



PUBLISHER MUST LAY DOWN THE LAW

BY OSCAR S. CISNEROS
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WHILE THE PRESS and the tech world concentrated on the Microsoft antitrust trial, a quieter legal battle was being waged for access to society's source code: the full text of the law.

The case involved West Publishing, a tremendously powerful legal-information vendor that claimed a copyright on law's written word as printed in its publications. For generations, the Minnesota-based company jealously guarded its role as the almost exclusive publisher of federal court opinions.

On 1 June, West lost its claims when the US Supreme Court declined to hear its arguments that it owns the text of the law as compiled in its books. The development effectively put the law back in the public domain.

Armed with the latest technology, companies can now bring court opinions to the Web without fear of copyright-infringement suits from West. The upshot: easier and cheaper access to the law.

"Within five years, all this information will be available for free," said Carl Hartmann, the attorney who argued and won the case against West.

West, for its part, disagrees with the ruling.

"Nobody should be able to rip off our products," said West spokesman Patrick Sexton. "We took what's absolutely public and made it so that lawyers can find the information quickly."

If the courts won't allow West de facto ownership of American case law, the company may seek the succor of database legislation to achieve its ends.

For all practical purposes, West and its cozy competitor Lexis-Nexis are the only sources for legal information.

Lawyers preparing for trial must turn to the companies to cite previous court rulings to bolster their cases. Why? Because the page numbers of West's books have become the standard for legal citation and are required by almost all courts.

West didn't always have a reputation as a bully. In fact, at the turn of the century, many courts made the company their official court reporter based on its sterling reputation. The courts needed someone to take care of their paperwork headaches. As more courts turned to West, the page numbers in its publications became signposts to specific cases.

It proved a lucrative situation for West, whose court-sanctioned monopoly put the bulk of the printed law exclusively in its hands, Hartmann said. Its books even became a symbol of prestige at law firms: attorneys paneled their walls with the latest and most complete West collections.

By the mid-1980s, technological advances made it possible for online databases to search the law. What's more, West's huge revenue chummed the waters for would-be competitors.

One such competitor was Lexis-Nexis, a giant online publisher of academic and professional documents that tried to muscle into West's business.

West sued, but the companies settled out of court and, according to critics, practically split the market between them. The pair came to be known as "the Wexis Cartel" by frustrated lawyers.

With Lexis in the picture, Hartmann said legal researchers had two options: pay West a lot of money, or pay Lexis a lot of money. "Every man, woman, and child basically pays a database tax to West or Lexis," said Hartmann.

Other companies tried to bring competition and lower prices to the legal-data market. But West threatened lawsuits, asserting it owned the copyright to the text of court opinions printed in its books, Hartmann said.

West also claimed a copyright on its page-numbering system, the standard way to index the law. Without access to its page-numbering system, rivals couldn't compete, he added.

Undeterred, HyperLaw, a publisher of inexpensive legal CD-ROMs, fought West for almost 10 years, eventually winning a judgment in 1998 that declared West's copyright claims invalid.

West tried to appeal the ruling before the Supreme Court, but the court refused to hear the case.

In light of that development, nimble competitors, such as HyperLaw, FindLaw, and VersusLaw, won the right to add West's page-numbering system to their databases.

"Overall, this will make access to legal information easier and cheaper for the average person," said Alan Sugarman, president and founder of HyperLaw. "If the lawyer has to pay for access to legal information, he's going to pass it on to his client."

West doesn't simply republish rulings and opinions, said Sexton, the company's spokesman. It employs dozens of expert legal editors who add enhancements, such as case summaries and cross-references to other cases. The editors also research specific points of law – insurance fraud, for example – and collate sometimes hundreds of relevant decisions to help lawyers build their cases.

These products can't be replicated with software or search engines, so "the financial impact of the ruling is insignificant" to West Publishing, Sexton said.

"We obviously don't have a copyright over the words that are in the original opinions, but we do have a copyright on the improvements we make," he said, adding that the opinions are available to the public outside of West's books.

Sexton also derided claims that West and Lexis split the market, which he said were akin to Trilateral Commission conspiracy theories.

"I simply can't buy the argument, on its face, that this is not an open market," Sexton said and pointed to West's recent battle with Lexis over competing online legal-citation search engines.

Asked how West could assert a copyright over the text of public opinions reprinted in the company's books, Sexton said improvements such as cross-indexing added to the text of the opinions. The fact that all the opinions were gathered in one place by West made the end product, including page numbers, its property.

Hartmann said the company asserted its copyright claims for so many years that Internet-based law databases and other data vendors were reluctant to take on West, which had US\$1.3 billion in revenue last year. "Nobody else could really produce these products while West is making these threats," Hartmann said.

Stung by West's suit in the 1980s, Lexis also felt vindicated by the Supreme Court's action in early June. "Lexis-Nexis believes that the decision from the Supreme Court validates the position that we've long held, which is that there is no copyright in page numbers," said Lexis spokesman Mark Fieghery.

Whether the string of court decisions will encourage a major player to enter the legal-information market remains to be seen. But for the first time, small competitors have the opportunity to compete with West and Lexis.

Even though West lost in the courts, the company won't go down quietly. West is using its political connections to lobby Congress to pass a database protection law that would give database vendors absolute ownership of their compilations. There are two bills before Congress, both offering some form of protection for database vendors. But critics say they're concerned that if West and Lexis get their way, basic functions of the Internet, such as linking and hosting, could be disrupted.