

use the federal statute reports on Lexis's CD-ROMs to create the database of federal statutes available on the website.

121. Lexis's "selection" and "arrangement" of the statute reports within any CD-ROM, which contains some or all of the statutes of a particular state, is obvious, typical and routine.

122. Lexis makes no original or creative "selection" among statutes. Rather, Lexis includes on the CD-ROM statute reports of all of the statutes of the state.

123. Lexis's "arrangement" of the statute reports on a CD-ROM is practically inevitable. Lexis faces very few options with respect to the arrangement of the statute reports on a CD-ROM, and external factors limit the viability of certain of those options.

124. Lexis might arrange the statute reports on a CD-ROM only chronologically, by subject matter, by title and section number, or by a combination of the foregoing. A user seeking to find a statute is most likely to know the title and section number, or subject matter, of a particular statute. If the statute reports in a CD-ROM were arranged without regard to any of those criteria, a user who knew all of that information would nevertheless be unable to locate the statute quickly on the CD-ROM, if at all. Especially given that the CD-ROM is designed to allow the user to retrieve statutes quickly, any other arrangement would make the CD-ROM significantly less commercially viable, if viable at all, as a research tool.

125. The feasibility and viability of a CD-ROM on which statute reports were arranged by subject matter of the statute is quite limited. The question of which subject matter a statute addresses is subjective, and a statute often addresses many different subject matters. Given these factors, a user of the CD-ROM would not be able to locate statutes quickly.

126. Lexis's choice to use the only viable option for arrangement – by title and section number – lacks the requisite level of creativity to be copyrightable.

Jurislone Has Not Infringed Any Protectible Copyright Lexis May Hold  
in the Selection or Arrangement of Statute Reports on Its CD-ROMs

127. Even if Lexis's selection or arrangement of statute reports of state statutes on its CD-ROMs constitutes an "original work of authorship," Jurislone has not "copied" Lexis's selection or arrangement on the CD-ROMs within the meaning of that term in the Copyright Act.

128. The statutes available on the Jurislone website are not "arranged" in any manner that may be perceived by a user of the website. Instead, all of the statutes available on the website are contained in a single database from which statutes are reorganized depending on the search commands. A user of the Jurislone website thus cannot view statutes in the order in which Lexis may have arranged statute reports on its CD-ROMs.

Jurislone Has Not Infringed Any Protectible Copyright Lexis May Hold in the  
Factual Enhancements Lexis Makes in the Statute Reports on Its CD-ROMs

129. Each Lexis statute report consists of the text of the statute with several factual enhancements. Prior to making statutes available on its website, Jurislone omits from the statute report all of the enhancements that Lexis makes to the statutes. The statutes that are available on the website, after redaction of the Lexis factual enhancements, therefore do not contain copyrightable material.

Lexis Holds No Protectible Copyright in Certain Factual Enhancements  
Lexis Makes in the Statute Reports on its CD-ROMs

130. Each Lexis statute report consists of the text of the statute with, among other enhancements, two forms of factual enhancements: the legislative history of the statute, and suggested forms for pleadings that an attorney might file pursuant to the statute.

131. These enhancements involve the addition and arrangement of facts or preexisting material. With respect to legislative history, Lexis (i) specifies when the statute was originally enacted; (ii) specifies when the statute was amended or modified (if at all), and indicates which statutory text was amended or modified; and (iii) arranges this information in a particular order. These changes are unoriginal, uncreative and insubstantial.

132. The dates when the statute was originally enacted, when the statute was amended or modified, and the indication of which statutory text was amended or modified are elementary items, and their inclusion stems from their importance, not Lexis's judgment. Lexis's inclusion of legislative history is also dictated by industry convention, as West statute reports (and other publishers' statute reports) contain such information.

133. Lexis's use of certain words or terms to describe the legislative history is also uncreative, and lacks sufficient judgment. The limited text Lexis uses merely reflects the terms used in Congress or the state legislature itself to describe the statute or statutory amendment or modification.

134. Lexis's choices on the selection and arrangement of these enhancements are obvious, typical and lacking even minimal creativity. The only realistic way of reflecting the legislative history is to insert the information after the complete text of the statute. This choice is

not creative, and does not require sufficient judgment to be copyrightable. Lexis's inclusion of the legislative history immediately after the text of the statute is also dictated by industry convention, as West statute reports (and other publishers' statute reports) insert legislative history in the same place.

135. With respect to suggested forms, Lexis merely chooses a pleading filed pursuant to the statute, which someone else has authored, and redacts any information indicating which parties and attorneys were involved in that pleading. Lexis does not hold any protectible copyright in this underlying work.

136. Lexis's choice to include the suggested forms is unoriginal and uncreative. The inclusion of this information stems from its importance, not Lexis's judgment. Lexis's inclusion of suggested forms is also dictated by industry convention, as West statute reports (and other publishers' statute reports) contain such information.

137. Even if Lexis's choice about where to insert the suggested forms is original or creative, the use of Lexis's suggested forms in a single position, after the statute, rather than within the text of the statute (where Lexis often places its citations to suggested forms), would not violate any protectible copyright Lexis may hold in the arrangement of the statutes and forms.

**The Supremacy Clause of the Constitution and the Copyright Act Preempt  
State Law Claims That Lexis May Attempt To Assert Against Jurisling**

138. The Copyright Act expressly preempts any state-created rights, legal or equitable, that are "equivalent" to any of the exclusive rights within the general scope of copyright under section 106 of the Act. 17 U.S.C. § 301(a). The exclusive rights under section 106 of the Act

are the rights of reproduction, adaptation, distribution, public performance and public display.

17 U.S.C. § 106.

139. A state-created right is equivalent to a right of copyright if the state-created right is infringed by an act of reproduction, adaptation, distribution, performance or display. State-created rights that are broader or narrower than these federal rights (and thus not equal) are deemed "equivalent" within the meaning of the Act.

140. A court may not, by enforcing a state-created right, abrogate or diminish rights protected by the Copyright Act, nor create, grant or destroy rights equivalent to any of the exclusive rights of copyright.

141. Lexis may attempt to protect its uncopyrightable material on the CD-ROMs by attempting to assert certain state-created rights (both legal and equitable). In particular, Lexis may attempt to assert state law causes of action against Jurisline for misappropriation, unfair competition, unjust enrichment, conversion, and/or interference with business relations, and may attempt to seek injunctive relief on the basis of such claims.

142. The Copyright Act expressly preempts each of these causes of action, because Lexis could state a cause of action and/or obtain relief, with respect to each claim, only by alleging that these causes of action preserve to Lexis legal and/or equitable rights that are equivalent to the rights granted under the Copyright Act with respect to material that comes within the subject matter of the Copyright Act.

143. To satisfy each cause of action, Lexis would have to allege that Jurisline had acted unlawfully by having exercised one or more of the rights specified in section 106 of the Copyright Act. Further, there are no qualitative elements of any of these causes of action other

than the exclusive rights of reproduction, adaptation, performance, distribution or display under section 106 of the Copyright Act.

144. Lexis may also attempt to assert a cause of action for breach of contract, and may attempt to seek injunctive relief on the basis of such a claim. The Copyright Act expressly preempts such a claim.

145. Jurisline obtained the CD-ROMs from Lexis Law Publishing. The Master Agreement (under the name of Lexis Law Publishing) sets forth the terms and conditions under which Lexis Law Publishing grants a "non-exclusive, non-transferable limited license" to the user of the CD-ROMs, or licensee, for "access to and use of" the CD-ROMs. The Master Agreement is a standard-form, non-negotiable contract that the licensee is able to read only when it receives the CD-ROMs the licensee has ordered.

146. The Master Agreement provides, in relevant part, that the licensee may not (1) "copy the CD-ROM System, or any portion thereof, in any form" (§ 1.4.1); (2) "store in a retrieval system, reproduce, transfer, publish, distribute, display, broadcast, sell, sublicense or provide a third party access to the Licensed Database, or any portion thereof, without the express written permission" of Lexis Law Publishing (§ 1.4.2); (3) "use the CD-ROM System to develop a database, infobase or other information resource for internal use" (§ 1.4.3); (4) "create compilations or derivative works of the CD-ROM System" (§ 1.4.4); (5) "use the CD-ROM System to develop a database, infobase or other information resource for resale or reuse" (§ 1.6.3); or (6) "use the CD-ROM System on a personal computer to which is attached a device that would permit the making of electronic or digital copies of the CD-ROM System" (§ 1.6.7).

147. The Master Agreement also provides that the licensee assigns to Lexis Law Publishing "all copyrights and other proprietary rights in and to any derivative work of the . . . CD-ROM Systems" the licensee creates "in violation of this Agreement." (§ 2.1.)

148. The Master Agreement seeks to preserve to Lexis rights indistinguishable from those rights accorded by the Copyright Act, as each of these contractual provisions, if enforceable, prohibits the licensee from copying or publishing material that the Copyright Act includes in the public domain.

149. The Master Agreement binds each licensee and effectively grants Lexis the exclusive right to copy uncopyrightable material and to prevent all others from doing so. Further, there are no qualitative elements of a cause of action for breach of the License Agreement other than the exclusive rights under section 106 of the Act, especially because the licensee can neither review nor renegotiate the terms of the Agreement before he obtains or uses the CD-ROMs. Section 301 of the Copyright Act thus expressly preempts any cause of action Lexis may assert against Jurisline for breach of the Master Agreement.

150. The Supremacy Clause of the Constitution, Article VI, clause 2, also preempts state law causes of action that Lexis may attempt to assert against Jurisline.

151. The Supremacy Clause states that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding." (U.S. Const. Art. VI, cl. 2.)

152. The Copyright Clause of the Constitution provides that Congress shall have the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to

Authors and Inventors the exclusive Right to the respective Writings and Discoveries." (U.S. Const. Art. I, sec. 8, cl. 8.)

153. Enacted pursuant to the Supremacy Clause and Copyright Clause, the Copyright Act provides a limited grant of exclusive rights in material meeting the requisite standard for protection to encourage the creation of new works. The Copyright Act provides that the public may freely use material that fails to meet the requisite standards set out in the Act, and which belongs in the public domain.

154. To state a cause of action for any of the state law claims that Lexis may attempt to assert against Jurisline, Lexis must allege that Jurisline has unlawfully copied material, including facts, that the Copyright Act includes in the public domain. Enforcement of any of the state common law causes of action set out above would therefore stand as an obstacle to the accomplishment of the purposes and objectives of Congress in creating a federal scheme of copyright law. Accordingly, the Supremacy Clause preempts these claims.

Jurisline Has Made Fair Use  
of Any Copyrightable Material on the Lexis CD-ROMs

155. Jurisline's use of any copyrightable material on the Lexis CD-ROMs, or in any of the individual Lexis case reports on the CD-ROMs, is a fair use under the Copyright Act. 17 U.S.C. § 107.

156. An important purpose of the Jurisline website is to permit easy access to legal databases to enable legal research. The website will be of interest to anyone attempting to access legal research materials for purposes of criticism, comment, teaching and scholarship.

157. The public will be able to access the Jurisline website, undertake legal research, and print and download material from the website at no cost. Jurisline is not selling for commercial purposes its case reports or statutes or requiring payment for use of any of its databases of public documents. (As many websites do, Jurisline will seek to maintain its business by relying nearly entirely on advertising.)

158. Jurisline's website is transformative of the Lexis CD-ROMs and Lexis-Nexis. The website is marked by a further purpose, and is of a different character, than either the CD-ROMs or Lexis-Nexis.

159. The website provides access to entirely different, Internet-based information than the Lexis CD-ROMs or Lexis-Nexis, which provide access only to databases of legal material and certain other public documents. In addition to federal and state opinions and statutes, Jurisline provides access to a variety of other information and services, including EDGAR filings, stock quotes, news headlines, trademark searches, corporate form templates, links to other law-related Internet sites, and a restaurant guide. The website home page also provides a "hyperlink" (a code or "tag" in a computer program that brings the user to a website without having to enter the website address) that allows a user to search the Internet through the top three Internet search engines. Neither the CD-ROMs nor Lexis-Nexis provides any of these options.

160. The website's user interface is entirely different than the user interface of the Lexis CD-ROM or Lexis-Nexis. The website's interface contains, among other features, intuitive icons, advertising banners with detailed graphics, and hyperlinks to advertising on the website. Neither the CD-ROMs nor Lexis-Nexis provide any of these features.

161. A user may undertake legal research on the website at no cost and without a subscription, permitting a new option for legal research for the significant percentage of attorneys and members of the public for whom fee-based legal research is prohibitively costly. In contrast, attorneys must purchase Lexis CD-ROMs and pay Lexis a fee, calculated pursuant to a detailed pricing model, to use Lexis-Nexis.

162. The website will be used by people who do not need the assistance that Lexis's fully enhanced case or statute reports provide, smaller practitioners who may be unable (or unwilling) to pay for fee-based legal research, and members of the general public who merely want convenient and free access to public legal documents.

163. The search feature of the website also functions in a manner distinct from the Lexis CD-ROMs or Lexis-Nexis. A user of an electronic legal research service undertakes research by entering search commands, in the form of words and other symbols. In response to the search commands, the search engine of the electronic service searches its database for words or terms matching those commands and produces search results that most closely match the search commands. The search commands, or search "language," that the website accepts is simpler than the search commands required to search the Lexis CD-ROMs. The website also accepts many search commands that Lexis-Nexis does not accept.

164. The website search engine produces more search results, and results that more closely match the search commands, than the search engine on the Lexis CD-ROMs. In addition, a user of a Lexis CD-ROM is able to search at one time only the case or statute reports contained on that CD-ROM. Since many of the collections are contained on more than one CD-ROM,

users must perform the same search multiple times to search an entire collection using the CD-ROMs.

165. The website arranges its search results of case reports in a different and significantly more convenient order than the Lexis CD-ROMs or Lexis-Nexis. The website arranges its search results in specific "folders," separated by jurisdiction and court. A search result may include, for example, two cases from each of the Supreme Court, the Second Circuit, the Seventh Circuit, the Southern District of New York, and the Northern District of Illinois. In that event, the website would present the search results in the following order of jurisdictions: the Supreme Court, the Seventh Circuit, the Northern District of Illinois, the Second Circuit, and the Southern District of New York.

166. The website also arranges the search results of case reports in sub-folders that would indicate, in the example above, that the Northern District of Illinois and the Southern District of New York are located in the Seventh and Second Circuits, respectively. This arrangement allows a user of the website to determine quickly which cases among the search results are in a particular circuit.

167. Within the sub-folder arrangement, the website also arranges the search results by "relevance." The website uses a complex algorithmic search engine that assigns case reports weight based on, among other factors, the number of times the search terms appear in the document and the position of the search terms in the document.

168. A Lexis CD-ROM and Lexis-Nexis, in contrast, merely arranges its search results of case reports in reverse chronological order. Further, although Lexis-Nexis arranges its search results of case reports from "highest" to "lowest" court, it does not arrange the case reports in sub-folders, making it more difficult for a user of Lexis-Nexis to determine quickly which cases,

among the search results, are in a particular circuit. Neither a Lexis CD-ROM nor Lexis-Nexis, moreover, arranges its search results of case reports in a ranking by relevance.

169. With respect to statutes, the website permits a user to search within a single "title," such as Title 18 of the United States Code. Neither a Lexis CD-ROM nor Lexis-Nexis permits a user to limit a search to a particular statutory title.

170. The website also permits a user to view on-screen a list of titles and chapters of a particular statutory arrangement. A user may view on-screen, for example, a list of all of the titles of the United States Code, and a list of all of the chapters in a particular title of the United States Code.

171. With respect to both case and statute reports, the website "loads" the entire report at once, which permits a user to scroll through the document without pause. Neither a Lexis CD-ROM nor Lexis-Nexis loads a report in that manner, so that a user must often pause while attempting to scroll through the report.

172. The unit of visible text from a Jurisline case report on the website is bordered on the left by a prominent Jurisline banner. The unit of visible text from a case report on the Lexis CD-ROM, in contrast, has small borders on both the left and right, and does not have a Lexis banner of any sort.

173. A single printed page from a Jurisline case report that has been printed directly from the screen contains approximately 550 words and is bordered on the left by a prominent Jurisline banner; a single printed page from a Jurisline case report that has been downloaded contains approximately 600 words, has a footer that contains the page number in textual form and a "Jurisline.com" identifier, and is structured in two columns. A single printed page from a

case report on the Lexis CD-ROM, in contrast, contains approximately 700 words, identifies the page number in the top right corner in numeric form, has a footer that contains a copyright notice for Lexis, and is not structured in two columns.

174. A Jurisline case report, whether printed directly from the website or after it has been downloaded, uses a different size and style font, in both the text and footnotes, than the size and style font used in a printed Lexis case report.

175. The unit of visible text of the first page from a state statute on the website, or in printed form, contains the source of the statute (for example, "New York Consolidated Laws"); the chapter in which the statute appears (for example, "Chapter 2 - Banking Law"); the article or subchapter in which the statute appears (for example, "Article III-A - Bank Holding Companies"); and the section number and title of the statute. The source of the statute and the chapter in which the statute appears are styled in bold, capital letters. The unit of visible text of the first page from a Lexis statute on the CD-ROM, or in printed form, contains only the section number and title of the statute, followed by four hyperlinks to certain of the factual enhancements Lexis makes in its statute report.

176. The unit of visible text from a Jurisline state statute on the website is bordered on the left by a prominent Jurisline banner. The unit of visible text from a statute report on the Lexis CD-ROM, in contrast, has small borders on both the left and right, and does not have a Lexis banner of any sort.

177. A single printed page from a Jurisline state statute that has been printed directly from the screen is bordered on the left by a prominent Jurisline banner; a single printed page from a Jurisline state statute that has been downloaded has a footer that contains the page number

in textual form and a "Jurisline.com" identifier. A single printed page from a statute report on the Lexis CD-ROM, in contrast, comprises, in addition to the text of the statute, factual enhancements after the text entitled "History," "Notes," "Cross References," "Research References and Practice Aids," "Annotations," and "Texts"; identifies the page number in the top right corner in numeric form; and has a footer that contains a copyright notice for Lexis.

178. The nature of any work on the CD-ROMs in which Lexis may hold a protectible copyright permits the widest possible scope of permissible fair use. Lexis's CD-ROMs comprise published opinions and state statutes, in which Lexis clearly holds no copyright, that are enhanced only in factual, unimaginative fashion.

179. The opinions and state statutes at the core of Lexis's case reports and statute reports, respectively, are public documents. A legal publisher may not impede the dissemination of such public information merely by adding limited, unimaginative factual information to the underlying documents.

180. The amount and substantiality of the portion of any copyrightable material, if any, on Lexis's CD-ROMs that Jurisline has used with respect to case reports is reasonable in relation to the purpose of the copying. Jurisline has not copied Lexis's headnotes, syllabi, lists of core terms, editorial comments in the text of opinions, or unusual parallel citations. Jurisline also has not copied the unreported opinions that Lexis had included on its CD-ROMs. Jurisline has thus copied a small proportion of the copyrightable material from a given Lexis case report and CD-ROM. Further, Jurisline has not copied any of the enhancements that Lexis makes in its statute reports.

181. The amount of copyrightable material on the CD-ROMs, if any, that Jurisline has copied is a small proportion of the total material in which Lexis may hold protectible copyright, and is no greater than the amount of material necessary to create a reasonable and useful minimally enhanced opinion.

182. Lexis's CD-ROMs and Lexis-Nexis offer a different service and permit a broader form of legal research than the Jurisline website.

183. With respect to its database of legal material, the website contains only minimally enhanced opinions and non-annotated statutory materials -- a small fraction of the legal research materials offered on Lexis's CD-ROMs and Lexis-Nexis.

184. The Jurisline case reports do not contain hyperlinks to a cited case report or syllabi of the underlying opinions. The Lexis case report makes certain information more immediately available than the Jurisline case reports and thus provides a different service.

185. The CD-ROMs also provide a different service than the website. The Lexis CD-ROMs are permanently fixed with the case reports and/or statutory materials of a particular jurisdiction within a particular time frame, a function that is not available on the website.

186. Jurisline's case reports thus fill a niche in the market for computer-assisted legal research services that Lexis has not attempted to occupy through its CD-ROMs or Lexis-Nexis.

187. The public interest favors efficient, accurate, universal and free access to federal and state opinions and statutes. In particular, a fundamental principle of the United States legal system is the doctrine that judicial precedents within a jurisdiction are a principal source of binding authority. Judges and attorneys must, and do, provide citations to opinions and statutes as authoritative support for legal and factual propositions. To a significantly greater extent than a

competing fee-based method of legal research, the Jurisline website furthers these interests, as it provides such access at no cost to the user.

188. Lexis and West are the dominant publishers of opinions and statutes in the United States. Lexis's and West's market dominance effectively precludes the rapid and free access to opinions that the website provides.

189. The balance of these considerations clearly establishes that Jurisline has engaged in the fair use of any copyrightable material on the Lexis CD-ROMs, or the individual Lexis case reports available on both the CD-ROM and Lexis-Nexis, that Jurisline has copied.

190. The balance of these considerations similarly establishes that Jurisline's use of the unreported opinions on Lexis's CD-ROMs would constitute fair use.

Jurisline Has Not Violated, and With Respect to the Prospective  
Use of Certain Material Would Not Violate, the Lanham Act

191. The Lanham Act states in relevant part that a person shall be liable if he or she has, "in connection with any goods or services, . . . use[d] in commerce any word [or] term, or any combination thereof, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin of his or her goods, services or commercial activities . . ." 15 U.S.C. § 1125(a).

192. Jurisline has not used in commerce any word or term (or combination thereof) that is likely to cause confusion, mistake or deception regarding whether such word or term (or combination thereof) actually originated with Lexis, or whether Jurisline is connected or associated with Lexis. Jurisline has not used any words or terms (or combination thereof) that

Lexis originated or created. Jurisline has omitted from its case reports any LEXIS citations to the database of case reports on Lexis-Nexis.

193. Lexis cannot show that Jurisline's use of certain words or terms has resulted in, or is likely to result in, damage to Lexis as a result of confusion, mistake or deception regarding the origin of such words or terms (or combination thereof). The Jurisline opinions and state statutes bear no resemblance to the Lexis case or statute reports.

194. Jurisline's use of the procedural information enhancements that Lexis makes to its case reports would not and is not likely to result in damage to Lexis as a result of confusion, mistake or deception regarding the origin of such words or terms (or combination thereof).

As a Matter of Equity, Lexis Cannot Obtain  
Injunctive Relief or Damages Against Jurisline

195. To attempt to enjoin Jurisline from using the Lexis CD-ROMs to obtain public documents, or to obtain damages against Jurisline for such use (on the basis of the Copyright Act, the Lanham Act, or any state law claim), Lexis must complain of acts that Lexis itself previously undertook — and which Lexis has asked a federal court to declare legal.

196. Lexis created its database of case reports of opinions written before approximately 1988 in substantial part by simply copying case reports published in West's reporters.

197. Lexis's predecessor, Mead Data Central, Inc. ("MDC"), filed a lawsuit in federal court in which it asserted that it had "continuously added judicial opinions to the LEXIS database for progressively earlier periods and for other jurisdictions" while acknowledging that West's reporters were the "core source of judicial opinions of the lower federal courts and state courts

and state statutes relied upon by attorneys for the practice of law and by others interested in the laws of the United States and the individual states.”

198. In its lawsuit, MDC requested (among other relief) (i) a declaration that “West’s collection of published lower federal court and state court opinions and statutes constitute an ‘essential facility’ which must be made available to competitors and potential competitors,” and that “West’s refusal to provide access to such judicial opinions and statutes is in violation of Section 2 of the Sherman Act”; and (ii) a permanent injunction against West to prevent West “from refusing to allow MDC to have equal access to West’s published opinions of the lower federal courts and state courts and state statutes.”

199. Equity (and principles of estoppel) require that Lexis cannot enjoin or punish Jurisline for undertaking the same activity that Lexis undertook – that is, to obtain public documents from the only source of many of those documents, and the only reasonably available source of all of those documents – to compete in the market.

200. Lexis therefore cannot enforce any otherwise protectible copyright Lexis may hold with respect to its database of opinions and statutes, nor assert any related federal or state law claims with respect to Jurisline’s use of Lexis’s database of opinions and statutes.

#### Background of Lexis’s Antitrust Violations and Copyright Misuse

201. In the early 1970s, Lexis and West began a protracted dispute over the legality of their respective activities in the market for comprehensive computer-assisted legal research services in the United States. In 1985 West brought suit against MDC, alleging that Lexis’s copying of opinions from West case reporters and use of West star pagination infringed West’s copyright in its reporters.

202. MDC, in turn, brought an antitrust suit against West, alleging that West was operating an "essential facility" by (among other things) refusing to make available to competitors, like MDC, West's comprehensive database of opinions and star pagination, and that West thus wrongfully attempted to monopolize, and maintained a monopoly in, the market for published opinions and statutes.

203. MDC and West resolved their legal disputes in 1988 when they entered into a confidential Settlement and Caselaw License Agreement and a confidential Statutes License Agreement. Although the terms of these agreements have never been made public (indeed, Lexis and West guard the privacy of the agreements intensely), Lexis and West have publicly conceded that pursuant to the agreements West (among other things) licenses to Lexis its database of opinions and statutes.

204. Having secured its own dominance in the market for comprehensive computer-assisted legal research (including by copying West's database), Lexis now prohibits potential competitors from using Lexis's database of opinions and statutes to create a competing database.

205. West also imposes on its licensees a license agreement that prohibits potential competitors from using West's database of opinions and statutes to create a competing database of such materials, closely paralleling Lexis's own license agreement.

206. By denying access to their respective databases of opinions, Lexis and West willfully maintain monopoly power in the market for comprehensive computer-assisted legal research services in the United States.

207. Lexis and West control the essential facility of a comprehensive source of opinions that contain (or reflect) West pagination, and of state statutes. Lexis and West prevent

potential competitors from using this essential facility to create a competing comprehensive computer-assisted legal research service, including by refusing to license such potential competitors.

208. Lexis's actions (both independent of, and in concert with West) give rise to violations of the Sherman Act and preclude Lexis's enforcement of its Master Agreement or any otherwise protectible copyright it may hold with respect to its database of legal materials.

209. In addition, Lexis obviously seeks to preserve to itself rights indistinguishable from those rights accorded by the Copyright Act. If enforceable, the restrictive provisions of Lexis's Master Agreement prohibit the licensee from copying or publishing material that the Copyright Act includes in the public domain.

210. Lexis has attempted to extend any limited protectible copyright it may hold with respect to its database of opinions and statutes beyond its lawful scope to secure its position in the market for comprehensive computer-assisted legal research services, and has engaged in conduct contrary to the public policy inherent in the Copyright Act.

211. Lexis has caused anticompetitive harm to the public, to consumers in the market for comprehensive computer-assisted legal research, and to Jurisline. Lexis has also ignored both the public interest and the strong policy underlying the Copyright Act favoring the dissemination of ideas. Lexis has misused any otherwise protectible copyright it may hold, and therefore cannot enforce such copyright or the offending provisions of the Master Agreement.

Lexis Has Conspired with West To Restrain Competition  
in the Market for Comprehensive Computer-Assisted Legal Research

212. Since approximately 1988, Lexis and West have engaged in parallel conduct evidencing their intent to prevent competition in the market for comprehensive computer-assisted legal research services, including by refusing to allow potential competitors to use the essential facility of a comprehensive source of opinions that contain (or reflect) West pagination, and of state statutes.

213. In particular, Lexis and West each impose on licensees standard-form, non-negotiable license agreements that prevent the licensee from using Lexis's or West's respective databases to compete in the market.

214. Lexis and West have adhered to a scheme and concerted course of conduct to prevent licensees from using their respective databases and, including because they dominate the market, have understood that their cooperation is essential to the success of this plan.

215. Lexis and West have understood that to prevent potential competitors from creating a database of opinions and statutes as comprehensive as the database of such materials that Lexis and West control, they must each prevent any potential competitors from using the opinions and statutes in their databases to such an end.

216. Lexis and West have an obvious common motive to impose such restrictions on licensees. Lexis and West recognize that preventing potential competitors from using the opinions and statutes in the Lexis and West databases is in Lexis's and West's best interests.

217. By preventing potential competitors from using the Lexis and West databases of opinions and statutes to create a competing comprehensive computer-assisted legal research

service, Lexis and West would (and in fact do) artificially restrict the supply of comprehensive computer-assisted legal research services and thereby maintain the overall demand for their own services.

218. By maintaining such demand, and artificially limiting consumer choice, Lexis and West would be able to (and do in fact) charge higher fees for the use of their services than they could if there existed in the market other services that offered access -- in particular free access -- to a database of opinions and statutes as comprehensive as Lexis's and West's.

219. The Caselaw and Statutes License Agreements (at least) also demonstrate the substantial and crucial level of communications between Lexis and West. The Agreements were negotiated only after Lexis and West had disputed, both formally and informally, their respective legal rights for at least fifteen years, and proximately resulted from months of intense negotiation.

220. Lexis and West have thereby conspired to prevent competition in the market for comprehensive computer-assisted legal research services.

Lexis Has Restrained Competition in the Market  
for Comprehensive Computer-Assisted Legal Research

221. Lexis and West maintain the power to exclude competition, and thus control prices, in the product market for comprehensive computer-assisted legal research services.

222. The relevant geographic market is the United States. There are no significant producers of United States legal materials published outside the United States. (Although The Thomson Corporation, a Canadian corporation, acquired West in 1996, the facilities used to

produce and publish Thomson's legal materials are located in the United States.) The demand for United States legal material outside of the United States is de minimus.

223. Lexis and West maintain exclusive access, and control access by potential competitors, to the essential facility of a comprehensive source of opinions that contain (or reflect) West pagination, and of state statutes.

224. Lexis and West control 100% of the shares in the market for comprehensive computer-assisted legal research in the United States. Lexis and West have controlled 100% of the shares in this market since approximately 1988, and have controlled nearly 100% of the shares in this market since approximately 1975.

225. Lexis and West have willfully maintained monopoly power in the market. In particular, Lexis and West prevent potential competitors from using the Lexis-West essential facility to create a competing comprehensive computer-assisted legal research service.

226. A potential competitor in the market cannot duplicate the database of opinions that Lexis and West currently control and will continue to control.

227. Lexis and West prevent potential competitors from using the Lexis-West essential facility. Indeed, given Lexis's and West's market dominance, the uniformity of the non-negotiable, standard-form Lexis and West license agreements effectively replaces the copyright laws with private legislation.

228. Through its Master Agreement, Lexis has given itself the power to control potential competition. The inchoate threat that Lexis's power to enforce its Master Agreement engenders has deterred potential competitors from using the public documents that Lexis makes

available. Lexis has thus created, and continues to create, a substantial anticompetitive impact in the market.

229. Lexis could allow immediate access to and use of its essential facility without any significant additional cost to Lexis, because Lexis publishes the opinions and state statutes in its database on CD-ROMs.

230. Independent of its publication of CD-ROMs, Lexis maintains, and could continue to maintain at little or no additional cost, the opinions and state statutes in its database in distributable electronic form. (If, pursuant to the terms of the Caselaw and Statutes License Agreements, Lexis is not permitted to license its database of opinions and statutes, the Agreement constitutes further evidence of Lexis's and West's conspiracy to monopolize and unlawful maintenance of monopoly power.)

231. A potential competitor denied access to this essential facility suffers a categorical and prohibitive disadvantage in the market. That is, such a competitor cannot otherwise create a competing comprehensive computer-assisted legal research service.

232. By preventing potential competitors from using the Lexis and West databases of opinions to create a competing comprehensive computer-assisted legal research service, Lexis and West artificially restrict the supply of comprehensive computer-assisted legal research services and thereby maintain the overall demand for their own services.

233. By maintaining such demand, and artificially limiting consumer choice, Lexis and are able to, and do in fact, charge higher fees for their services than they could if there existed in the market other services that offered access -- in particular free access -- to a database of opinions and statutes as comprehensive as Lexis's and West's.

Lexis Has Misused Any Otherwise Protectible Copyright  
Lexis May Hold with Respect to Its Database of Opinions and Statutes

234. Lexis has attempted to extend any limited protectible copyright it may hold with respect to its database of opinions and statutes beyond its lawful scope and has engaged in conduct contrary to the public policy inherent in the Copyright Act.

235. Lexis has caused anticompetitive harm to consumers in the market for legal research and has ignored both the public interest and the strong policy underlying the Copyright Act favoring the dissemination of ideas and disfavoring protection for unoriginal works.

236. Lexis has sought to use any otherwise protectible copyright it may hold with respect to its database of opinions and statutes to prevent the development of competition in the market for comprehensive computer-assisted legal research, and thus to secure Lexis's position in that market.

237. In an attempt to extend the protection provided by the Copyright Act, Lexis imposes its Master Agreement to prevent licensees, as well as the general public, from copying material that the Copyright Act does not protect.

238. Through the Master Agreement, Lexis effectively imposes on a licensee the condition that the licensee will not develop a database of opinions and statutes to compete with Lexis's database of such materials.

239. Like Lexis, West imposes a restrictive license agreement to prevent users from creating a competitive database of opinions and statutes. In conjunction with Lexis's and West's market dominance, the uniformity of the non-negotiable, standard-form Lexis and West license agreements effectively replaces the copyright laws with private legislation.

240. In light of these restrictions and prohibitive practical limitations, Lexis's and West's market dominance effectively precludes the rapid and free access to opinions and statutes, and the majority of these materials remains exclusively under the control of Lexis and West.

241. Lexis does not hold any protectible copyright in the material that Jurisline has used to create its database of opinions and statutes. Lexis could attempt to enforce such non-existent copyright only as a means to chill other competitors from creating databases similar to the databases that Jurisline has created.

242. Lexis has sought to impose on potential competitors, including Jurisline, artificial barriers for entry into the market for legal research, and has thus violated the public policy favoring competitive markets.

243. Lexis has sought to extend its copyright protection to its entire database of opinions and statutes and thereby seeks to prevent a potential competitor from using the only source of many of those materials, and the only reasonably available source of all of those materials, to create a competing product that features, in part, a database of such materials. In short, Lexis prevents potential competitors from using a database of public domain material that no longer can (if it ever could) be independently created.

244. Lexis has caused anticompetitive harm to the public and to consumers in the market for comprehensive computer-assisted legal research services.

245. The Master Agreement seeks to preserve to Lexis rights indistinguishable from those rights accorded by the Copyright Act. If enforceable, the offending contractual provisions (including those quoted above) prohibit the licensee from copying or publishing material that the Copyright Act includes in the public domain. The Master Agreement binds each licensee and

effectively grants Lexis the exclusive right to copy uncopyrightable material and to prevent all others from doing so.

246. Lexis has sought to extend any limited protectible copyright it may hold beyond its lawful scope. Lexis has thus sought to restrain competition in the valuable dissemination of materials (opinions and statutes) that are not themselves within the scope of any otherwise protectible copyright Lexis may hold with respect to its database of opinions and statutes.

247. Lexis has also attempted to use its dominance in the market for fully enhanced case reports and statute reports to prevent competition in the separate market for minimally enhanced (or unenhanced) opinions and statutes.

248. The principal respect in which enhanced case reports are distinguishable from minimally enhanced (or unenhanced) opinions is that an enhanced case report contains, in addition to the text of the opinion, written descriptions of points of law within the opinion (such as Lexis's "syllabuses" and list of "core terms" and West's "headnotes"). Attorneys and other end-users use minimally enhanced (or unenhanced) opinions for different purposes than they use enhanced case reports.

249. Attorneys use minimally enhanced (or unenhanced) opinions, for example, to identify the correct language from the opinion, to evaluate fully the analysis set out in the opinion, and to attach the opinion as an exhibit to materials filed with the court. Attorneys use enhanced case reports, in contrast, to obtain an overview of the opinion and to determine how the analysis in the opinion has been categorized for purposes of legal research.

250. Among other evidence, the separate market for unenhanced opinions is demonstrated by the fact that many federal courts, including nearly all of the Circuit Courts of Appeal, make their recent opinions available on the Internet.

251. The principal respects in which enhanced statute reports are distinguishable from minimally enhanced (or unenhanced) statutes are that (i) each enhanced statute contains written summaries, or "annotations," of relevant case law interpreting the statute; and (ii) each enhanced statute contains cross-references to relevant secondary law products (such as treatises, manuals, practice guides and model forms) or relevant case law in the same and other jurisdictions.

252. Attorneys and other end-users use enhanced statute reports for different purposes than they use minimally enhanced (or unenhanced) statutes. Attorneys use minimally enhanced (or unenhanced) statutes, for example, to identify the correct wording of the statute, to obtain an overview of the relevant statutes on a particular topic, or to attach the relevant statutes as exhibits to materials filed with a court. Attorneys use enhanced statute reports, in contrast, preliminarily to identify and evaluate judicial interpretations of the statute.

253. Among other evidence, the separate market for unenhanced statutes is demonstrated by the fact that Lexis, West, and many public institutions make available unenhanced statutory compilations for certain states.

254. Despite the advent of the Internet and the rapid access to public domain information that it has increasingly permitted, Lexis-Nexis and Westlaw remain the only means through which attorneys and the general public may access a comprehensive database of opinions and statutes. In a truly competitive market, such public domain material would be as freely accessible as many current opinions.