
The Legality of Hyperlinks: The Issues Deepen

2000-06-07

Hyperlinks, the ubiquitous point-to-point connections between sites on the Internet, define the fabric of the Worldwide Web. For this reason, many Internet commentators have argued that legal restrictions on hyperlinking would inhibit the growth of the web and defeat the openness that led to its widespread popularity. Nevertheless, a number of companies have objected when others have linked to their sites without permission, particularly when the "linker" is a competitor. A recent federal court decision in California (*[Ticketmaster Corp. v. Tickets.com, Inc.](#)*, U.S. District Court, C.D. Cal., Mar. 27, 2000) has sided with the commentators and openness, suggesting that hyperlinking, and so-called "deep linking" in particular, may, in fact, be permissible under various legal theories.

This issue first achieved national attention in 1997, when Ticketmaster sued Microsoft over hyperlinks used by Microsoft's Sidewalk city guides (see our [earlier Internet Alert](#) about meta-searching and deep linking). Ticketmaster's principal complaint was that the Sidewalk site linked to pages "deep" within Ticketmaster's web site, thus enabling a Sidewalk user to access specific Ticketmaster information directly, bypassing Ticketmaster's home page and other pages (on which, presumably, Ticketmaster had placed lucrative advertising). This case was settled in 1999, when Microsoft agreed to hyperlink only to the Ticketmaster home page. The issue was raised again by Ticketmaster in 1999, when it brought suit against another purveyor of event tickets, Tickets.com. Tickets.com operated a web site on which it both sold event tickets and provided information about other events for which it did not sell tickets. For many events, Ticketmaster was the exclusive ticketing agent, and Tickets.com, in addition to other information about those events, provided a hyperlink to the Ticketmaster page on which

tickets to those events could be purchased. Ticketmaster sued to prevent Tickets.com from using these hyperlinks.

In its opinion, the court addressed a number of issues surrounding deep linking.

1. The court stated that such a hyperlink did not constitute copyright infringement, as Tickets.com did not copy any portion of the Ticketmaster site, but simply transferred the user directly to the relevant Ticketmaster page.
2. The court dismissed Ticketmaster's claim that deep linking violated Ticketmaster's "terms and conditions" of use, which were posted on its web site. Although these terms and conditions expressly prohibited deep linking, Ticketmaster failed to produce evidence that Tickets.com was aware of these terms. However, the court left the door open to the argument that such terms and conditions could have been violated if Ticketmaster had demonstrated that Tickets.com was aware of them.
3. The court held that the deep linking itself did not necessarily involve unfair competition, so long as Tickets.com did not attempt to mislead users about the source of the tickets being offered by Ticketmaster.

This case, though leaving some questions unanswered, suggests that the practice of hyperlinking is likely to be viewed favorably by U.S. federal courts.

This result is not to be confused, however, with another recent case which held that hyperlinking to a site containing infringing content could subject the linker to a claim of copyright infringement (Intellectual Reserve v. Utah Lighthouse Ministry). See our [February 29, 2000 Internet Alert](#) discussing that case. In the Utah Lighthouse case, the court held that a Web site operated by former members of the Mormon Church contributorily infringed copyrights held by the Church when it linked to other sites known by them to contain unauthorized copies of a copyrighted Mormon instructional handbook.

In addition, even where the linked site does not object to the link, the linking party could be liable, perhaps even criminally, for directing traffic to certain types of web sites. For example, in a [recent Japanese case](#), a court held that a software developer whose web site included links to sites displaying pornographic content was guilty of aiding and abetting the criminal acts of the owners of the pornographic sites. The holding of this case appears to be consistent with the Utah Lighthouse case decided in the United States.

Thus, while the recent Tickets.com case has given encouragement to many web site operators who advocate the free hyperlinking of sites, it by no means authorizes all forms of

hyperlinking, and should be considered only as another piece in the gradually-developing mosaic of Internet law.

Jorge Contreras

jorge.contreras@haledorr.com

Jeffrey Morgan

jeffrey.morgan@haledorr.com

Michael Bevilacqua

michael.bevilacqua@haledorr.com