

Web Scraping – Liability for Harvesting Data

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How can I protect my company's website data? Can a company (or an individual) use information on my website to its advantage?

Web scraping, web harvesting, or web data extraction are all terms used to describe the process of extracting data from websites. This process is common on the internet and typically done with code specifically designed to target the particular website or its underlying data set. One familiar example is Kayak, a travel listing company which collects travel data in real time to offer visitors a place where they can view various travel deals all in one place. A more obvious example is Google, a platform that actively searches websites for new information, and compiles it in a list on its own platform (in a sense, the founder of Google made billions of dollars off web scraping).

Platforms like Kayak and Google are usually invited by companies (i.e. – a product seller wants Google to find and list its product) and equally appreciated by consumers, who benefit from having the information all in one place. Of course, these platforms are so prevalent that we, as internet users, encounter them on a daily basis. The benefits of web scraping do not end there as many individuals and/or companies utilize this method to easily extract and compile their own website data. But what happens when a company does not want its data taken and used by another?

The answer to this question, like most *good* legal questions, is that *it depends*. A brief search for cases related to web scraping in South Carolina fails to turn up any cases. Nonetheless, the law of other jurisdictions, federal law, and pre-existing legal theories act as guides to determine how a South Carolina court will treat unauthorized web scraping. One such example is *trespass to chattels*, which protects against unauthorized use of someone's personal property, such as computer servers. Another example is the Computer Fraud and Abuse Act, which creates civil and criminal liability for intentionally accessing a computer without authorization or exceeding authorized access and thereby obtaining information from the protected computer. Other causes of action, such as ones based in copyright or contract (the "terms of service" governing your visit to the website) may also create civil liability for scraping the data of a website.

If you have a website with data that you would like to keep private, there are fundamental steps that you must take. Speak with an attorney to ensure that you are protected in the event that someone extracts data from your website without your permission. Alternatively, if you are looking to scrape data from a website, whether for commercial gain or not, consult an

attorney to see what steps, if any, can be taken to prevent you from civil liability.