

# Memorandum

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## Court Awards \$60 Million for Unauthorized Website “Scraping”

May 16, 2017

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On April 13, 2017, the U.S. District Court for the Northern District of California awarded \$60.6 million in damages to website Craigslist Inc. from RadPad, Inc., a competitor who had scraped and used data from the Craigslist website, including after receiving a “cease and desist” letter and after Craigslist obtained a permanent injunction against RadPad’s third-party listings provider and its other customers for similar activities. This case and the prior related case discussed below<sup>1</sup> offer three important lessons for companies that obtain or use data collected from third-party websites without a license.

### Lessons From the Case

First, you ignore a “cease and desist” letter from a website at your peril. In a prior case, Craigslist sent such a letter to ad aggregator 3Taps and two of its customers, demanding that they stop obtaining and republishing scraped Craigslist listings. Craigslist won a permanent injunction against all three defendants (and \$2.1 million against one 3Taps customer) for violating the U.S. Computer Fraud and Abuse Act (“CFAA”), because its “cease and desist” letter specifically denied the defendants authorization to access its website.

Second, republishing data that someone else unlawfully “scraped” from a website can give rise to independent liability in certain circumstances. The CFAA covers persons who knowingly engage in unauthorized computer access, but in the prior case the court enjoined two of 3Taps’ customers from republishing Craigslist data that they had received from 3Taps. The facts in that case were particularly bad, in that the two customers knowingly republished Craigslist listings on their websites after receiving “cease and desist” letters to stop such conduct and also scraped some data themselves. Therefore, this case should not automatically extend liability to companies who use third-party data solely on an internal basis, with no knowledge that the vendor obtained it unlawfully from a website, and in a manner that does not compete with the original website.

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<sup>1</sup> *Craigslist v. RadPad*, No. 3:16-cv-01856-CRB (N.D. Cal. filed Apr. 8, 2016) and *Craigslist v. 3Taps*, No. 3:12-cv-03816-CRB (N.D. Cal. filed Jul. 20, 2012).

Third, scraping data from a third-party website may be copyright infringement, if the site's arrangement of uncopyrighted raw data constitutes a copyrighted compilation. The \$60 million RadPad judgment included \$20.4 million in copyright statutory damages, due to willful infringement.

### Case Details

Data aggregator 3Taps, Inc. scraped the Craigslist website to access user posts and contact information, which it sold to two customers who republished the data on their own websites. Craigslist sent all three defendants a broad "cease and desist" letter, but the defendants continued their activities. Craigslist sued for copyright infringement and CFAA violations, among other claims. 3Taps and its two customers filed a motion to dismiss, which the court denied because (i) the scraped data were potentially a copyright-protected compilation and (ii) the "cease and desist" letters broadly denied permission for the defendants to access the Craigslist website. The court later entered a stipulated judgment of \$2.1 million against one customer and permanently enjoined the defendants from scraping the Craigslist website.

Craigslist competitor RadPad had also received Craigslist's scraped data from 3Taps and even assisted 3Taps to modify the data feed. Craigslist sent RadPad a "cease and desist" letter as well. After Craigslist won its injunction against the 3Taps defendants, RadPad then paid its own team to scrape the Craigslist website, instructed them how to evade detection and used the Craigslist data to send voluminous spam. Craigslist sued Radpad on multiple theories, and the court found that RadPad had violated the CFAA, its California analog, federal and state spam laws and had committed copyright infringement and breach of the website's terms of use. The Court awarded Craigslist \$60.6 million in damages and issued a permanent injunction.

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