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On March 27, 2000, the federal district court for the Central District of California ruled on a motion to dismiss that Tickets.com had not violated the Copyright Act simply by virtue of creating links between its web-site and the web-site of ticket-seller Ticketmaster. See *Ticketmaster Corp. v. Tickets.com, Inc.*, No. CV 99-7654, 2000 U.S. Dist. LEXIS 4553 (C.D. Cal. Mar. 27, 2000).

### Background

Both Tickets.com and Ticketmaster sell tickets to events over their web-sites. When Tickets.com cannot itself provide tickets to a particular event, it provides information about or a link to a ticket broker that can provide the tickets. This frequently involves hyperlinks to Ticketmaster's interior web-pages, bypassing the Ticketmaster home-page.

The court concluded that, because Ticketmaster's interior web-page contains the Ticketmaster logo, "the customer must know he is dealing with Ticketmaster." The court also determined that there was no deception involved in terms of how the links operated: "[T]he customer is automatically transferred to the particular genuine web-page of the original author."

The motion to dismiss the copyright claim was nonetheless denied, because there was still an allegation that Tickets.com had actually copied Ticketmaster web-pages onto its own computer in order to facilitate presentation of factual data that Ticketmaster provided on its web-site. Thus, while this decision suggests that hyperlinking itself does not involve copyright infringement, a violation may still be found when Internet-based data is used through other mechanisms.

### Key point in the court's ruling

- (1) The link allowed customers to realize they were visiting a different web-site.
- (2) The link was obvious and did not involve deception.
- (3) Other mechanisms making use of Internet-based data may still be considered "copying" and therefore in violation of copyright laws.

## Related developments

In 1999, another federal district court judge in the Central District of California determined that a visual search engine that used "thumbnail" images from other web-sites to index its visual search engine did not violate the copyright held by the authors of those images. In this case, the court concluded that the plaintiff, a photographer, had established that he owned the copyright to the images and that the search engine had reproduced and displayed them without authorization.

Thus, the fact that the image "was not technically located on [the] [d]efendant's web-site," but rather displayed through a link, did not prevent the court from concluding that the defendant had reproduced the image. In this case, however, the link obscured all information from the second web-site outside of the image itself, making its origins indiscernible from the user's perspective.

Nonetheless, the search engine was not found liable of copyright infringement because its use of the images in the visual index was so transformative that it fell within the "fair use" exception to copyright liability. See *Kelly v. Arabia Soft Corp.*, 77 F. Supp 1116 (C.D. Cal. 1999).

More recently, the National Football League (NFL) has sued the creator of the nfltoday.com web-site for unauthorized use of trademark and copyright material. The NFL alleges violation due to the fact that the nfltoday.com web-site carries advertising for entities engaged in sports-betting and also provides a hyperlink to the official NFL web-site, which appears framed in the nfltoday.com web-site.

In a March 30, 2000 order the court determined that it had personal jurisdiction over the web-site's creator, despite the fact that he lives in California and does not sell goods or services to New Yorkers over the web-site. The court found jurisdiction based on the fact that the web-site creator is alleged to have caused harm to an entity within the state, and could reasonably have anticipated that his conduct would cause such harm. See *National Football League v. Miller*, 2000 WL 335566 (S.D.N.Y. Mar. 30, 2000).

Those interested in the legal consequences of hyperlinking will want to follow this case, assuming it does not settle or is not dismissed before the court has an opportunity to rule on these issues.

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