to a substantial interference with possession right of property, but consists of intermeddling with or use of or damages to the personal property, the owner has a cause of action for trespass to chattels.

So basically, one could be liable for simply aggregating content from the eBay site.

Since 2001, however, the courts have backpeddled on this position. In a case that was decided last month, *Genevive La Court, et al. v. Specific Media, Inc.*, the Ninth Circuit Court of Appeals held that the current state of the law in California is that if the interference does not "compass an electronic communication that neither damages the recipient computer system nor impairs its functioning there is no cause of action for trespass to chattels".

This position may severely cut into this cause of action as it could be argued that the current state of aggregating does not damage or interfere with the recipient computer. But, this is yet to be determined.

It's still the wild west in this field – so proceed with caution.

**Startup owners: Got a legal question about your business? Submit it in the comments below or email Curtis directly. It could end up in an upcoming "Ask the Attorney" column.**

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