



FROM THE TECHNOLOGY COUNSEL



by Braden Cox

A Toast to the Supremes

Cheers to the Supreme Court for its recent decision striking down discriminatory laws in New York and Michigan that allowed in-state wineries, but not out-of-state businesses, to ship directly to consumers. The case involved the Constitution's Commerce Clause, which prohibits states from discriminating against out-of-state businesses, and the 21st Amendment, which ended Prohibition in 1933 and granted states authority to regulate alcohol sales. But this case will affect much more than wine, and serves as an important precedent for the distribution of any product over the Internet.

E-commerce is rapidly becoming a large part of our economy. Online retailers sold \$8.8 billion worth of goods and services during 2004's holiday season, a 24 percent increase over the same period in 2003. The ease of buying and selling electronically is a boon for small businesses and consumers with particular tastes. But it presents a new challenge for brick-and-mortar companies that have traditionally dominated certain industries. Many traditional retailers have adopted new business models—but, unfortunately, many others have petitioned government for protection against new competition.

Under the rationale of "protecting" consumers, regulators have enacted rules making illegal the online purchase of many products—from contact lenses to even caskets. Texas, at the behest of car dealer trade groups, stopped Ford Motor Company from marketing used cars on the web—regardless of the potentially huge savings to consumers.

Now these laws have received the attention of federal regulators. The Federal Trade Commission and The House Energy and Commerce Committee have held hearings on whether state impediments to E-commerce were valid consumer protection measures or merely veiled protectionism.

Too often, state laws restricting online business are anticompetitive. Yet many local industries could benefit greatly from Internet connectivity. For example, real estate Internet portals can easily bring together all of the players in a real-estate transaction—buyers, sellers, renters, landlords, and brokers. Over 70 percent of all home buyers now use the Internet to search for homes, according to the National Association of Realtors.

But, unfortunately, many traditional businesses ignore the benefits and focus on the challenge of new competition. That was the case in California, where a federal court struck down a state law that required websites like ForSaleByOwner.com to obtain a real estate broker's license to publish real estate advertising and information. Why does an online provider of real estate information need a full-fledged broker license? To protect current real estate brokers from competition, of course. But let's not forget that online publishers of information have First Amendment rights that should be as zealously protected as those of newspapers or other print media.

In New York, a web-based listing services company faces a similar regulatory fight. MLX.com provides property shoppers with private accounts for managing their apartment searches and connecting them to landlords, owners, brokers, and MLX.com advisers. But the New York State government is trying to apply an outdated law that requires all companies—even online businesses—that provide information about rental property availability to furnish hard-copy documents to consumers—including contracts, escrow agreements, and submissions of available listings from landlords—before they can distribute information. Consumers are harmed, not helped, by this consumer protection law.

Online businesses—from all over the country—are seriously challenging the old business way of offline intermediaries and controlled information flow, giving consumers more and better choices and substantial price savings. So another round of cheers to those states that allow consumers to reap the benefits of E-commerce.

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