**Legal Publishing and Database Protection**

by Jason Gelman

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# Introduction

 When it comes to legal data, lawyers and their clients are willing to pay a premium for accuracy, speed, quality and ease of use. As such, the legal information market is highly profitable and has been so for the last 120 years. Lawyers have long demonstrated a willingness to pay for up-to-the-minute access to information in an easily accessible format. While there are currently discount and “free” sources of law, attorneys have demonstrated a preference for the more expensive services.

 The providers of these services, legal publishers, have litigated against each other over their copyright in court decisions since the early nineteenth century.[[1]](#footnote-2) United States copyright law has been tailored to encourage publication of court decisions by for-profit compilers.[[2]](#footnote-3) As such, “no reporter has or can have any copyright in the written opinions delivered by th[e] court; and . . . the judges thereof cannot confer on any reporter any such right,” but reporters have a copyright interest in their own reporting of the court’s decisions.[[3]](#footnote-4) To remain competitive against low-cost providers of legal information, legal publishers have jealously guarded their proprietary methods of reporting court decisions.[[4]](#footnote-5)

 Recently, the major legal publishers have come together in support of legislation that would give them short-term copyright-like protection for their databases, even if these databases contain information that is non-copyrightable.[[5]](#footnote-6) Copyright law has historically not been applicable to mere facts,[[6]](#footnote-7) and a database is, by definition, a compilation of facts.[[7]](#footnote-8) This legislation would be directly in opposition to the law established by the United States Supreme Court in *Feist Publications, Inc. v. Rural Telephone Service Co*., which prohibited compilers of information from claiming copyright for unoriginal compilations of facts.[[8]](#footnote-9) *Feist* established that “originality, not simply hard work, is the constitutionally mandated prerequisite for copyright protection.”[[9]](#footnote-10) This standard was further refined by the Second Circuit in *Matthew Bender & Co. v. West Publishing Co.*, where the court held that the West Publishing Company (“West”) did not hold copyright in the items in its databases and as such a competitor could freely copy the text of court decisions from this database and market a CD-ROM containing these decisions.[[10]](#footnote-11)

 This paper will examine the history of litigation and consolidation in the legal publishing market; then it will examine the current economics of the legal publishing market, addressing specifically the abnormally large profit margins these publishers enjoy; finally, the paper will discuss the current protections available to legal publishers and it will analyze the implications of granting these publishers copyright-like protection in their databases.

# Litigation and Consolidation

## A Brief History

 For the greater part of its storied history, West functioned in a pseudo-governmental role, as an “arm of the court,” but did not have much competition.[[11]](#footnote-12) In the past two decades a slew of competitors both large and small have entered into the legal publishing business.[[12]](#footnote-13) As sales have risen, so has the level of competition. The three largest publishers, West (now owned by Thomson), Reed Elsevier, and Wolters Kluwer, have fought each other for market share while staving off competition from lower-cost and independent publishers, both print and online.[[13]](#footnote-14) More recently, a wave of billion dollar deals and subsequent smaller acquisitions have consolidated most major print titles and services within the corporate umbrella of the “big three,” under a variety of trade names.[[14]](#footnote-15) Other than the big three, as of 2001 there was only one other independent legal publisher in existence in 1978 that was still in business.[[15]](#footnote-16)

## The First Big Challenge: *Mead Data Central v. West Publishing Co.*

In tandem with consolidation, the legal publishing industry has been engaged in continuous internal litigation, largely driven by West’s desire to protect its pseudo-monopoly on the law through protection of its pagination of the case reporters it produces.[[16]](#footnote-17) Modern legal publishing litigation began in 1986 with *West Publishing Co. v. Mead Data Central, Inc.*, when West sued the then-owner of LexisNexis for illegally using its arbitrary but universally accepted system of page numbering, star pagination.[[17]](#footnote-18) Being able to cite to a specific page of the reporter published by West was crucial for the viability of Mead’s LexisNexis service.[[18]](#footnote-19) Attorneys who chose to use LexisNexis would be expected by judges to cite to the same page within a particular case as those using West’s reporters or its new Westlaw service.[[19]](#footnote-20) While West and Mead settled privately,[[20]](#footnote-21) the Eighth Circuit held that Mead was violating West’s copyright in its pagination system.[[21]](#footnote-22) *Mead Data* signified the first major challenge to West’s stranglehold on the legal publishing market it had dominated for over 100 years.[[22]](#footnote-23) The settlement allowed LexisNexis to gain a footing in the legal information market. By 1989 LexisNexis had one million users and the next year the service performed a peak of 100,000 searches in a day.[[23]](#footnote-24)

## The Tide Turns: *Feist* and Industry Consolidation

 Five years after *Mead*, the Supreme Court indirectly dealt a blow to West with their opinion in *Feist*, holding that hard work alone (“sweat of the brow”) did not warrant copyright protection.[[24]](#footnote-25) The Court held that for a work to receive copyright protection it must be original, and there must be a “creative spark” present.[[25]](#footnote-26) This decision did not go so far as to give carte blanche to legal publishers to freely co-opt West’s star pagination, but it raised doubt in the Mead decision and rejuvenated litigation against West.[[26]](#footnote-27)

 Before the next round of litigation could commence there were two blockbuster takeovers in the legal publishing industry. The first of the massive deals came in 1994 when Mead decided to sell the Mead Data Corporation, parent company of LexisNexis, to Reed Elsevier, one of the largest publishing houses, for $1.5 billion.[[27]](#footnote-28) Just eleven months later Wolters Kluwer, already Europe’s largest publisher of tax and legal journals and owner of Aspen Publishing, bought Commerce Clearing House (“CCH”) for $1.9 billion.[[28]](#footnote-29)

Up to this time there had been some industry consolidation, but the publishing business in general was not very dynamic. Before its acquisition of CCH in 1994, Wolters had not made any other significant forays into legal publishing since its 1978 acquisition of Aspen Publishers, Inc.[[29]](#footnote-30) Lexis and its future owner Reed Elsevier had also been quiet, with their only major acquisition coming in 1987, when Lexis acquired the Michie Co., publishers of state codes and statutes.[[30]](#footnote-31)

 The impetus for these acquisitions was their growth potential—both targets were online outlets for delivering legal information. This was the beginning of the “dot-com” boom and both Wolters Kluwer and Reed Elsevier had successfully acquired the capability to deliver legal materials electronically. This left the previously dominant legal publisher, West, in a less commanding position.[[31]](#footnote-32) Now, instead of competing against a handful of other, less established companies, West was competing as an “independent” publisher against multinational corporate behemoths. In response, West retained two investment banks to collect bids and formally put itself up for sale.[[32]](#footnote-33)

## Thomson Buys Legal Publishers, Prompts Antitrust Investigation

 Thomson was charging into the publishing business through a steady stream of acquisitions. Starting in 1978, the Canadian conglomerate had purchased 13 other publishers, Wadsworth, Litton, Delmar, Gale, AutEx, Lawyers Cooperative Publishing (owners of Callaghan and Clark Boardman), MICROMEDEX, Institute for Scientific Research, Banks-Baldwin, Information Access Company, The Medstat Group, The Rutter Group, and Peterson’s.[[33]](#footnote-34)

 On Tuesday, February 27, 1996 the *Wall Street Journal* reported, “Thomson Corp. won the auction to acquire legal publisher West Publishing Co. for an expensive $3.43 billion in cash, even as the internet threatens West’s core markets.”[[34]](#footnote-35) The *Wall Street Journal* reviewed the purchase almost solely on Thomson’s ability to leverage West’s vast legal resources to compete in the emerging online marketplace.[[35]](#footnote-36) Before Thomson could finalize its acquisition, though, it would have to pass antitrust muster under the Hart-Scott-Rodino Act.[[36]](#footnote-37)

 In June, the United States, along with seven states, simultaneously filed an antitrust suit challenging the acquisition and announced a proposed settlement of the suit.[[37]](#footnote-38) As a portent of the “new order” of the legal publishing market, the court examined the implications of a combined Thomson/West and found it had the potential to create a duopolistic legal publishing market.[[38]](#footnote-39) With the help of amici curiaeLexisNexis and Hyperlaw, and the additional public comments of Matthew Bender & Co. (“Bender”) and CD Law, the court examined the post-acquisition legal publishing market and found potential for anticompetitive results in two major areas: Thomson would have a monopoly in markets where West and Thomson were the only publishers of certain materials; and there was potential for Thomson to discontinue offering or increase the cost of purchasing its licensed content and service.[[39]](#footnote-40) The settlement stipulated that Thomson divest 52 legal publications.[[40]](#footnote-41) More importantly, though, Thomson agreed to a compulsory licensing system for its star pagination system, at a rate much cheaper than what LexisNexis had been paying pursuant to the settlement in 1986’s *Mead* case.[[41]](#footnote-42)

 Perhaps in deference to other pending litigation discussed below, the U.S. Department of Justice (“DOJ”) was careful to limit the precedential value of West’s agreement to freely license the star pagination system. In announcing the settlement, the DOJ stated:

Today’s settlement, with its open licensing requirement, does not suggest . . . that the Department believes a license is required for use of such pagination. The Department expressly reserves its right to assert its views concerning the extent, validity, or significance of any intellectual property right claimed by the companies [West and Thomson]. The Department also said that the parties agree that the settlement shall have no impact whatsoever on any adjudication concerning such matters.[[42]](#footnote-43)

## Industry Litigation Spreads: The *Bender*, *Hyperlaw* and *Oasis* Cases

 Litigation did not come to a standstill in the years before Thomson’s acquisition of West. While Thomson was buying itself a stable of smaller publishers and Lexis and West were developing expensive services by which lawyers could search the full text of opinions online, a slew of entrepreneurs were using the nascent technology of the internet and the newly popular CD-ROM format to bring legal information to smaller law firms and the public in general—at prices possible only without the costly production of large printed volumes.[[43]](#footnote-44) In February of 1994, Bender, represented by David Nimmer,[[44]](#footnote-45) filed two motions for declaratory judgment, allowing it to include West’s pagination in its CD-ROM compilations of cases and other secondary materials.[[45]](#footnote-46) Bender, founded in 1887, was one of the “old guard” of legal publishing and had recently begun to explore new ways to deliver its content.[[46]](#footnote-47)

 Bender was not the only company that wanted to use West’s star pagination in its electronic products. The “poster child” for the burgeoning CD-ROM industry was Alan Sugarman, founder of Hyperlaw. Sugarman founded Hyperlaw in 1991 after publishing a legal book and discovering that he could not electronically access the cases to which his publication cited because to do so required use of West’s proprietary system.[[47]](#footnote-48) Hyperlaw quickly released compilations of Supreme Court and United States Court of Appeals opinions on CD-ROM at discount prices (compared to West’s rates) using its own system of citation.[[48]](#footnote-49) Unfortunately, these compilations were of little or no use because those who bought them needed to cite to specific pages in West’s official reporters.[[49]](#footnote-50) In 1996 the court upheld Hyperlaw’s request to intervene in the *Bender* case, combining two prominent challenges to West’s empire.[[50]](#footnote-51)

 While this case was still pending, another publisher, Oasis Publishing Co., filed a similar motion for declaratory judgment, also asserting that West’s claim to hold copyright in its star pagination system was invalid.[[51]](#footnote-52) The United States District Court in Minnesota granted summary judgment for West, upholding the *Mead* court’s opinion that West’s arrangement of its cases entitled it to protection of its page numbering system.[[52]](#footnote-53) The case was “argued to the Eighth Circuit in early 1997 and then . . . resolved.”[[53]](#footnote-54)

 Meanwhile, West was doing all it could to keep the *Bender* case from being heard on the merits. “After extensive discovery, briefing and oral argument on the jurisdictional issue, the court denied West’s motions . . . as well as West’s subsequent motion for reconsideration or interlocutory review. West’s failed jurisdictional ploy delayed adjudication of the merits by at least two years and caused significant litigation costs.”[[54]](#footnote-55) The attempts by West to stall the case were futile; on November 22, 1996, the District Court granted summary judgment on the star pagination issue, holding that West had no copyrightable interest in its star pagination system.[[55]](#footnote-56) The judge stated, “Where and on what particular pages the text for a court opinion appears does not embody any original creation and is not, in my opinion, entitled to protection.”[[56]](#footnote-57) The court denied summary judgment as to whether it was legal for Hyperlaw to directly copy from West’s reporters but would rule in favor of Hyperlaw after a bench trial.[[57]](#footnote-58) West appealed both rulings.

 While the appeal was still pending before the Second Circuit, Matthew Bender’s parent company, the Times Mirror Co., sold the publisher to Reed Elsevier, the parent of LexisNexis.[[58]](#footnote-59) The sale, part of yet another billion-dollar deal, consolidated the legal publishing industry further. The co-chairman of Reed Elsevier, Nigel Stapleton, was quoted as saying, “What we are really doing is making ourselves a credible overall competitor to Thomson, which until now had clearly been in a leading position.”[[59]](#footnote-60)

 In two decisions handed down November 3, 1998, the Second Circuit upheld the District Court on both issues: star pagination was not copyrightable and Hyperlaw could copy directly from West’s reporters.[[60]](#footnote-61) The court pointed to *Feist* as directly contradicting *Mead* and commented that West was relying on the “now defunct ‘sweat of the brow’ doctrine.”[[61]](#footnote-62) Now West could not leverage its proprietary system to prevent competition. “The ruling will allow other publishers to scan the text of judicial opinions straight from West reporters into the databases.”[[62]](#footnote-63) This decision marked a decided shift in the way West approached protecting its intellectual property. Now that it had exhausted the court system, West took a new two-pronged approach to protecting its property: it attempted to buy up any competitors and it lobbied Congress to pass a law granting copyright-like protection to its databases.[[63]](#footnote-64)

## The Industry after *Bender*: Legal Publishers Consolidate

 After the ruling in *Bender* the legal publishing industry’s consolidation was fast and furious. Between 1997 and 2004 Wolters Kluwer acquired 10 other publishers including Wiley Law, Summers Press, Accounting Research Manager, Browne Publishing, Casenotes Publishing Company, Charles D. Spencer & Associates and Loislaw. Reed Elsevier, having bought Matthew Bender, the portion of Shepard’s it did not already own, and the 52 titles Thomson divested as part of its acquisition of West, also bought 9 other publishers between 1998 and 2002, including Quicklaw, CD Law, and Courtlink.

 Thomson outdid its two major competitors. Between 1998 and 2004 it has acquired 20 other publishers, both print and online. The most interesting acquisition was the $37 million buyout of FindLaw, the leading free source of legal information.[[64]](#footnote-65) Lexis countered with the launch of a service aimed at small law offices and solo practitioners, LexisOne.[[65]](#footnote-66)

 In the years after *Bender* there has not been a sustainable proliferation of independent legal sources offering free access to United States case law. LawSource maintains American Law Source On-line (“ALSO”), a comprehensive listing of sources of free legal information.[[66]](#footnote-67) As evidenced on ALSO, the United States government has begun to place more of its own information online in the last 10 years, much of which is free or carries a nominal cost.[[67]](#footnote-68) Private companies have not followed suit. ALSO’s links to free legal information, with the exception of the numerous links to government-run websites, are mostly to LexisOne or FindLaw. The only other major source for “free” law is Cornell’s Legal Information Institute (“LII”). LII may be the most significant competitor to the paid services, as it offers a single engine from which to search all the circuit court decisions dating back to 1995, some going back as far as 1992.[[68]](#footnote-69) LII also hosts New York Court of Appeals decisions from 1992 to present, the United States and state constitutions, the U.S. Code, the Uniform Commercial Code, and the Federal Rules of Civil Procedure.[[69]](#footnote-70) Nearly all of this information is also available via free U.S. government websites and much of it is also available on FindLaw and/or LexisOne.

 Sadly, though, the pool of free legal websites is quite shallow. Of ALSO’s 100-plus links to free legal information, other than the links to LII there are only nine links to non-government sites not owned by Thomson or Reed Elsevier.[[70]](#footnote-71) Suffice it to say, Thomson and Reed Elsevier’s competition is not very fierce in the “free” market. It seems that Thomson and Reed Elsevier would rather own the “free” sources of legal information than compete with them. By tightly controlling the trickle of available free information, Thomson and Reed Elsevier have been able to satisfy the general public with some crumbs of legal information while maintaining their stranglehold on anyone doing in-depth research.

 Much like free sources of law, there are only a handful of independent sources for online legal information. One such source is TheLaw.net.[[71]](#footnote-72) TheLaw.net competes directly with LexisNexis and Westlaw and costs much less. Conventional wisdom would suggest that the presence of a competitor like TheLaw.net would force down prices at LexisNexis and Westlaw. Instead, both services have been able to successfully stave off a profit-threatening commoditization of the industry by differentiating themselves from the lower-priced competition based on comprehensiveness, accuracy, and a host of value-added services.[[72]](#footnote-73) The dominant legal publishers have been able to successfully differentiate themselves from the minor paid services through innovation and reliability, while protecting their market share by limiting the number of free sources of legal information and acquiring potential competitors.

## The Business of Legal Publishing in 2004

 The legal publishing market has traditionally been very quick to adopt new technology. Computers and the internet have brought the general public unprecedented access to large volumes of information and transformed the legal publishing business. There has been a tremendous rush, especially by the United States government, to place legal and national information online, thereby giving access to all citizens.[[73]](#footnote-74) Unfortunately, the massive amount of data is located across a complex worldwide network of computers and accessed via billions of individual websites.[[74]](#footnote-75) Computers have been harnessed to quickly query this bulk of information and deliver results useful to individuals, and legal publishers are masters at delivering these results.

 In 1953, the first information retrieval system on a general-purpose computer was announced.[[75]](#footnote-76) Just eleven years later, in 1964, the legal field began to use these systems to store case citations, statutes, administrative decisions, and city ordinances.[[76]](#footnote-77) By 1975, there were 300 public access databases.[[77]](#footnote-78) Forty years after the first forays into online full-text information retrieval, the market is dominated by the three major players: the West Group, owned by the Thompson Corp., LexisNexis, owned by Reed Elsevier, and CCH, owned by Wolters Kluwer.[[78]](#footnote-79) In 1998, of the estimated $5.2 billion market for legal research materials, these three companies controlled over $4 billion in annual sales.[[79]](#footnote-80) In 2004 the “big three” posted $5.9 billion in sales.[[80]](#footnote-81) Online sales represent nearly 46% of this $6 billion-plus market.[[81]](#footnote-82)

 The “big three” legal publishers enjoy unusually large profit margins on their legal publications as compared to the other divisions in their companies,[[82]](#footnote-83) and as compared to traditional publishers.[[83]](#footnote-84) Because online sales represent nearly half of the revenue for these “publishers,” it is unfair to compare them to other traditional print publishers. Instead, it may be more apt to compare the margins of these companies with other “information dealers.” The profit margins of companies in the software and programming industry average 24.845%, close to the 25.265% average margins of the legal publishing divisions.[[84]](#footnote-85) When considering that less than half of their revenue comes from online endeavors, though, the comparison is weaker. An average of the traditional publishing and software industries’ margins would be more expected. An average of the margin from the software and programming industry[[85]](#footnote-86) with publishing’s 5% margin,[[86]](#footnote-87) or 14.925%, presents a reasonable facsimile of the revenue streams for legal publishers. This calculation produces an estimated profit margin significantly lower than legal publishing’s 25%-plus margin. Regardless of their sector classification, the legal publishing divisions’ profit margins are in or near the top quartile of the S&P 500 companies, quite high by overall corporate standards.[[87]](#footnote-88) With such massive profit margins, it is hard to see how the legal publishers can argue that they are in danger.[[88]](#footnote-89) Quite to the contrary, the big three’s sales have increased 40% since 1998.[[89]](#footnote-90)

## Proposed Legislative Protection

 Notwithstanding their dominant position and unnaturally large profit margins, the big three are jealous of Europe’s database owners. On March 11, 1996, the European Union Parliament and Council adopted the Directive on the Legal Protection of Databases (“EU Database Directive”).[[90]](#footnote-91) The EU Database Directive gave Europe’s database owners the authority to prevent unauthorized extraction and re-utilization of the contents of their database for a period of 15 years from the creation of the database.[[91]](#footnote-92) The EU has threatened the United States with trade retaliation if it fails to enact similar legislation.[[92]](#footnote-93)

 The legal publishers are pressuring Congress to pass a law similar to the EU Database Directive. Congress has considered several such laws.[[93]](#footnote-94) On May 19, 1998, the House passed H.R. 2652, the Collections of Information Antipiracy Act; which died in committee in the Senate.[[94]](#footnote-95) The bill was called “an unfortunate residue of an overprotective exclusive property rights approach.”[[95]](#footnote-96) The 106th Congress considered two bills, H.R. 345 and H.R. 1858. While H.R. 345 was favorable to the publishing industry, H.R. 1858 was written by its sponsors with the advice of the public interest community to be a compromise bill. Both bills successfully made it out of their respective committees, but they were never consolidated into a version the Senate could consider. With the end of the 106th Congress, database protection was once again dead in the water.

 The battle continues in the 108th Congress. On October 8, 2003, Representative Howard Coble and nine other cosponsors introduced a bill favorable to legal publishers, H.R. 3261, the Database and Collections of Information Misappropriation Act.[[96]](#footnote-97) In response, on March 3, 2004, Representative Cliff Stearns introduced H.R. 3872, the Consumer Access to Information Act of 2004.[[97]](#footnote-98) Both bills passed their respective committees, and, as of this writing, the two competing bills were placed on the House’s Union Calendar for consolidation before being brought to the floor of the House for a vote.[[98]](#footnote-99)

 Reed Elsevier and Thomson are serious about obtaining increased copyright protections. In 2003, Reed Elsevier spent $1.2 million on its own full-time lobbyists and paid seven Washington D.C. lobbying firms over $640,000 to convince Congress to increase intellectual property rights, including database protection.[[99]](#footnote-100) As of mid-2004, Reed Elsevier has spent an additional $163,875 on federal lobbying.[[100]](#footnote-101) In addition to hiring lobbyists, Reed Elsevier donates a modest amount of money to political candidates via its Political Action Committee. In the 2000 election cycle, Reed Elsevier donated $12,500; in the 2002 cycle it donated $50,045; and in 2004 it has donated $53,522 as of the August 2 filing deadline.[[101]](#footnote-102) Reed’s “hard-money” contributions are matched by its $115,175 in soft-money contributions over the 2000 and 2002 election cycles.[[102]](#footnote-103)

 Reed Elsevier’s $250,000 in political contributions does not place it in the upper echelon of federal donors. The West Group, now owned by Thomson, has a consummate Washington insider and longtime large donor in former West head Vance Opperman.[[103]](#footnote-104) Opperman is repeatedly scrutinized for his large political donations.[[104]](#footnote-105) In the 2000 election cycle alone, Opperman, via the holding company Key Investments, gave $488,000 in soft money to federal Democrats.[[105]](#footnote-106) Opperman also gave over $170,000 in 2002 to Democrats in Minnesota, where the West division of Thomson is headquartered.[[106]](#footnote-107) Thus far the millions Reed and Thomson have spent have not been enough to convince Congress to pass a favorable law.

## Existing Legal Protections

Even while they lobby for legislation to extend their rights, the big three use an effective mix of existing protections to guard their data and their market share. Most prominently, they use the trifecta of intellectual property rights: copyright, patent and trademark. Among the big three, Thomson has been the most aggressive in using current law. As noted in Appendix C, Thomson has registered over 48,000 trademarks for works and serials.[[107]](#footnote-108) In comparison, Reed Elsevier and Wolters Kluwer combined have registered just over 5,300 trademarks.[[108]](#footnote-109) Appendix B lists patents that Thomson and Reed Elsevier hold; each has attempted to protect the methods they have developed that allow lawyers to quickly find relevant information in their vast databases.[[109]](#footnote-110) Completing the trio of intellectual property rights, the big three publishers all use trademark protection extensively to protect their brands.[[110]](#footnote-111) It is perhaps in Appendix A’s listing of trademarks that the average reader can appreciate the extent to which these three companies so completely dominate the legal publishing market. Nearly all the information a lawyer might need in the normal course of law school and as a practitioner can be found within the big three’s product catalogs.

In addition to using traditional intellectual property rights, the big three employ “click wrap” contracts to lock up their data. For example, to gain access to westlaw.com all users must agree not to “reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of westlaw.com[.]”[[111]](#footnote-112) This portion of the agreement should be unnecessary if Thomson patented the eligible portions of its site, preventing competitors from replicating westlaw.com’s value added services until the patents expire. In addition to protecting the information architecture and searching tools that make Westlaw so valuable, the User Agreement goes on to prohibit a user from permanently storing any of the information downloaded from westlaw.com: “User may store temporarily insubstantial amounts of Downloaded Data.”[[112]](#footnote-113) This effectively prohibits a user from using westlaw.com to compile a database of case law, even though the text of each downloaded decision is not copyrightable. Again, it would seem unnecessary for Thomson to have included this provision, as its 48,000 registered copyrights must include all copyrightable material on westlaw.com. The User Agreement attempts to lock up all the data Thomson has compiled, whether it did so creatively or by the sweat of its brow. Thomson’s ability to force users to agree to contracts limiting their rights beyond what lawmakers intended should not be underestimated, especially in light of publishers asking for additional protections.

To gain and keep market share both Reed Elsevier’s LexisNexis and Thomson’s westlaw.com use loyalty programs, issuing points to users much like airlines’ frequent flyer miles.[[113]](#footnote-114) These loyalty programs are designed to attract law students who, as students, receive both LexisNexis and Westlaw for “free.”[[114]](#footnote-115) Law students are oblivious to the real world expense of the services they are using; they are often ignorant of other more cost-effective or free options (limited as they are) and often become “hooked” on these very convenient and effective tools. These programs are designed to make law students more likely to pay for them as practitioners.[[115]](#footnote-116)

The big three have been very effective at using existing law and savvy marketing to create demand for their service while making sure there are no competitors benefiting from their hard work and ingenuity. The existing palette of protections has been more than adequate for the big three to make a hefty profit and, after a review of the success they have had in protecting their data and their profitability, it seems unnecessary to add any more legislative or regulatory barriers to a market already dominated by three large players.

# Conclusion

 As the market has shown, raw information does not need to be legally protected so long as the interface for retrieving it is significantly more convenient than the free alternatives, and the information is highly reliable and “complete.”[[116]](#footnote-117) This added ease of use and guaranteed reliability provided as a wrapper around the facts themselves drive attorneys to pay a high price for the law even when there are less expensive means of obtaining it.

 Even after unfavorable court decisions (*Bender* and *Hyperlaw*) that opened the market to free riders, Thomson, Reed Elsevier, and Wolters Kluwer have remained dominant and continued to expand. The reaction to the decision in *Bender* was very favorable. Librarians expected the price of obtaining legal information to fall.[[117]](#footnote-118) But it has not, perhaps because there is very little competition from independent publishers.[[118]](#footnote-119) In purchasing or providing private, free sources of law and also in reliably gathering a “complete” history of the law in a single place, Thomson, Reed Elsevier, and Wolters Kluwer have captured the legal publishing market in a way that ensures their continued success, regardless of the *Bender* and *Hyperlaw* decisions. Because of their business practices and the nature of the industry they serve, these companies are not vulnerable to competition from the free riders they seek to protect themselves from by gaining legal protection for their databases as a whole. While not having this protection may cost the big three occasionally, they have established a pattern of buying any significant competitor that threatens their grip on the industry. As such, the “market” is working as it was intended. The existence of three main legal publishers ensures that there will continue to be innovation as they compete with each other for market share. So far no lower-cost provider has been able to make available a close enough subset of services to force the big three to lower their prices. Given the current state of the legal publishing industry, it would be absurd to further limit any avenues of outside competition in what is, and has for over a century been, a tremendously profitable cartel for the dominant players.

# Appendix A- Trademarks

Trademarks Owned by Thomson, Reed Elsevier and Wolters Kluwer and their subsidiaries:

**Trademarks Issued to Thomson’s West Unit:**

ALR

American Casebook Series

American Digest System

Am Jur

Atlantic Digest

Atlantic Reporter

Bankruptcy Reporter

Black Letter

Black Letter Series

Black's Law Dictionary

Briefing Papers

Brief It

California Insurance Law and Regulation Reporter

California Reporter

clestore.com

COA

Concepts and Insights Series

CJS

CoreContent

Corpus Juris Secundum

Criminal Law News

Decennial Digest

Desktop Practice Systems

Education Law Reporter

ENFLEX

Environmental E-Site

Estate Practice Systems

Exam Pro

EZ ACCESS

\FAST

Federal Case News

Federal Claims Reporter

Federal Litigator

Federal Practice and Procedure

Federal Practice Digest

Federal Practice Manual

Federal Reporter

Federal Rules Decisions

Federal Supplement

FindLaw

FirmSite Basic

Foundation Press

Full-Text Plus

General Digest

Gonsalves & Kocachenko

The Government Contractor

Government Contracts Citator

Great Ideas in the Law

Hornbook Series

IDL

Illinois Decisions

Immigration Briefings

In A Nutshell

Industrial Defense Library

Information Innovators

Information on Your Terms

Insta-Cite

Interpreter Releases

IntraClip

KeyCite

KeyCite Alert

KeyCite Locate

KeyCite Notes

Key Connection

KeySearch

LawDesk

LawDesk Expertise

LawDesk Explorer

Law in Action Series

LawOffice.com

LawQuote.com

LegalEdcenter.com

Legal Exercise Series

Legal Solutions

McKinney's

McKinney's Consolidated Laws of New York Annotated

Military Justice Reporter

MLRS--Memory Learning and Retention System

Modern Federal Practice Digest

Most Cited Cases

National Litigator Library

National Reporter System

Newslink

New York Supplement

North Eastern Reporter

North Western Digest

North Western Reporter

Nutshell Series

Ohio Jurisprudence

Ohio Reports

Pacific Digest

Pacific Reporter

PastStat Locator

PeopleCite

PersonNet

Practitioner Series

Premise

Preparing for Settlement and Trial

Profiler

ProLaw

PST

Purdon's Pennsylvania Statutes Annotated

QuickView

QuickView

QuoteRight

ResultsPlus

SearchLink

Securities EXChange

Smith-Hurd

Social Security Reporting Service

South Eastern Digest

South Eastern Reporter

South Western Reporter

Southern Digest

Southern Reporter

SSRS

Supreme Court Reporter

TaxSource

The Government Contractor

The Information Innovator's Institute

The Key to Good Law

The Lawyers Competitive Edge

The Lawyer's PC

The Nash & Cibinic Report

The West Education Network

The West Network

Turning Point Series

TWEN

ULA

Ultra Fiche Ed.

Uniform Laws Annotated

United States Code Annotated

United States Merit Systems Protection Board Reporter

United States Supreme Court Digest

University Casebook Series

University Textbook Series

USCA

U.S. Code Congressional & Administrative News

Vernon's

West

WestCheck

WestCheck.com

WestCiteLink

WestClip

WestDoc

WestExpress

WestFax

WestFile

WestFind&Print

West FirmSite

WestFlags

West Group

West Intranet Toolkit

West Key Number System

West km

WestLaser

Westlaw

westlaw.com

WestlaweCarswell

Westlaw Integration Solutions

Westlaw Is Natural

Westlaw Profiler

WestlawPRO

WestlawPRO Plus

Westlaw Solo

Westlaw UK

Westlaw Wireless

West Legal Directory

West LegalEdcenter

WestLink

WestMate

WestNet

West NetSolutions

Westnews

West's

West's Federal Appendix

West's Handbook Series

West's Review

WestSend

WestSuite

WestWare

WestWeek

WestWorks

West WorkSpace

WIN

Words and Phrases

**Selected Trademarks Issued to Reed Elsevier & Its Subsidiaries:**

 6-in-1

Ahead of the News

Aisle by Aisle

AMM American Metal Market

Analysis and Skills Series

Anderson Publishing

Authority

Authority from Matthew Bender

Authority On-Demand

Ballantine & Sterling California Corporation Law

Bender’s Federal Practice Forms

Benedict on Admiralty

Best in Test

Bookexpo America

Books in Print

Books Out of Print

Cablevision

Capsoft

Cases and Materials Series

CD Law

Chainleader.com

Checkcite

Children’s Books in Print

Citerite

Citesearch

Collier

Collier on Bankruptcy

Commverge

Comparerite

Courtlink

Criticas

Daily Variety

Dispute Resolution Directory

Draft Master

Ecommerce Business

E-commerce Business

Ecommerce Home

Electronic Business Today

EP&P

FedNet

FullAuthoirty

GovNet

HotDocs

Hotels

Hotels’ Investment Outlook

Immigration Lawyers’ Electronic Assistant

In House

Justice Link

LawPlus

Lawyers.com

Legal Text Series

LexCite

LexCm

LexDoc

LexForm

LexImage

Lexis

Lexis.com

LexisNexis

Lexis-Nexis.com

LexisOne

LexisOne.com

Lexis-Nexis

Lexis-Nexis XChange

Lexis Publishing

LexPedite

LexStat

LexTalk

Library Journal

Library Journal’s Academic Newswire

Martindale

Martindale.com

Martindale-Hubbell

Martindale-Hubbell Dispute Resolution Directory

Matthew Bender

Milgrim on Trade Secrets

Moore’s Federal Practice

NepCon

Net Connect

Nexis

Nexis.com

Nichols on Eminent Domain

Nimmer on Copyright

Packaging Digest

Partner with the Brightest Minds in Law

Plugin Datamation

Powell on Real Property

QuickLaw

Quick Print Products

School Library Journal

Search Master

SemiSource

Shepards

Shepards.com

Shepard’s Alert

Shepardize

SI

Student Guide Series

TaxCalibre

Tax Calibre

Tax Source

Topform

Unrich’s International Periodicals Directory

Variety

Variety.com

Variety Cares

Variety Extra

Warren’s Forms of Agreements

Weinstein’s Evidence

We Tell All

World Leaders in Print

Zone-In

**Selected Trademarks Issued to Wolters Kluwer & Its Subsidiaries:**

Accounting Research Manager

Advances in Nursing Science

Alzheimer’s Care Quarterly

An Aspen Publication

AuditVision

BeneQuick

BeneView

Blue Sky Advantage

Business and the Environment

CartiFile

CCH

CertiTax

Claims

CompleteTax

CompuTax

Correspondent

CT Insurance Advantage

Cyber Strategies

Cyber Strategies at the Frontier of Law and Business

DB Dynabreak

Dynabreak

Edgar Ease

Emanuel Crunchtime

ENTT

Energy Design Update

Exempt Organizations Reporter

Factuary

Federal Tax Guide Reports

Health Care Management Review

Health Law Center

Hospital Food & Nutrition Focus

HRAnswersNow

GAAS Guide

IllMiss

Law in a Flash

Nursing Administration Quarterly

Paseo Colorado Pasadena

PD on CD

PocketTax

ProSystem FX

Quatra

SecNet

Shared Learning

Siegel’s

SmartRelate

Standard Federal Tax Reports

State Tax Review

St. Loys

Strategies & Tactics

Tagged

Taxes the Tax Magazine

Taxes on Parage

Tax Shop

Techniques in Orthopedics

The Licensing Journal

The Journal of Ambulatory Care Management

Topics in Health Care Financing

Trademark Access

UCC Direct

U. S. Master Tax Guide

ViewPlan

ZipComm

ZipSales

ZipUtil

# Appendix B- Patents

Selected Patents Assigned to Thomson Publishing, Reed Elsevier and their subsidiaries (note: no patents were found assigned to Wolters Kluwer or its subsidiaries):

**Selected Patents Assigned to Thomson & West Publishing**

5,157,783: Data base system which maintains project query list, desktop list and status of multiple ongoing research projects

5,265,065: Method and apparatus for information retrieval from a database by replacing domain specific stemmed phases in a natural language to create a search query

5,418,948: Concept matching of natural language queries with a database of document concepts

5,434,932: Line alignment apparatus and process

5,488,725: System of document representation retrieval by successive iterated probability sampling

5,644,720: Interprocess communications interface for managing transaction requests 5,715,445: Document retrieval system employing a preloading procedure

5,870,770: Document research system and method for displaying citing documents

6,263,351: Document research system and method for efficiently displaying and researching information about the interrelationships between documents

6,292,813: System and method for communicating information relating to a network resource

6,301,576: Document retrieval system for retrieval of a first search document and a last search document from database

6,336,131: System and method for communicating information relating to a network resource

6,341,305: System and method for communicating information relating to a network resource

6,529,911: Data processing system and method for organizing, analyzing, recording, storing and reporting research results

6,604,103: System and method for information retrieval employing a preloading procedure

6,668,255: Data processing system and method for organizing, analyzing, recording, storing and reporting research results

**Selected Patents Assigned to Reed Elsevier & Its Subsidiaries**

5,481,742: Printer control apparatus for remotely modifying local printer by configuration signals from remote host to produce customized printing control codes

5,692,176: Associative text search and retrieval system

5,761,497: Associative text search and retrieval system that calculates ranking scores and window scores

5,771,378: Associative text search and retrieval system having a table indicating word position in phrases

5,771,381: Method and system for adding configuration files for a user

5,819,260: Phrase recognition method and apparatus

5,826,260: Information retrieval system and method for displaying and ordering information based on query element contribution

5,855,015: System and method for retrieval of hyperlinked information resources

6,115,712: Mechanism for combining data analysis algorithms with databases on the internet

6,282,660: Extending dial up networking paradigm to cover network connections

6,529,911: Data processing system and method for organizing, analyzing, recording, storing and reporting research results

6,560,597: Concept decomposition using clustering

6,668,255: Data processing system and method for organizing, analyzing, recording, storing and reporting research results

# Appendix C- Copyrights

All information is based on a August 26, 2004 search of the United States Copyright Office’s database of registered copyrights and registered serials.

Of the three largest legal publishers, Thomson & West Publishing have most aggressively registered their copyrights.[[119]](#footnote-120)

West Publishing Corportation is the author of 29,762 registered works:

WEST PUBLISHING (2 items)
WEST PUBLISHING COMPANY (23,884 items)
WEST PUBLISHING COMPANY, INC (2 items)
WEST PUBLISHING CORPOATION (1 item)
WEST PUBLISHING CORPORATION (5,843 items)
WEST PUBLISHING CORPORTATION (1 item)
WEST PUBLISHING CORPORTION (1 item)
WEST PUBLISHING CORPROATION (1 item)
WEST PUBLISHING GROUP (1 item)
WEST PUBLISHING ORPORATION (1 item)
WEST PUBLISHING, INC (23 items)
WEST PUBLISH9ING CORPORATION (1 item)
WEST PUBLISING CORPORATION (1 item)
WEST PUBLSHING CORPORATION (1 item)

And 18,532 serial works:

WEST PUBLISHING CO (1 item)
WEST PUBLISHING COCRPORATION (1 item)
WEST PUBLISHING COMPANY (10,729 items)
WEST PUBLISHING COMPANY, INC (25 items)
WEST PUBLISHING CORPORATION (7,769 items)
WEST PUBLISHING CORPORATON (4 items)
WEST PUBLISING CORPORATION (2 items)
WEST PULBLISHING CORPORATION (1 item)

Reed Elsevier holds significantly fewer copyright registrations with 1,458 registered works:

REED ELSERVIER, INC. LEXIS LAW PUBLISHING (1 item)
REED ELSEVEIR, INC. MICHIE (1 item)
REED ELSEVIER GROUP. BUTTERWORTH-HEINEMANN (4 items)
REED ELSEVIER PROPERTIES, INC (5 items)
REED ELSEVIER PROPERTIES, INC. LEXIS LAW PU (4 items)
REED ELSEVIER PROPERTIES, INC. LEXIX LAW PU (1 item)
REED ELSEVIER PROPERTIES, INC. MICHIE COMPA (1 item)
REED ELSEVIER. LEXIS LAW PUBLISHING (376 items)
REED ELSEVIER. MICHIE (3 items)
REED ELSEVIER, INC (13 items)
REED ELSEVIER, INC. LEXIS LAW PLBUISHING (1 item)
REED ELSEVIER, INC. LEXIS LAW PUBLISHING (219 items)
LEXIS (1 item)
LEXIS COURT COURIERS (1 item)
LEXIS LAW PUBISHING (1 item)
LEXIS LAW PUBLIS;HING (1 item)
LEXIS LAW PUBLISHING (676 items)
LEXIS LAW PUBLISHING OF PUERTO RICO (1 item)
LEXIS LAW PUBLISHING OF PUERTO RICO, INC (6 items)
LEXIS LAW PUBLISING (3 items)
LEXIS LAW PUBLISING OF PUERTO RICO, INC (1 item)
LEXIS LEGAL PUBLISHING (1 item)
LEXIS NEXIS DE PUERTO RICO (5 items)
LEXIS NEXIS DE PUERTO RICO, INC (1 item)
LEXIS NEXIS LIBRARY (1 item)
LEXIS PUBLISHING (17 items)
LEXIS PUBLISHING. CD LAW, INC (4 items)
LEXIS-NEXIS (29 items)
LEXIS-NEXIS DE PUERTO RICO, INC (9 items)
LEXIS-NEXIS OF PUERTO RICO (2 items)
LEXIS-NEXIS OF PUERTO RICO, INC (16 items)
LEXISNEXIS (38 items)
LEXISNEXIS GROUP. ANDERSON PUBLISHING COMPA (12 items)
LEXISNEXIS GROUP. ANDERSON PUBLISHING GROUP (1 item)
LEXISNEXIS GROUP. ANERSON PUBLISHING COMPAN (1 item)
LEXISNEXIS OF PUERTO RICO, INC (1 item)

And 2,442 registered serial works:

REED ELSEVIER (1 item)
REED ELSEVIER BUSINESS INFORMATION (2 items)
REED ELSEVIER GROUP, INC. BUTTERWORTH-HEINE (1 item)
REED ELSEVIER INC. MICHIE (2 items)
REED ELSEVIER MEDICAL PUBLICATIONS USA (1 item)
REED ELSEVIER MEDICAL PUBLISHERS (1 item)
REED ELSEVIER MEDICAL PUBLISHERS, USA (3 items)
REED ELSEVIER PROPERTIES, INC (1 item)
REED ELSEVIER. CAHNER PUBLISHING COMPANY (3 items)
REED ELSEVIER. CAHNERS BUSINESS INFORMATION (4 items)
REED ELSEVIER. CAHNERS PUBLISHING COMPANY (17 items)
REED ELSEVIER. CAHNERS TRAVEL GROUP (22 items)
REED ELSEVIER. LEXIS LAW PUBLISHING (565 items)
LEXIS (1 item)
LEXIS DOCUMENT SERVICES, INC (2 items)
LEXIS LAW (1 item)
LEXIS LAW PUBLISHERS (1 item)
LEXIS LAW PUBLISHING (889 items)
LEXIS LAW PUBLISHING (FORMERLY MICHIE) (1 item)
LEXIS LAW PUBLISHING OF PUERTO RICO, INC (2 items)
LEXIS LAW PUBLISHING, INC (1 item)
LEXIS NEXIS MEALEY PUBLICATIONS & CONFERENC (1 item)
LEXIS NEXIS PUBLISHING OF PUERTO RICO, INC. (1 item)
LEXIS PUBLISHING (32 items)
LEXIS PUBLISHING. CD LAW, INC (2 items)
LEXIS PUBLISHING. MICHIE (1 item)
LEXIS-NEXIS (5 items)
LEXIS-NEXIS DE PUERTO RICO, INC (4 items)
LEXIS-NEXIS OF PUERTO RICO (4 items)
LEXIS-NEXIS OF PUERTO RICO, INC (15 items)
LEXISNEXIS (693 items)
LEXISNEXIS GROUP (2 items)
LEXISNEXIS GROUP. ANDERSON PUBLISHING COMPA (1 item)
LEXISNEXIS MEALEY PUBLICATION & CONFERENCES (1 item)
LEXISNEXIS MEALEY PUBLICATIONS & CONFERENCE (156 items)
LEXISNEXIS MEASLEY PUBLICATIONS & CONFERENC (2 items)
LEXISNEXIS OF PUERTO RICO, INC (1 item)

Wolters Kluwer has registered even fewer copyrights, with 714 registered works:

WOLTERS (1 item)

WOLTERS KLUWER HEALTH. LIPPINCOTT WILLIAMS (3 items)

WOLTERS KLUWER HEALTH, INC (15 items)

ASPEN LAW & BUSINESS (48 items)

ASPEN LAW & BUSINESS PUB (3 items)

ASPEN LAW & BUSINESS PUBLISHERS (9 items)

ASPEN LAW & BUSINESS PUBLISHERS, INC (2 items)

ASPEN LAW & BUSINESS PUBLISHING (3 items)

ASPEN LAW AND BUSINESS (108 items)

ASPEN LAW AND BUSINESS PUB (37 items)

ASPEN LAW AND BUSINESS PUBLICATION (1 item)

ASPEN LAW AND BUSINESS PUBLICATIONS (1 item)

ASPEN LAW AND BUSINESS PUBLIHSERS, INC (1 item)

ASPEN LAW AND BUSINESS PUBLISHER (2 items)

ASPEN LAW AND BUSINESS PUBLISHERS (40 items)

ASPEN LAW AND BUSINESS PUBLISHERS, INC (7 items)

ASPEN LAW AND BUSINESS PUBLISHING (23 items)

ASPEN LAW AND BUSINESS. PANEL PUBLISHERS (1 item)

ASPEN PUBLISHERS (33 items)

ASPEN PUBLISHERS. ASPEN HEALTH LAW CENTER (1 item)

ASPEN PUBLISHERS. ASPEN LAW & BUSINESS (1 item)

ASPEN PUBLISHERS, INC (196 items)

ASPEN PUBLISHERS, INC. ASPEN CENTER FOR PAT (9 items)

ASPEN PUBLISHERS, INC. ASPEN COMMUNICATIONS (7 items)

ASPEN PUBLISHERS, INC. ASPEN EDUCATION DEVE (2 items)

ASPEN PUBLISHERS, INC. ASPEN HEALTH AND ADM (1 item)

ASPEN PUBLISHERS, INC. ASPEN HEALTH LAW AND (12 items)

ASPEN PUBLISHERS, INC. ASPEN HEALTH LAW CEN (11 items)

ASPEN PUBLISHERS, INC. ASPEN LAW & BUSINESS (7 items)

ASPEN PUBLISHERS, INC. ASPEN LAW AND BUSINE (4 items)

ASPEN PUBLISHERS, INC. ASPEN NONPROFIT FUND (1 item)

ASPEN PUBLISHERS, INC. ASPEN REFERENCE GROU (61 items)

ASPEN PUBLISHERS, INC. ASPEN REVERENCE GROU (1 item)

ASPEN PUBLISHERS, INC. HEALTH & ADMINISTRAT (1 item)

ASPEN PUBLISHERS, INC. HEALTH AND LAW COMPL (1 item)

ASPEN PUBLISHERS, INC. PANEL PUBLISHERS (1 item)

ASPEN PUBLISHERS, INC.. ASPEN LAW & BUSINES (1 item)

ASPEN PUBLSHERS (1 item)

ASPEN PUBLSIHERS, INC (1 item)

ASPEN REFERENCE GROUP (54 items)

ASPEN REFERENCE GROUP. ASPEN PUBLISHERS, IN (1 item)

And 580 registered serial works:

WOLTERS KLUWER HEALTH (5 items)

WOLTERS KLUWER HEALTH, INC (12 items)

WOLTERS KLUWER U.S. CORPORATION. LIPPINCOTT (2 items)

ASPEN LAW & BUSINESS (198 items)

ASPEN LAW & BUSINESS I (7 items)

ASPEN LAW & BUSINESS PANEL PUBLISHERS (1 item)

ASPEN LAW & BUSINESS PUB (26 items)

ASPEN LAW & BUSINESS PUBLISHERS (8 items)

ASPEN LAW & BUSINESS PUBLISHING (5 items)

ASPEN LAW AND BUSINESS (102 items)

ASPEN LAW AND BUSINESS PUB (129 items)

ASPEN LAW AND BUSINESS PUBLICATION (1 item)

ASPEN LAW AND BUSINESS PUBLISHER (1 item)

ASPEN LAW AND BUSINESS PUBLISHERS (39 items)

ASPEN LAW AND BUSINESS PUBLISHERS, INC (1 item)

ASPEN LAW AND BUSINESS PUBLISHING (38 items)

ASPEN LAW AND BUSINESS. PANEL PUBLISHERS (2 items)

ASPEN LAW CENTER (2 items)

ASPEN LAW OF BUSINESS PUBLISHERS (1 item)

# timeline%20with%20casesAppendix D- Acquisitions Timeline

1. Wheaton v. Peters, 33 U.S. 591 (1834). [↑](#footnote-ref-2)
2. Anne Wells Brascomb, *Lessons from the Past: Legal and Medical Databases,* 35 Jurimetrics J. 417, 424 (Summer 1995) (describing how the first court reporter worked without pay, relying on his copyright to produce earnings). [↑](#footnote-ref-3)
3. *Id.* at 424. [↑](#footnote-ref-4)
4. See generally David Y. Atlas, *Comment: Taming the Wild West: The Scope of Copyright Protection for Compilations after Matthew Bender & Co. v. West Publishing Co.,* 38 IDEA 491, 492 (1998). [↑](#footnote-ref-5)
5. Matthew Swibel, Defending the Database, March 21, 2004, *available at* http://www.forbes.com/2004/03/31/cz\_ms\_0331beltway.html. [↑](#footnote-ref-6)
6. 499 U.S. 340 (1991) (hereinafter “Feist”). [↑](#footnote-ref-7)
7. Russell G. Nelson, *Seeking Refuge from a Technology Storm: The Current Status of Database Protection Legislation After the Sinking of the Collections of Information Anti-Piracy Act and the Second Circuit Affirmation of Matthew Bender & Co. v. West Publishing Co.,* 6 J. Intell. Prop. L. 453, 457–8 (1999). [↑](#footnote-ref-8)
8. Feist, 499 U.S. 340. [↑](#footnote-ref-9)
9. Atlas, *supra* note , at 492. [↑](#footnote-ref-10)
10. 158 F.3d 674 (2d Cir. 1998). [↑](#footnote-ref-11)
11. Sharon Schmickle and Tom Hamburger, *West Has a Long Publishing History,* Minneapolis–St. Paul Star Tribune, March 5, 1995, at 1, *available at* http://www.startribune.com/westpub/profiles/west\_his.htm. [↑](#footnote-ref-12)
12. “[I]n 1922, there were some 65 competing publishers of case reports providing at least 190 case law sources. At the end of 1994, there were over 170 competing providers providing over 700 different sources of case law. Now, in early 1995, the number of competing case law providers exceeds 190 entities producing over 750 case law sources. This amounts to increases of about 300 percent in each category over just the past two years.” *West Defends Actions, Cites Lists of Accomplishments,* Minneapolis–St. Paul Star Tribune, March 5, 1995, at 1, *available at* http://www.startribune.com/westpub/perspectives/response.htm. [↑](#footnote-ref-13)
13. Sharon Schmickle and Tom Hamburger, *West Fights to Maintain Its Lead in a Changing Industry,* Minneapolis–St. Paul Star Tribune, March 5, 1995, at 1, *available at* http://www.startribune.com/westpub/competit.htm. [↑](#footnote-ref-14)
14. Deborah Tussey, *Owning the Law: Intellectual Property Rights in Primary Law,* 9 Fordham Intell. Prop. Media & Ent. L.J. 173, at 177–8 (1998). Between 1979 and 2002, Thomson acquired 23 publishers, including West Group. Kendall F. Svengalis, Rhode Island Law Press, *The Current State of the Legal Publishing Industry and Its Implications for Law Libraries,* *at* http://www.rilawpress.com/orall\_presentation.ppt, 2002 (hereinafter “Svengalis presentation”). Reed Elsevier has acquired 10 publishers over the same period, including Lexis-Nexis. *Id.* Wolters Kluwer acquired five other publishers in the period between 1994 and 2002. *Id.* Thomson Corporation owns the West Group, which in turn claims ownership of 213 trademarks. Trademarks Owned by West, *available at* http://west.thomson.com/copyright/trademarks.asp. These include ALR, Federal Reporter, Am Jur, Factiva, FindLaw, LawOffice.com, Nutshell Series, and Westlaw. *Id.* [↑](#footnote-ref-15)
15. Svengalis presentation, *supra* note . [↑](#footnote-ref-16)
16. See Atlas, *supra* note , at 495; see Wheaton v. Peters, 33 U.S. at 598 (holding no reporter can have copyright in judicial opinions). [↑](#footnote-ref-17)
17. 799 F.2d 1219 (8th Cir. 1986) (hereinafter “Mead”). [↑](#footnote-ref-18)
18. James H. Wyman, *Freeing the Law: Case Reporter Copyright and the Universal Citation System*, 24 Fla. St. U. L. Rev. 217, 219 (1996) (noting that almost all federal courts and a large number of state courts require citations that contain the page numbers of West Publishing Company’s case reporters). [↑](#footnote-ref-19)
19. There was a movement to create an independent universal system of citation, but it did not succeed. Christine Hurt, *Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice,* 87 Iowa L. Rev. 1257, at 1290–8 (2002) (contending that West’s large influence, fueled by its desire to maintain a stranglehold on the market, was the downfall of the universal citation movement). [↑](#footnote-ref-20)
20. Gary Wolf, *Who Owns the Law,* Wired, May 1994, *available at* http://www.wired.com/ (speculating that the terms of the settlement in West v. Mead Data involved West licensing its page numbering system to Mead Data but that Mead Data could not use these page numbers in CD-ROM’s and other electronic formats). [↑](#footnote-ref-21)
21. Mead, 799 F.2d at 1229. [↑](#footnote-ref-22)
22. West was founded in 1872 by John B. West and his brother Horatio. Thomson West Company Overview, at http://west.thomson.com/about/history/ (last visited April 30, 2004). [↑](#footnote-ref-23)
23. The LexisNexis timeline: Celebrating Innovation . . . and 30 years of online legal research, *available at* http://www.lexisnexis.com/anniversary/30th\_timeline\_fulltxt.pdf (hereinafter “Lexis timeline”). [↑](#footnote-ref-24)
24. Feist, 499 U.S. 340. [↑](#footnote-ref-25)
25. *Id.* at 345. *See also* Susan Hansen, *Fending off the Future*, The American Lawyer (Sept. 1994), *available at* http://people.umass.edu/aex1000/am-lawr.html (last visited May 19, 2004) (discussing the shift in *Feist* toward less liberal copyright protection). [↑](#footnote-ref-26)
26. Morgan Chu, Alex Wiles and Elliot Brown, Irell & Manella LLP, Matthew Bender Letter to DOJ Re Thomson/West, August 31, 1996, *at* http://www.hyperlaw.com/dojmatb1.htm(“the *West v. Mead* decision has not yet been explicitly overturned, and West has in fact continued its use of litigation to prevent competitors from using star pagination”). [↑](#footnote-ref-27)
27. Raju Narasetti and Greg Steinmetz, *Reed Elsevier Wins Bidding for Lexis/Nexis,* Wall St. J., October 5, 1994, at A3. [↑](#footnote-ref-28)
28. James P. Miller, *Publisher CCH Agrees to Buyout by Dutch Firm,* Wall St. J., November 28, 1995, at A3. [↑](#footnote-ref-29)
29. American Association of Law Libraries, Committee on Relations with Information Vendors, *A Legal Publishers List: Corporate Affiliations of Legal Publishers, 2d ed.: Part III. Wolters Kluwer,*

*available at* http://www.aallnet.org/committee/criv/resources/tools/list/wolterskluwer.html (last visited May 6, 2004) (hereinafter “Wolters List”). [↑](#footnote-ref-30)
30. American Association of Law Libraries, Committee on Relations with Information Vendors, *A Legal Publishers List: Corporate Affiliations of Legal Publishers, 2d ed.: Part II. Reed Elsevier,*

*available at* http://www.aallnet.org/committee/criv/resources/tools/list/reedelsevier.html (last visited May 6, 2004) (hereinafter “Reed List”). [↑](#footnote-ref-31)
31. *West Publishing’s Auction Attracts a Slew of Suitors,* Wall St. J., February 26, 1996, at B8. [↑](#footnote-ref-32)
32. *Id.* [↑](#footnote-ref-33)
33. American Association of Law Libraries, Committee on Relations with Information Vendors, *A Legal Publishers List: Corporate Affiliations of Legal Publishers, 2d ed.: Part I. Thomson Corporation,*

*available at* http://www.aallnet.org/committee/criv/resources/tools/list/thomson.html (last visited May 6, 2004) (hereinafter “Thomson List”); West: Historic Highlights, *at* http://west.thomson.com/about/history (last visited May 18, 2004). [↑](#footnote-ref-34)
34. Raju Narisetti and Solange De Santis, *Thomson to Buy West Publishing for $3.43 Billion,* Wall St. J., February 26, 1996, at A3. [↑](#footnote-ref-35)
35. *Id.* (quoting Thomson’s chief financial officer as saying “West has a database of cases that goes way back . . . the key is the ability to search the database and that added value is extremely difficult to duplicate.”). [↑](#footnote-ref-36)
36. Hart-Scott-Rodino was enacted in 1976 to prevent “midnight mergers,” which have potential negative antitrust implications. Information about Hart-Scott-Rodino is available at: http://www.ftc.gov/bc/hsr/hsr.htm. [↑](#footnote-ref-37)
37. Albert R. Karr, *Thomson’s Pact to Acquire Rival Receives Government Approval,* Wall St. J., June 20, 1996, at B10. [↑](#footnote-ref-38)
38. United States v. Thomson Corp., 949 F .Supp. 907, 910 (D.D.C. 1996). [↑](#footnote-ref-39)
39. *Id.* at 909–12. *See generally* DOJ Antitrust Review of Thomson/West Merger Page, *at* http://www.hyperlaw.com/dojvthm.htm. [↑](#footnote-ref-40)
40. *Id.* at 915 n.8. Reed Elsevier bought all the titles Thomson was required to divest. Reed List, *supra* note 30. [↑](#footnote-ref-41)
41. *Id.* at 925–31. The settlement was summarized: “In United States, State of California, State of Connecticut, State of Illinois, Commonwealth of Massachusetts, State of New York, State of Washington and State of Wisconsin v. The Thomson Corporation and West Publishing Company, the Division challenged the $3.4 billion merger of two of the nation’s largest legal publishers, Thomson Corporation, headquartered in Toronto, Canada, and West Publishing and charged that the acquisition would lessen competition in nine markets for enhanced primary law—legal publications of statutes or court decisions in which commentary is offered—and in more than 50 markets for secondary law products—treatises and legal guides—and in the online services market. A proposed consent decree was filed simultaneously settling the suit. The proposed decree would require the divestiture of more than 50 products by Thomson, guarantee access to important data bases, require Thomson to license openly, for a capped fee, to other law publishers the right to use the pagination of individual pages in West’s National Reporter System in their products, and give options to three states to reopen bidding for certain contracts. This was the seventh and largest joint federal and state antitrust action filed in the past two years. Modifications were made to the consent decree in response to comments and the court’s December 1996 opinion. The consent decree was entered by the court on March 7, 1997, and the divestitures required by the decree have occurred.” Federal Trade Commission Annual Report to Congress for Fiscal Year 1996, Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Nineteenth Report), *available at* http://www.ftc.gov/bc/hsr/96anrpt.htm (last visited May 10, 2004). [↑](#footnote-ref-42)
42. U.S. Dept. of Justice, Press Release No. 96–287, at 3–4, 1996 WL 337211 (DOJ) \*2 (June 19, 1996). [↑](#footnote-ref-43)
43. “[A]nyone with a little cash, know-how, and entrepreneurial spark can call themselves a legal publisher and begin hawking case law on CD–ROM.” Hansen, *supra* note 25. [↑](#footnote-ref-44)
44. Matthew Bender & Co., now owned by LexisNexis, is the publisher of *Nimmer on Copyright.* The treatise is available from the publisher at http://bookstore.lexis.com/bookstore/catalog?action=product&prod\_id=10441&cat\_id=T&pcat\_id=15&pub\_id=1. [↑](#footnote-ref-45)
45. Matthew Bender & Co. v. West Pub. Co., 1995 WL 702389 (S.D.N.Y. 1995). *See also* Matthew Bender & Co. v. West Publishing Co., 95 Civ. 4496 (JSM) (S.D.N.Y.). [↑](#footnote-ref-46)
46. LexisNexis Company History, *at* http://www.lexisnexis.com/presscenter/mediakit/history.asp (last visited May 18, 2004). [↑](#footnote-ref-47)
47. Kevin Worth, *Business and the Internet:* *The Future of Online Legal Publishing: The Business Case for Hyperlaw, Inc.,* at http://cyber.law.harvard.edu/courses/tech97/temp/team4/business.html (last visited May 18, 2004), citing an interview with Alan Sugarman, founder of Hyperlaw, Inc. [↑](#footnote-ref-48)
48. *Id.* [↑](#footnote-ref-49)
49. *Id.* [↑](#footnote-ref-50)
50. Matthew Bender & Co. v. West Publishing Co., 94-CIV-589 (JSM) (S.D.N.Y. 1996) (holding that HyperLaw had a reasonable apprehension of being sued by West over use of the West features at issue here at the time that it filed the complaint). [↑](#footnote-ref-51)
51. 924 F. Supp. 918 (D. Minn. 1996). [↑](#footnote-ref-52)
52. *Id.* (924 F.Supp. 918) [↑](#footnote-ref-53)
53. E-mail from Bruce H. Little, attorney for Oasis Publishing Co., to Jason Gelman, student, Duke University School of Law (May 13, 2004) (on file with author) (ellipsis in original). [↑](#footnote-ref-54)
54. Morgan Chu, Alex Wiles and Elliot Brown, Irell & Manella LLP, and James Imbriaco, The Times Mirror Company, Matthew Bender Letter to DOJ Re Thomson/West, August 31, 1996 available at http://www.hyperlaw.com/dojmatb1.htm (last visited May 18, 2004), citing Matthew Bender & Co., Inc. v. West Publishing Co., 1996 WL 223917 (S.D.N.Y. 1996). “There has been a clear pattern of settling with the Fortune 500 companies who can afford to litigate, and squashing the small publishers with no means to afford lengthy courtroom battles with a barrage of legal tactics.” Ned Daly and Mike Ward, *The Front: West’s Information Empire,* Multinational Monitor, available at http://multinationalmonitor.org/hyper/mm1294.html (last visited May 19, 2004) (quoting James Love, director of the Taxpayer Assets Project). [↑](#footnote-ref-55)
55. Matthew Bender & Co. v. West Publishing Co., 1996 WL 774803 (S.D.N.Y.). [↑](#footnote-ref-56)
56. *Id.* [↑](#footnote-ref-57)
57. Matthew Bender & Co. v. West Publishing Co., 1996 WL 266972 (S.D.N.Y.). [↑](#footnote-ref-58)
58. Lisa Bannon and Kimberley A. Strassel, *Reed Elsevier to Buy Two Units of Times Mirror,* Wall St. J., April 28, 1998, at A3. [↑](#footnote-ref-59)
59. *Id.* [↑](#footnote-ref-60)
60. Matthew Bender & Co. v. West Publishing Co., 158 F.3d 674 (2d Cir. 1998), *cert. denied,* 526 U.S. 1154 (1999) (hereinafter “Bender”) and Matthew Bender & Co. v. West Publishing Co., 158 F.3d 693 (2d Cir. 1998), *cert. denied,* 526 U.S. 1154 (1999) (hereinafter “Hyperlaw”). [↑](#footnote-ref-61)
61. Hyperlaw, 158 F.3d at 708. [↑](#footnote-ref-62)
62. Michael Higgins, *Go West, Young Publishers*, 85 A.B.A.J. 24 (1999) (quoting Carl Hartmann, lawyer for Hyperlaw, Inc. reacting to the District Court ruling in favor of Matthew Bender and Hyperlaw). [↑](#footnote-ref-63)
63. Atlas, *supra* note , at 499–500. [↑](#footnote-ref-64)
64. Emily S. Nash, *West Group Acquires FindLaw*, Law Office Computing, April/May 2001, at 18. FindLaw offers the U.S. Code (also available for free from the federal government), Supreme Court cases from 1893 to present, and an abridged directory of attorneys. [↑](#footnote-ref-65)
65. On LexisOne, one can search the last five years of state and federal court rulings and U.S. Supreme Court decisions from 1790 to present and search LexisNexis Total Research System by source for free. Payment is for only the documents retrieved; some legal forms are available for free download and there is a listing of legal websites. There are also a multitude of pay options that give access to more comprehensive legal information. About LexisOne, *available at* http://www.lexisone.com/aboutlexisone/index.html (last visited May 20, 2004). [↑](#footnote-ref-66)
66. American Law Source On-line, *at* http://www.lawsource.com/lawsource.htm (last visited May 20, 2004). [↑](#footnote-ref-67)
67. *Id.* [↑](#footnote-ref-68)
68. Cornell’s Legal Information Institute, *at* http://www.law.cornell.edu (last visited May 20, 2004). [↑](#footnote-ref-69)
69. *Id.* [↑](#footnote-ref-70)
70. American Law Source On-line, *supra* note 66. [↑](#footnote-ref-71)
71. TheLaw.net: Affordable Legal Research with a National Scope, *at* http://www.thelaw.net/ (last visited August 28, 2004). [↑](#footnote-ref-72)
72. About Westlaw, *at* http://west.thomson.com/store/product.asp?product%5Fid=Westlaw&catalog%5Fname=wgstore (last visited August 28, 2004). [↑](#footnote-ref-73)
73. “Government information is a public asset. The government will promote the timely and equitable access to government information via a diverse array of sources, both public and private, including state and local governments and libraries . . . We are committed to using new computer networking technology to make this [government] information more available to the taxpayers who paid for it. In addition, it requires consistent Federal information policies designed to ensure that Federal information is made available at a fair price to as many users as possible while encouraging growth of the information industry.” Anne Wells Branscomb, *Lessons from the Past: Legal and Medical Databases,* 35 Jurimetrics J. 417, 441 (1995) (citing President Bill Clinton, Technology for America’s Growth: A New Direction to Build Economic Strength, Policy Statement Delivered to a group of Silicon Valley, Cal. Executives, Feb. 22, 1993). The United States federal government disseminates information via the National Technical Information Service, part of the U.S. Department of Commerce’s Technology Administration. NTIS maintains http://www.fedworld.gov as a portal to government information. About FedWorld, *at* http://www.fedworld.gov/about.html (last visited May 3, 2004). [↑](#footnote-ref-74)
74. Press Release, Google Achieves Search Milestone with Immediate Access to More Than 6 Billion Items, *at* http://www.google.com/press/pressrel/6billion.html (last visited May 3, 2004). [↑](#footnote-ref-75)
75. Lexis timeline, *supra* note . [↑](#footnote-ref-76)
76. *Id.* The Lexis service was launched in 1973, followed by the Westlaw service in 1975. [↑](#footnote-ref-77)
77. *Id.* [↑](#footnote-ref-78)
78. The “big three” control 80% of the legal publishing market. Svengalis presentation, *supra* note . [↑](#footnote-ref-79)
79. Svengalis presentation, *supra* note . [↑](#footnote-ref-80)
80. Thomson has 2003 annual sales of $3.142 billion. Thomson Corporation 2003 Annual Report, at 41, *available at* http://ar.thomson.com (last visited May 20, 2004). Reed Elsevier had 2003 sales of 1.428€ billion, or $1.616 billion. Reed Elsevier 2003 Annual Report, at 10, *available at* http://www.reedelsevier.com/media/pdf/n/p/annualRep03.pdf (last visited May 3, 2004) (hereinafter “Reed 2003 Annual Report”); Wolters Kluwer has 2003 sales of 1.025€ billion, or $1.152 billion. Wolters Kluwer 2003 Annual Report, at 29, *available at* http://www.wolterskluwer.com/NR/rdonlyres/eiu6ftzt5kc2cs7t4ccioi6nidf4hwbm65huoyhv5wptish2s6zhqnjiamder7thgbrgodpd25ccei/WK03ENGTOTAL1.pdf (last visited May 3, 2004) (hereinafter “Wolters 2003 Annual Report”). [↑](#footnote-ref-81)
81. Svengalis presentation, *supra* note . [↑](#footnote-ref-82)
82. Thomson’s Legal & Regulatory division posted a 26.9% profit margin for the first quarter of 2004, an increase of over 4% from the same period in 2003 and significantly higher than for any other division; Thomson’s companywide profit margin was 15.7% for 2003. Thomson Corporation Consolidated Statement of Earnings for 1Q 2004, *available at* http://www.thomson.com/cms/assets/pdfs/corporate/Financial\_Tables/1Q\_2004\_financials.pdf (last visited May 3, 2004). Reed Elsevier’s 2003 profit margin for LexisNexis was 22.8%, a 10% increase over the previous year; Reed Elsevier’s company-wide profit margin was 13.4%. Reed Elsevier 2003 Annual Report, at 10. Wolters Kluwer’s profit margin on North American legal publishing was 26%; their companywide profit margin was 18%. Wolters Kluwer 2003 Annual Report, at 29, 17. [↑](#footnote-ref-83)
83. Profit margins differ, but educational books have a 13–16% profit, and adult paperbacks have a 1–4% profit margin. William H. Donald, *Standard & Poor’s Industry Surveys: Publishing,* February 19, 2004, *available at* http://mi.compustat.com/cgi-mi-doc/docserver.cgi?keytype=INDSUR&keyval=PUB&doctype=IS&docformat=pdf&date=200402&ie=.pdf, last visited May 6. 2004; see Brendan J. Wyly, *Competition in Scholarly Publishing? What Publisher Profits Reveal,* *at* http://www.arl.org/newsltr/200/wyly.html (last visited May 3, 2004) (asserting that the median in the overall periodical publishing industry as measured by Dun & Bradstreet’s Industry Norms & Key Business Ratios 1997–98 is 5.0%). [↑](#footnote-ref-84)
84. Reuters.com, Software & Programming Industry Overview, *at* http://www.investor.reuters.com/IndustryCenter.aspx?industrypscode=SOFTWR&target=industrycenter (last visited May 6, 2004). [↑](#footnote-ref-85)
85. *Id.* [↑](#footnote-ref-86)
86. *Id.* [↑](#footnote-ref-87)
87. The five-year average profit margin of S&P 500 companies is 11.63%. http://www.reuters.com. [↑](#footnote-ref-88)
88. Higgins, *supra* note 62 (asserting that the cost of providing online content is 4 cents per minute but that current market rates are several dollars per minute). [↑](#footnote-ref-89)
89. See *supra* notes 79 & 80. [↑](#footnote-ref-90)
90. Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases, available at http://europa.eu.int/ISPO/infosoc/legreg/docs/969ec.html (last visited May 4, 2004). [↑](#footnote-ref-91)
91. David Mirchin, *White Papers: The European Database Directive,* 39(1) NFAIS Newsletter 7 (January 1997), *available at* http://www.nfais.org/publications/white\_papers\_2.htm (last visited May 4, 2004). [↑](#footnote-ref-92)
92. Stephen Mairer and Suzanne Scotchmer, *Database Protection: Is It Broken and Should We Fix It?,* 284 Science Number 5417, pp. 1129–30, May 14, 1999. [↑](#footnote-ref-93)
93. For a comprehensive guide to recent database legislation, refer to the Association of Research Librarian’s Database Proposals and Legislation page at http://www.arl.org/info/frn/copy/database.html. [↑](#footnote-ref-94)
94. For detailed information on H.R. 2652, go to http://thomas.loc.gov/bss/d105query.html and search for “H.R. 2652” under Bill Number. [↑](#footnote-ref-95)
95. Pam Samuelson, Letter to Representative Howard Cole, Re: Tyson/Sherry Report, October 23, 1997. [↑](#footnote-ref-96)
96. H.R. 3261 Bill Summary and Status for the 108th Congress, *at* http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR03261:@@@P (last visited August 29, 2004). [↑](#footnote-ref-97)
97. H.R. 3872 Bill Summary and Status for the 108th Congress, *at* http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR03872: (last visited August 29, 2004). [↑](#footnote-ref-98)
98. *Id.* “The Union Calendar in the House of Representatives is a calendar for the consideration of bills and resolutions that raise revenues or appropriate or authorize the expenditure of money or property, either directly or indirectly.” Union Calendar, *at* http://thomas.loc.gov/home/definitions/union\_calendar.html (last visited August 29, 2004). [↑](#footnote-ref-99)
99. United States Senate Office of Public Records Lobby Filing Disclosure Program, *available at* http://sopr.senate.gov. [↑](#footnote-ref-100)
100. *Id.* [↑](#footnote-ref-101)
101. Opensecrets.org, Money in Politics Data, *at* http://www.opensecrets.org (last visited August 26, 2004) (hereafter Opensecrets.org). The funding for Reed’s PAC comes mainly from three people, Norman Willox, LexisNexis’s Chief Officer for Privacy, Industry and Regulatory Affairs ($17,500), Henry Horbaczewski, Reed Elsevier’s Senior Vice President and General Counsel ($8,000), and Steven Manzo, Reed Elsevier’s Vice President for Government Affairs ($5,200). [↑](#footnote-ref-102)
102. *Id.* [↑](#footnote-ref-103)
103. Viveca Novak and Michael Weisskopf, *The Cheerful Giver: A Businessman with a Corner on Publishing Court Documents Was Also a Master of Political Donations,* Time, April 21, 1997, *available at* http://www.cnn.com/ALLPOLITICS/1997/04/14/time/novak.html. [↑](#footnote-ref-104)
104. *Id.* [↑](#footnote-ref-105)
105. Opensecrets.org, *supra* note 101. [↑](#footnote-ref-106)
106. Follow the Money: The Institute of Money in State Politics, *at* http://www.followthemoney.org/database/StateGlance/contributor.phtml?si=200223&d=2515509 (last visited August 29, 2004). [↑](#footnote-ref-107)
107. *See infra*, Appendix C. [↑](#footnote-ref-108)
108. *Id*. [↑](#footnote-ref-109)
109. *See infra*, Appendix B. [↑](#footnote-ref-110)
110. *See infra*, Appendix A. [↑](#footnote-ref-111)
111. Westlaw User Agreement for Law School Students, at http://lawschool.westlaw.com/pdf/law school student user agree.pdf (last visited September 5, 2004). [↑](#footnote-ref-112)
112. *Id*. [↑](#footnote-ref-113)
113. Students receive points for logging onto the services and for completing training programs designed to showcase the value-added features unique to each service. The points are redeemable for a variety of products, such as travel and electronics. [↑](#footnote-ref-114)
114. Law students receive unlimited-use subscriptions to LexisNexis and Westlaw, paid for by their law schools, but presumably included in the cost of tuition. These unlimited accounts are only available for academic use and while the student is taking classes or doing other school-related work. [↑](#footnote-ref-115)
115. For an analysis of how to engineer an effective loyalty program s*ee generally* Brian Wansink and Scott Seed, *Making Brand Loyalty Programs Succeed*, 8:3 Journal of Brand Management 211 (February 2001). [↑](#footnote-ref-116)
116. Our legal information market is based on an elaborate fiction—significant numbers of decisions are “unpublished,” which merely means an editor at West (or whomever the publisher of the reporter is in any given jurisdiction) decided that it wasn’t worthy of being published. These decisions are valid case law but nonetheless many courts will not accept a citation to an “unpublished” opinion. As such, a “complete” database of case law contains not every decision from a court, but only those which are “published.” [↑](#footnote-ref-117)
117. Higgins, *supra* note 62. [↑](#footnote-ref-118)
118. Svengalis presentation, *supra* note . [↑](#footnote-ref-119)
119. The data for Appendix C is from the United States Copyright Office’s online searchable database of registered copyrights and registered serial works and is correct as of August 26, 2004. The data is not complete for Thomson, Reed Elsevier, and Wolters Kluwer as a whole, as they may have registered copyrights in the names of any of their many divisions. The United States Copyright Office’s searchable index can be found at http://www.copyright.gov/records. [↑](#footnote-ref-120)