

What is 3taps?

3taps is a data commons of postings of offers for goods, services and information from multiple published sources and locations. 3taps syndicates postings through search and polling APIs so developers can build innovative and competitive services for the benefit of end users.

How does 3taps get postings?

3taps operates a posting API that allows third parties to add, edit, and delete postings to the data commons. Postings may come directly from a publisher, or may be scraped by anyone who has not been legally blocked from doing so due to access, copyright, or trademark constraints.

Don't the postings belong to the publishers?

Users who create exchange postings, rather than publishers, own the copyright in postings. The law is currently unclear over whether publishers can censor access to non-private, non-confidential information by blacklisting who can access public data on a publicly viewable website. 3taps believes that Congress never intended to limit access to public data on a public website via the Computer Fraud and Abuse Act. Others believe that the CFAA can be used to censor access to public websites and criminalize such access by blacklisted individuals and entities.

Can it really be a felony to visit a publicly viewable website that has no password, private or confidential data?

As stated and argued by some, the CFAA does not distinguish between how access is de-authorized to even a publicly viewable website. Some argue that a website owner can ban anyone for any reason, even if that revocation of access is based on nothing more than a letter and a blockage of any IP address the user in question once used to access the site in question. If such a view prevails as consistent with the intent of Congress in passing the CFAA, then the concept of the "open web" has really been supplanted by a permission based web that can censor and criminalize access to public web sites.

Isn't access to a public website without permission tantamount to trespass (to chattels)

A number of courts that are challenged in understanding the difference between cyberspace and "meat" space have confused the notion of access to a public website – even one without a password to protect private or confidential data -- with breaking/entering/trespassing into private property. The butchered view of some laymen is that access means actually being inside the host computer – and thus the analogies of breaking/entering and trespass. Nothing of the sort occurs on the

internet, as access merely relates to a request for data to be transferred from one computer rather than for “entry”

But access implies at least some utilization of host resources – surely this use could arguably be a form of damage that is consistent with norms or malevolent conduct of breaking/entering and trespass.

Putting aside extreme cases of true hacking (such as a denial of service attack) mere access is just the normal activity that a host is built to support as part of day-to-day operations. Unless an extreme amount of information is requested, the loads are trivial by the standards of modern computing and fall within the bounds of “normal use” rather than abnormal harm. For instance, collecting all 400,000 daily rental listings on Craigslist (at about 15,000K per record) amounts to download bandwidth of only 6GB – or about the same as watching one movie on Netflix or Hulu. These figures bespeak mere usage – not harm or damage. Once again, trumped up assertions that might have some meaning in meat space make little or no sense at all in cyberspace.

Who else, besides 3taps, is advocating for the Open Access?

The EFF, numerous academic scholars, and internet activists like Aaron Swartz, have all made various reasoned and passionate arguments for the defense of open access as a bright line for 1st amendment, competition, and user rights.

3taps appears locked in a battle with Craigslist that has dragged on for more than a year. Is there any prospect of resolution and clarity around Open Access?

The main facet of Craigslist litigation has been to maximize the cost and time of litigation to discourage other startups from challenging its dominance in the marketplace. Craigslist has acted the part of a troll as regards copyright, trademark, and access rights. Having lost out on copyright (rebuffed on the claim that they own the copyright of their users posts) and trademark (rebuffed on the claim that they own the peace sign), they have relied on an aggressive interpretation of the CFAA to attempt to still control data over which they have little hope of exercising copyright or trademark control. 3taps and its direct agents have forsaken accessing Craigslist site directly based on the courts current interpretation of the CFAA. As a fallback, 3taps is relying on garnering access to the same data on Craigslist’s website, but through third parties who have not been banned from such access and who still allow (or promote) the posting of such data to the 3taps data commons. Unless the mere receipt of public data by others who still have not had their access rights revoked, 3taps believes it can continue to maintain its data commons to others. The challenge is whether 3taps can withstand the legal expenses of defending against Craigslist and any other troll lawsuits over access, copyright, and trademark issues.

From where 3taps sits, there are no factual issues in dispute as 3taps already admits that it has all of the Craigslist data, received it directly for a year until a court

interpretation suggested that this might be a CFAA violation under some expansive readings of the statute, and receives such data currently through a multitude of indirect methods via search engines and crowdsourcing. A court is clearly competent to rule whether this is in fact a CFAA or trespassing violation -- and furthermore, even if there is a technical breach due to the imprecise wording of the current statute, whether any real harm has been done by simply accessing public data on a public website for the de minimis volumes discussed above.

Why should I care?

The open web is the greatest boon to a healthy public domain that has occurred in our lifetimes. All of this can be put at risk if the future potential of the web is censored through troll like litigation in the realms of access, copyright and trademark. Competition, innovation and user rights are all ingredients of, but all dependencies for an open web. Letting these pillars be stifled outright or buried through sham litigation is a tragedy for the many and a benefit for not only the few but the very few. Unless you are one of those very few, its your access that's ultimately at risk when your rights (rather than someone else's) is whittled down to a shadow of what it is or once was.