



INTERNET LAW CENTER

Bennet G. Kelley

Internet Law Center Ltd.

Los Angeles

www.internetlawcenter.net

The Evolving Law of Data Scraping

“I want to say one word to you. Just one word. . . .

~~Plastics~~”

Data”



From “The Graduate” (1967).

The quote is #42 in the American Film Institute's list of the top 100 movie quotations in American cinema.

Data is the New Oil



- “The world’s most valuable resource.” *The Economist* (July 2017)
- Approximately 90 percent of the data in the world today was created in the last three years.
- In 2017, more than 46,000 GB of data was transferred every second – that’s four times the size of the entire Library of Congress. United Nations Conference on Trade and Development (UNCTAD), 2019

Nomenclature

Data Aggregation

Data Crawling

Data Extraction

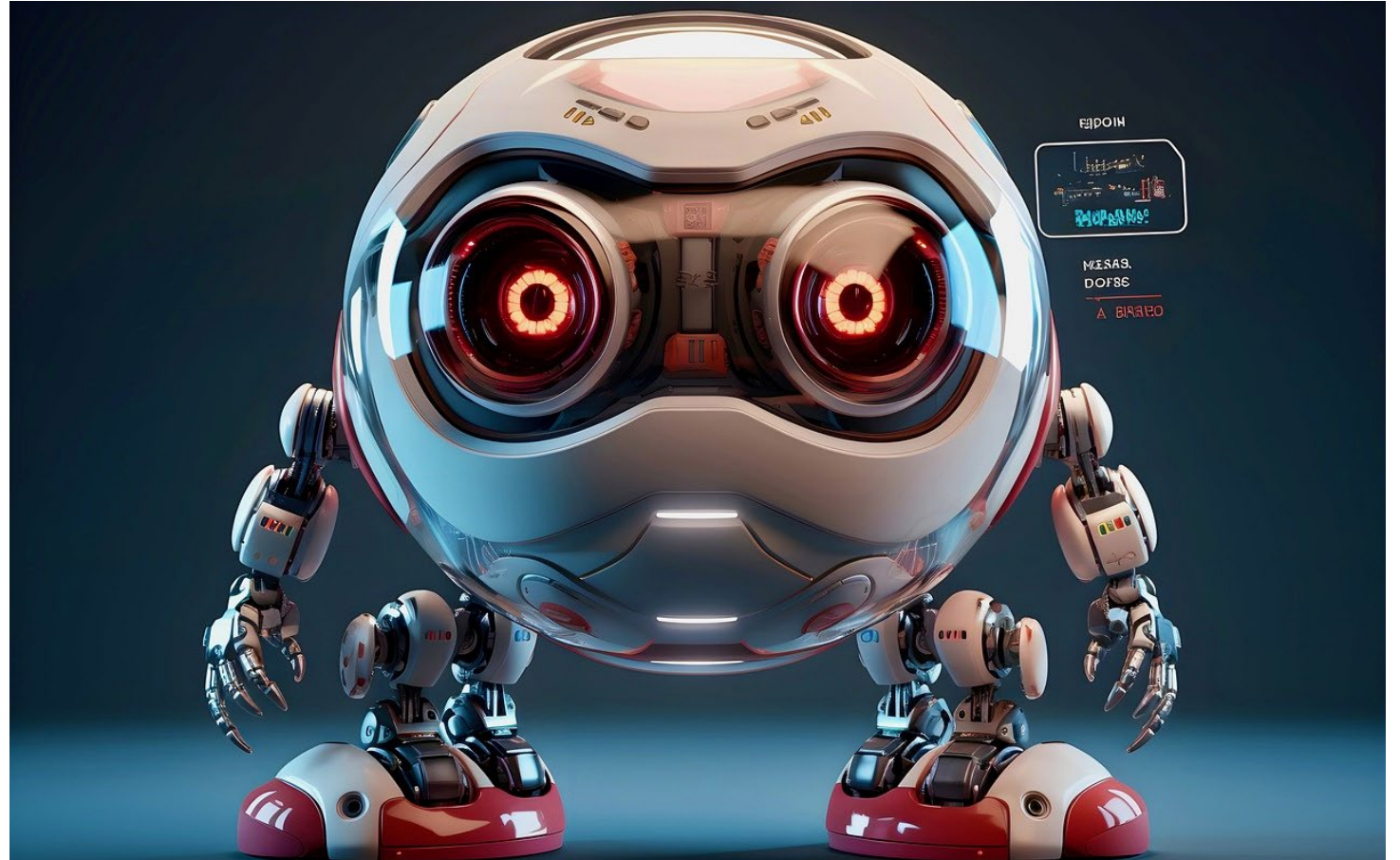
Data Liberation

Data Optimization

Data Scraping

Top Data Scraping Uses and Industries

- Lead Generation (Contact Scraping)
- Content
- Price Monitoring
- Brand Monitoring
- Sentiment Analysis
- Market Research
- Website Changes



Top Industries: E-Commerce, HR, Travel, Real Estate, Research

$\langle 626 \rangle (C) \frac{148}{199} P=55 \left(\frac{6}{275} \right) + \frac{\pi}{z \text{ axis } \sqrt{3.14} = 0 \text{ } 4500/\$$
 $(?) z+y=c \leq z \text{ } 9 \text{ to } 11^{\text{th}} \text{ pow}$
 $\frac{47}{85} \sqrt{9/10} = (C/z) \frac{48000}{9000 \text{ pores } \times \text{hill}^4} \left\{ \frac{45}{95^\circ} \right\} \sqrt{9500(4)} + \left(\frac{9}{10} \right) = (\sqrt{9361} (-\frac{2}{9}))$
 $4 + \frac{925}{4983} + \frac{\pi}{148} \frac{9}{10} (\div) \frac{1}{101} \geq \left(\frac{\text{eldub}}{\text{motke}} \right) \frac{45}{100} \left(\frac{4}{3} \right) + \sqrt{95619}$
 $\Delta p_x = p \sin \varphi = \frac{h}{\lambda} \sin \varphi, \Delta x \sin \varphi = \lambda$
 $\Delta x \Delta p_x \geq h, \Delta x \Delta v_x \geq h/m$
 $\Delta x = \frac{h}{m \Delta v_x}, \Delta E \Delta t$
 $\psi^2 = \psi^2 \frac{R+R'}{R R'}$
 $W \sim |\Psi(x,y,z,t)|^2$
 $W = \int dw = \int |\Psi|^2 dv$
 $E < U$

Figgo
 Evert Tauber
 Julia Raabert
 Maria Klose
 Julia
 Marien Klose
 Linn
 Sandra Hager
 Anthon Lindqvist
 Samuel Potter
 Nina Klose
 Vandaia Folke
 Jan Holmström
 Sebastian
 THE GREEK WAY 25/4-14
 R=8.31
 BEATER
 REBECCA
 HAFELIN

Emil Hogedal Sam Taheri
 interference
 $\lambda = \frac{h}{mv}$
 $p_m = 2PVI$
 $p_m = v p w S_m$
 $I = \frac{\text{Power}}{\text{Area}} = \frac{P_s}{4\pi r^2}$
 $\theta = \frac{\Delta t}{\lambda} 2\pi$
 $I = \frac{1}{2} p v w^2 S$
 $\Delta L = 0.5, 1.5, 2.5$ fully destructive
 $\Delta L = L \Delta T$
 $\Delta V = V \Delta T$
 $T_f = \frac{9}{5} T_c + 32$
 $DE_{\text{int}} = Q - W_{\text{out}}$
 $P_{\text{cond}} = \frac{Q}{t} = k \frac{T_1 - T_2}{L}$
 WE DID IT
 $R = \frac{h}{k}$
 SEBASTIAN
 THE GREEK WAY 25/4-14
 R=8.31
 BEATER
 REBECCA
 HAFELIN

Samuel
 close cyc
 Free exp
 $E_{\text{int}} = \frac{3}{2} nRT$
 $Q = n C_v \Delta T$ (constant Volume)
 $T_1 V_1^{\gamma-1} = T_2 V_2^{\gamma-1}$
 $P_1 V_1^\gamma = P_2 V_2^\gamma$
 $C_v = \frac{2}{2} R$
 $\Delta E = n C_v \Delta T$
 $P_{\text{exp}} P_1 V_1 = P_2 V_2$
 Tone Bonnik
 FREDRIK
 SCHWARTZSMAB
 Tot
 3
 5
 1
 3R

Data Scraping Law in One Slide

Computer Fraud and Abuse Act (CFAA)

hiQ Labs v. Linked In (9th Cir. 2019)

- “[T]he CFAA’s prohibition on accessing a computer “without authorization” is violated when a person circumvents a computer’s generally applicable rules regarding access permissions, such as username and password requirements, to gain access to a computer. . . . [W]hen a computer network generally permits public access to its data, a user’s accessing that publicly available data will not constitute access without authorization under the CFAA”. *HiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 1003-04 (9th Cir. 2019).
- CFAA: “covers those who obtain information from particular areas in the computer—such as files, folders, or databases—to which their computer access does not extend. It does not cover those who . . . have improper motives for obtaining information that is otherwise available to them.” *Van Buren v. United States*, 141 S. Ct. 1648, 1652 (2021)
- Note using bot to bypass a CAPTCHA is not the same as accessing a password-protected site. *hiQ Labs, Inc. v. LinkedIn Corp.*, [273 F.Supp.3d 1099, 1113](#) (N.D. Cal. 2017).
- *Meta Platforms, Inc. v. Bright Data Ltd.*, 23-cv-00077-EMC (N.D. Cal. Jan. 23, 2024). “Meta ‘left the gate open’ by choosing not to place all its content behind a password-protected barrier.”




California's Comprehensive Computer Data Access and Fraud Act (CDAFA)

- Section 502(c)(1): Prohibits “[k]nowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.”
- *Meta Platforms, Inc. v. Soc. Data Trading Ltd.*, No. 21-CV-09807-AGT, 2022 WL 18806267, at *4 (N.D. Cal. Nov. 15, 2022), *report and recommendation adopted*, No. 21-CV-09807-CRB, 2022 WL 18806265 (N.D. Cal. Dec. 8, 2022) (default judgment entered in Meta's favor based on allegations defendant exceeded consent and engaged in mere use of Meta's data, by data scrapping); *Meta Platforms, Inc. v. Ates*, No. 22-CV-03918-TSH, 2023 WL 4035611, at *6 (N.D. Cal. May 1, 2023), *report and recommendation adopted*, No. 4:22-CV-3918-YGR, 2023 WL 4995717 (N.D. Cal. June 27, 2023) (“[California Penal Code section 502](#) prohibits the unauthorized access and use of any data from a computer, computer system, or computer network”).
- *In re Meta Pixel Healthcare Litig.*, 22-cv-03580-WHO (VKD) (N.D. Cal. Jan. 29, 2024). Meta contends “mere use” insufficient, must show altered, damaged etc. data. Court cites Meta scraping cases to permit claim s to proceed.



Breach of Contract

- *hiQ Labs I (2019)*: “If companies like LinkedIn, whose servers hold vast amounts of public data, are permitted selectively to ban only potential competitors from accessing and using that otherwise public data, the result—complete exclusion of the original innovator in aggregating and analyzing the public information—may well be considered unfair competition under California law.”
- *hiQ Labs (ND Cal. 17-cv-03301-EMC) (Nov. 14, 2022)* Found that hiQ breached LinkedIn’s User Agreement both through its own scraping of LinkedIn’s site and using scraped data and rejected unconscionability defense.
- “The Court therefore does not construe *hiQ* as suggesting that a contract can be invalidated for its purportedly anticompetitive effects without a showing of harm to competition through the established framework of competition claims, i.e., either the rule of reason or special circumstances recognized as warranting heightened scrutiny. “*Meta Platforms, Inc. v. BrandTotal Ltd.*, 605 F. Supp. 3d 1218 (N.D. Cal. 2022)
 - Grants summary judgment for Meta on breach claim
 - Although damages are often recited as an element of a breach of contract claim, a recent California appellate decision reaffirmed older authority holding that nominal damages are available for breach of contract and can support entry of judgment in favor of a plaintiff who suffered "no appreciable harm"”



After this Court issued the preliminary injunction, hiQ’s business diminished significantly due to “cloud of uncertainty”. hiQ lost out on funding from investors, all of its employees left, and it could no longer solicit new clients or renew current client contracts. hiQ wound down operations in 2018.

Trespass to Chattels

- In order to prevail on a claim for trespass based on accessing a computer system, the plaintiff must establish: (1) defendant intentionally and without authorization interfered with plaintiff's possessory interest in the computer system; and (2) defendant's unauthorized use proximately resulted in damage to plaintiff. Here, eBay has presented evidence sufficient to establish a strong likelihood of proving both prongs and ultimately prevailing on the merits of its trespass claim. *eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1069-70 (N.D. Cal. 2000)
- eBay claimed damage by bandwidth consumption citing not just defendant's use but the likelihood that many others would follow suit if not enjoined.
- *But see Am. Airlines, Inc. v. Red Ventures LLC*, 4:22-cv-0044-P (N.D. Tex. July 15, 2022) – trespass does not extend to intangible property.



Other Claims

- We note that entities that view themselves as victims of data scraping are not without resort, even if the CFAA does not apply: state law trespass to chattels claims may still be available. And other causes of action, such as copyright infringement, misappropriation, unjust enrichment, conversion, breach of contract, or breach of privacy, may also lie. *See, e.g., Associated Press v. Meltwater U.S. Holdings, Inc.*, [931 F. Supp. 2d 537, 561](#) (S.D.N.Y. 2013) (holding that a software company's conduct in scraping and aggregating copyrighted news articles was not protected by fair use)
- *Compulife Software Inc. v. Newman*, 959 F.3d 1288 (11th Cir. 2020) (potential copyright and trade secret claims).
- Other Claims Asserted
 - Trademark Infringement / Lanham Act Claims
 - RICO
 - DMCA
 - Unfair Competition
 - Unfair / Deceptive Trade Practices

Warning to the “Scrapee”

Scraping that harvests personal information can constitute reportable data breaches. [Joint Statement](#) of privacy authorities from Australia, Argentina, Canada, China, Colombia, Jersey, Mexico, Morocco, New Zealand, Norway, Switzerland, and the United Kingdom.



Bennet Kelley

Internet Law Center Ltd.
Los Angeles

Bennet founded the Internet Law Center in 2007 after working in-house with technology, e-commerce, and internet advertising companies such as ETM Entertainment Network, Network Commerce and ValueClick for nearly a decade. He has been named as among the nation's top internet lawyers by several publications including the *Los Angeles Business Journal* which named him one of the Most Influential Lawyers in Digital Media and E-Commerce.

Bennet is a past Co-Chair of the California Lawyers' Association's Cyberspace Committee where he led the effort to develop a primer on cyberspace law for state policymakers. He also led the Technology, Internet, and Privacy subcommittee of CLA's Intellectual Property Section from 2016-2019.

In 2012, he was selected by the U.S. Department of Commerce to be part of the U.S. delegation and present on e-commerce law at the 17th U.S.-China Legal Exchange. The prior year he was part of a delegation of a dozen North American internet experts who met with leading Chinese netizens to promote greater freedom within China.

Bennet was the creator and host of *Cyber Law and Business Report* which aired on WebmasterRadio.fm from 2011-2019. He is a five-time winner of the Los Angeles Press Club awards for online commentary as well as for his law firm and history blogs.

Website: <https://www.internetlawcenter.net>

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2012年8月27日

中国·哈尔滨

AUG.27,2012

HEILONGJIANG PROVINCE
HARBIN·CHINA

