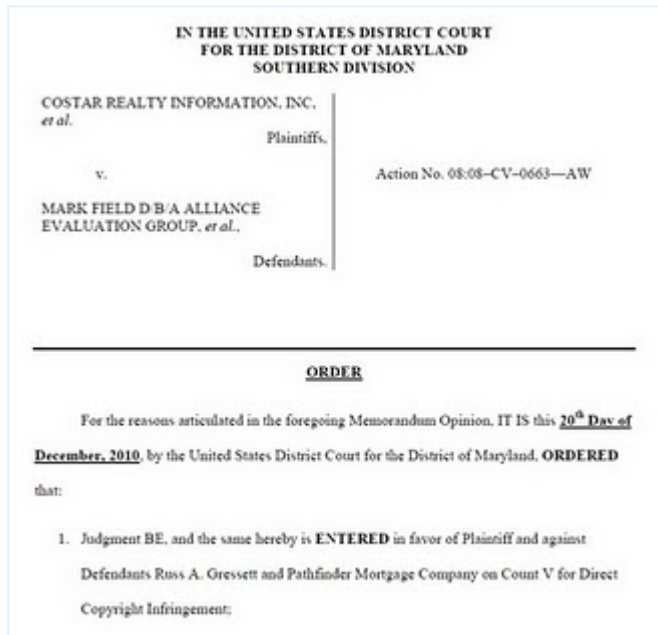


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Violating CoStar's Terms of Use and Copyrights Results in \$803,280 Judgment Against Appraiser (and Some Broader Lessons for All)

By Peter C



Many commercial real estate appraisers are familiar with CoStar Realty Information. It's an expensive source of commercial real estate sales, lease and property data. Like many sources of such data these days, CoStar's information is sold and accessed via an internet-based subscription service using IDs and passwords, and access to the service is granted pursuant to terms of use that are agreed to online. As is the case with many of these types of agreements (and I'd put AMC contractor agreements in this category), many people don't read the terms or sometimes just don't understand them. Most people just click through the terms when signing up without giving them much attention. Here's an obvious piece of advice: "I didn't read the agreement" -- whether it's in paper or online -- is usually not a good defense, especially in the context of a commercial service that costs hundreds or thousands of dollars per month. In any event, even if people don't read the terms, most people do understand that using a loaned password or giving a third party access to a password for an expensive subscription service is wrong. And, in this particular case **CoStar Realty Information, Inc. v. Mark Field d/b/a Alliance Valuation Group, et al.**, a federal court came to the same conclusion last week and awarded damages of more than

\$800,000 against a commercial appraiser who both used CoStar data without proper permission and provided CoStar passwords to other parties, again without permission.

The federal court in Maryland reached its decision on December 21 after a short bench trial. CoStar first filed its lawsuit back in 2008, naming three appraisers/appraisal firms and a mortgage company. One of the appraisers Mark Field dba Alliance Valuation Group and the mortgage company Pathfinder Mortgage were located in Orange County, California. A second appraiser Russ Gressett, who is also a real estate broker, was located in Houston, Texas. A third accused appraisal firm Lawson Valuation Group was located in Palm Beach Gardens, Florida.

Mid-way through the case, the court entered a default judgment against the California appraiser for failing to respond to discovery or otherwise participate in the case -- it's my guess that continuing to defend a case on the other side of the country was probably beyond his financial means. It was the California appraiser and his appraisal firm, however, who initially obtained the CoStar subscription and gave the access information to the Texas and Florida appraisers. CoStar said in a press release that the California appraiser has now "left the United States." Similarly, while the case was pending, the Florida appraisal firm filed for bankruptcy. I presume again that this was under the weight of paying to defend a copyright case in another state.

Only the Texas appraiser and Pathfinder Mortgage ended up going to trial against CoStar, but it doesn't appear that they could offer much of a defense to CoStar's claims. The court already had determined on summary judgment that the Texas appraiser breached CoStar's internet terms of use -- and the bench trial of the remaining issues lasted only a day.

In the end, the court ordered the Texas appraiser/broker to pay CoStar \$683,280 in breach of contract damages for sharing a CoStar ID/password with several commercial real estate companies and an additional \$120,000 in copyright damages for copying CoStar photographs in materials prepared for his clients. The court also ordered similar damages against Pathfinder Mortgage. It seems that CoStar is now using the court's decision as a big stick to cajole users of its data to comply with its terms of use -- and, it's a pretty big stick. CoStar said in a strategically issued press release: "Most companies that CoStar identifies as having shared passwords agree to settlements before lawsuits are necessary and agree to pay much less than the amount CoStar could ultimately receive from a court."

CoStar also stated in its press release that the court's decision is "a landmark verdict;" however, there really isn't anything legally provocative about the decision. The trial court did as one should expect: it enforced a contractual agreement and copyrights pertaining to data for which clients should pay and then applied the legal measure of damages for breaches of contract and statutory copyright violations. We could only wish that courts would so carefully and strictly apply the terms and conditions regarding use of appraisal reports.

Full copies of the following documents from the case can be viewed at appraiserlaw.com: [CoStar's Complaint](#), [Court Memorandum after Bench Trial](#), [Court Order re Damages](#).

In addition to the obvious suggestion about reading and abiding by contractual terms, here are some quick suggestions for appraisers, appraisal firms and management companies on minimizing the risks arising from copyright issues:

- It's important to fully understand the terms of use regarding data and information supplied by online services such as CoStar and other data sources such as MLS. Many firms -- particularly, lenders and AMCs -- routinely ask appraisers to supply data, maps, photographs and other information beyond the license terms pertaining to the information. As demonstrated in this case, it is not only the providers of that information (i.e., the appraiser) who can be held liable for copyright infringement, but also the recipients and end users of the information (potentially, the lenders and AMCs).
- Do not rely on any other party to indemnify you or your company for copyright infringements such as these -- as demonstrated in the CoStar case, one of the appraisers defaulted and left the country, and another appraisal firm filed for bankruptcy. It's far safer to have sound practices in place to guard against copyright infringement than to rely on someone else to pay for your company's defense and damages.
- Be aware that regular professional liability insurance policies are not going to cover copyright infringement claims relating to improper use of databases such as CoStar.