

LITIGATION
DEPARTMENT
OF THE YEAR

WEEK OF NOVEMBER 14, 2017

GROUND BREAKERS

Perry Viscounty - Latham & Watkins

Perry Viscounty of Latham & Watkins has been leading Craigslist's campaign against web scraping, or data extraction. He and his team won a \$60.5 million judgment in April against online real estate listing site RadPad and followed that up with a \$31 million stipulated judgment against car-selling website Instamotor. Viscounty told *The Recorder* about the patterns he sees in scraping cases and the tools that interactive websites have in protecting users' content.

Why do web scrapers seem to continually target public-facing websites and community posts as a source for data?

The situation I have encountered most often is a venture-backed company looking for an easy shortcut—a "growth hack," in start-up parlance. Instead of working for years to develop a

user base for your apartment rental or car buying app, why not just scrape listings from an established competitor's website? Well, I'll tell you why not. Because that shortcut likely breaches your competitor's terms of use and may violate other state and federal laws. Instead of an instant user base, you may find yourself facing an eight-figure judgment and permanent injunction, which were the results obtained in two of our recent cases.

Explain briefly how getting copyright assignment from site users can help an enforcement campaign against scrapers?

In certain circumstances, getting copyright assignments from site users may provide a website owner with another arrow in its quiver to go on the offensive against scrapers, with the added benefit of potentially



Perry Viscounty

significant statutory damages awards under the Copyright Act. **What trait would you say keeps clients coming back to you?**

I try to be responsive to my clients and provide them with advice that applies my

substantive legal expertise to the practical realities and goals of my clients' businesses. I also know that I have a great team that works with me, and together, our goal is to consistently deliver top-notch work product as efficiently as possible, tailored to the specific goals of each client. Also, at the end of the day, this is a results-oriented business. If clients are happy with the results, then they tend to come back. Our team has been fortunate over the years to achieve some great results for our clients and hopefully that trend will continue in the future.

A prospective client with a crisis calls and asks why you and your team should be retained. What is your answer?

There is definitely some overlap here with my previous answer, but I think my team's strength is our results-focused approach to solving our clients'

problems as efficiently as possible. I would also note that our team truly functions as a team, with each member playing to his or her strengths—the researcher, the writer, the negotiator, etc.—to achieve our shared goal. Of course, the size and makeup of the team will depend on the scope and substance of the “crisis,” but I work with a phenomenal group of attorneys with a broad range of experience and expertise, from which I would hand-pick the specific team for the specific issue facing a particular client.

Who is a litigator outside your own firm that you admire and why?

One litigator with whom I have worked closely over the last several years is Jason Yurasek, a former Big Law litigation partner who is now general counsel for Craigslist. I have been consistently impressed with Jason's ability to strategize and collaborate with our team

to achieve fantastic results across a wide range of issues. Perhaps equally as admirable as his business and legal acumen is how he maintains his poise and sense of humor throughout even the most intense stretches of contentious litigation. Also, on a personal note, for the last 20-plus years, I have sought (at times imperfectly) to find the balance between excelling as a Big Law partner in the high-pressure arena of complex commercial litigation, on the one hand, and being an engaged and present father, on the other hand. I have seen firsthand the way Jason strikes that balance and I admire that aspect of his life as a litigator as well.

***Ross Todd** is bureau chief of The Recorder in San Francisco. He writes about litigation in the Bay Area and around California. Contact Ross at rtodd@alm.com. On Twitter: [@Ross_Todd](https://twitter.com/Ross_Todd).*