

Click [here](#) to view the article, which originally appeared in Computing.

## Avoiding a nasty scrape

*James Longster looks at the legality of screen scraping, the automated process of copying/extracting (or “scraping”) the content of somebody else’s website for use on another website.*

It is a technique commonly used to gather valuable, seemingly proprietary data from websites and in some instances (for example price comparison websites) it is the cornerstone of an entire business. It is an understandably divisive topic: website owners don’t want their content to be “unfairly” taken and used whilst visitors to websites want to be able to make use of that information on the best possible terms (i.e. for free).

### Why does screen scraping happen?

You don’t need to look far on the internet to find examples of screen scraping and it is almost certain that every reader will have used a service which makes use of screen scraping techniques – a Google search for “price comparison” will throw up a multitude of good examples. Screen scraping can take many different forms but at one end of the spectrum is the situation where a website (or a particular web page) has been “cloned” in its entirety. This is usually driven by a desire to “trick” users into thinking the clone is the original site to extract money or information from users – it is safe to assume that most of us would consider this practice to be problematic (and very probably illegal).

However, at the more benign end of the spectrum there are screen scrapers which many of us (and sometimes the websites which are being scraped) would regard as very useful. A good example of this would be a flight price comparison website which “scrapes” flight data from the websites of multiple airlines. But whilst users and scrapers certainly view this as being beneficial, some airlines won’t necessarily appreciate the potential loss of customers to a cheaper carrier. Whilst an airline might make flight details publicly available to users to book flights via its own site, it could argue that it has not granted access for a price comparison website to take and reproduce its data. This is particularly the case where the screen scraper charges users a booking fee for the service.

### What are the legal implications of screen scraping?

One of a website’s main protections against screen scraping is intellectual property (IP), in particular trade mark rights and copyright in text and images. Database copyright and the separate database right may also be important if the content which is scraped is taken from a database on the website. Websites can also attempt to restrict the actions of screen scrapers through their published terms of use (T&Cs). From a purely legal perspective the cloning example referred to above should normally be a fairly simple IP infringement case, but the legality of screen scraping in situations like the flight price comparison example is rather more complicated.

The key questions both website owners and scrapers need to ask are:

- do any IP rights subsist in the relevant material;
- is the scraping an infringement of such rights; and
- do T&Cs limit the re-use of the data, and are they enforceable?

The difficulty that website owners and scrapers face is that the answers to these questions are far from obvious. A recent ruling by the Dutch courts (which has also been considered at a European level) in *Ryanair Ltd v PR Aviation BV* held that no IP subsisted in Ryanair's database of flight times and prices (which PR Aviation was scraping). In contrast, the UK Supreme Court's 2013 ruling in the *Meltwater* case held that Meltwater's mere use of news headlines (which it had scraped from news websites) as links to the relevant stories was enough to amount to copyright infringement. To complicate matters further, in 2013 an Italian court warned Ryanair that IP rights must be considered in light of competition law, so that they cannot be used to harm competition in the EU or partition the market.

However, Ryanair's position is by no means as bad as it may seem, since the Dutch courts also found that Ryanair was able to restrict the use of flight information on its website through its T&C's. With this in mind, it is important for scrapers to check all T&C's before taking another site's content. From a website owner's point of view we would typically recommend that T&C's prohibit commercial re-use of data (and also cover other unwanted practices such as deep-linking).

However, the English courts are yet to pass judgment on whether T&C's which haven't been positively accepted (e.g. through a tick box) are actually enforceable on visitors to a site.

### Conclusions

The law relating to screen scraping is complicated, multi-faceted and very fact-specific and we predict it will continue to be a contentious issue in the online community. Website owners who are sensitive to having their content scraped are advised to take precautions, both legally (e.g. appropriate wording in website terms) and technologically (to the extent possible without affecting user experience and search engine optimisation). Those wishing to engage in screen scraping should however tread carefully – the only way to be certain you can screen scrape is with permission (such as a licence) which is what Meltwater finally did to mitigate its losses.

#### James Longster

Associate

Commercial, IP & Technology Department

T +44 (0)20 7295 3496

E [james.longster@traverssmith.com](mailto:james.longster@traverssmith.com)



T