

Canadian settlement blocks database scraping

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23 April 2019



A Canadian consent order has seen the operators of a property listing website agree to refrain from any future access to and distribution of data belonging to the Toronto Real Estate Board.

The consent order, issued by the Federal Court of Canada on 15 April, follows property listing website Mongohouse's agreement to cease any unauthorised copying and distribution of data from the Toronto Real Estate Board's "Multiple Listing Service" (MLS) database.

TREB is a not-for-profit corporation with 53,000 real estate broker members across the greater Toronto area. It sued Mongohouse last year, accusing the website of allegedly accessing “unique information” contained on the board’s database and making it publicly available in breach of copyright laws.

The claim said that there was “no other means available for Mongohouse to obtain the information that is available and made publicly accessible through the Mongohouse website.”

Mongohouse went offline after TREB filed its lawsuit, but countersued saying it had never published information from the database onto the website, and had instead collected it from publicly available sources.

The consent order says any unauthorised copying, data scraping, downloading, display or distribution of the data concerned would breach TREB’s rights associated with the database.

Gary Daniel at Deeth Williams Wall in Toronto noted that the decision is a consent order, rather than an “injunction adjudicated by the court”.

“The result should therefore be approached with some caution [primarily] because it was based on consent, and because of the court’s jurisdiction the case had to be framed in the nature of a claim for copyright infringement rather than for the illegal disclosure of data,” Daniel said.

“This case is not the final word, and there is a level of mootness – the activity has stopped so the order doesn’t have the same effect.”

John Beardwood, a partner at Fasken Martineau DuMoulin in Toronto, said the order “seems to fly in the face” of a 2017 judgment by the Federal Court of Appeals of Canada, which held that TREB’s limitations on the use of its listings was anticompetitive.

Following a lawsuit by the Canada's antitrust watchdog, TREB had argued that loosening restrictions on the ability of third parties to use its information would violate the privacy of house sellers and its ownership of copyrights in the database. The appeal court dismissed the privacy arguments; it refused to rule on the existence of copyright but said *obiter dicta* that the data did not meet the necessary originality threshold.

Canada's Supreme Court [refused](#) to hear TREB's appeal against the decision last year.

Beardwood said that on its face, the consent order effectively stops Mongohouse from infringing TREB's copyright.

"But the first paragraph ... explicitly states that TREB is the owner of the copyright associated with data stored on the MLS," he said. "That seems to be contrary to the 2017 decision by the higher court ... where the issue of TREB's copyright in the database was found not to exist by the court, but was addressed in *obiter* and was therefore non-binding."

Beardwood said that the decision "therefore by no means definitively resolves whether TREB [has] copyright in the database."

TREB chief executive John DiMichele said in a statement: "The operators of Mongohouse.com have acknowledged that they were not authorised to access the TREB MLS system and that their actions were wrong in doing so. They have cooperated with TREB to thwart further such abuses of the TREB MLS system and its contents."

A cached version of the Mongohouse website as of March 2019 pointed to the TREB dispute and said the website is "unavailable until further notice". Mongohouse declined to comment.

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