

WILLIAMS &  
CONNOLLY<sup>LLP</sup>



ACC NATIONAL CAPITAL REGION TECHNOLOGY AND IP FORUM:

## **Protecting Digital Assets from Theft**

# Panelists

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# Agenda

- 1 Introduction to CoStar Group
- 2 CoStar's Digital Asset Theft Problem
- 3 In-house Strategies for Digital Asset Protection
- 4 Pre-litigation Case Studies
- 5 Competitor Litigation Case Study - Xceligent
- 6 User-Theft Case Study – Database-Fraud Litigation
- 7 Conclusion/Q&A



**Largest Commercial Real Estate  
Information & Analytics Database**



**Most Heavily Trafficked  
CRE Marketplace**



**Most Heavily Trafficked  
Business for Sale Marketplace**



**Most Heavily Trafficked  
Digital Rental Marketplace**



**Most Heavily Trafficked  
Land for Sale Marketplace**



# 40+ Million Monthly Visitors to CoStar Websites





**Millions of brokers, owners, tenants and others  
search for listings on CoStar's marketplaces every day**

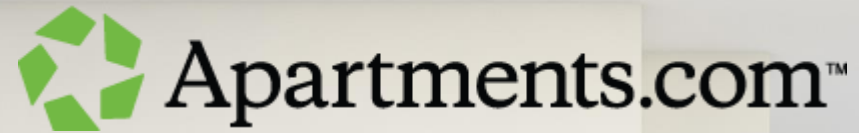




A low-angle photograph of the Transamerica Pyramid in San Francisco, showing its iconic twin spires and grid-like facade. The building is illuminated by warm, golden light, likely from the setting or rising sun, which creates a strong contrast with the deep blue and grey clouds in the background. The sky is filled with soft, wispy clouds, and the distant cityscape is visible at the bottom of the frame.

**Banks, investors and  
owners use our  
information, analytics  
and forecasting tools to  
inform trillions of  
dollars of transactions**

**Millions of Americans find their next home on**





**Hundreds of retailers use our tools to manage  
billions of dollars in rent payments**





**Government agencies at the federal, state and local levels use our data, analytics and indices**







3,500+ Employees





# Richmond Times-Dispatch

\$1.50 • TUESDAY, OCTOBER 25, 2016 • NEWS 24/7 AT RICHMOND.COM • FINAL

COMMERCIAL REAL ESTATE DATA FIRM

## CoStar to bring 730 jobs to new HQ in Richmond



## Health law's premiums set to rise sharply

HHS predicts average 25% jump before subsidies

BY RICARDO ALONSO-ZALDIVAR  
The Associated Press

WASHINGTON — Premiums will go up sharply next year under President Barack Obama's health care law, and many consumers will be down to just one insurer, the ad-

versy involving the Affordable Care Act, also known as Obamacare, shortly before the presidential election.

Before taxpayer-provided subsidies, premiums for a midlevel benchmark plan will increase an average of 25 percent across the 39 states, including Virginia, served by the federally run online market, according to a report from the Department of Health and Human Ser-





Research Phone Interviews

12,251,837



FIELD RESEARCH

# AERIAL

RESEARCH







FIELD RESEARCH

200

VEHICLES



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4,000,000+

Buildings  
VISITED



# Theft Issues Confronting CoStar

## Competitor Theft:

Competitors seek to “build” competing databases and marketplaces by copying CoStar content or inducing CoStar subscribers to share CoStar content

## User Theft (Password Sharing):

Individuals and entities that do not subscribe to CoStar find ways to get access





# CoStar's Digital Asset Protection Checklist

1. Register photos with the Copyright Office
2. Display binding terms of use on all websites
3. Deploy cutting edge digital content protection technologies
4. Attempt to stop theft by increasing security
5. Build comprehensive record of theft
6. Employ a theft team to monitor product usage and website traffic and to resolve confirmed instances of theft
7. Litigate when theft cannot be amicably remediated



# Copyright Registration

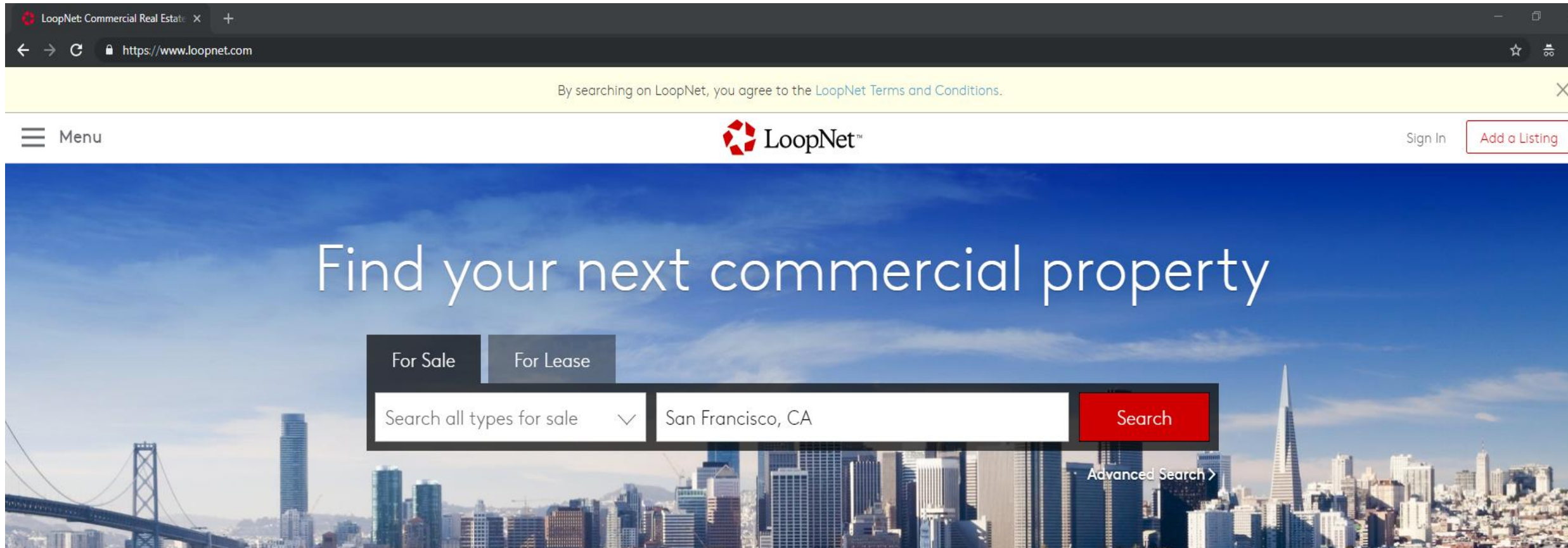
- The Copyright Act permits the owner of a work to register the work with the Copyright Office
- Photos can be bulk registered
- Statutory damages are available for registered works:
  - Up to \$150,000 per work infringed for willful infringement
  - Attorneys' fees
  - Copyright is a strict liability tort; few defenses
- Not all content is protected by U.S. copyright law





# Terms of Use

- The more the user must interact with the TOU, the more likely they are to be enforceable



## Leverage Technology

- Monitor and block excessive searching, page views and time in product
- Block countries from which normal website or product usage would not originate
- Block suspicious IP addresses, e.g. those associated with data mining, malicious web activity, or competitors
- Build real-time alerting based on suspicious website or product activity
- Alter the user experience based on alerts





## Staff Appropriately – Theft Team

- Analysts, data scientists and investigators
- Monitor website and product usage for anomalies
- Immediate blocking of suspicious activity and notice
- Live call by investigator empowered with comprehensive electronic records
- Strong internal relationships with IT-Security and Product Development



# Case Study 1: Technology + Theft Team

Legit CoStar credentials are issued to Heather of Company A

- 1. Heather’s account triggers a “bumpout” alert
- 2. Heather’s account has suspiciously named devices:

Licensed Browser Devices			
Device	# Activations	% Used	Last Login
Mike.	1	61.82	10/9/2018 2:40:59 PM
Laptop 1	1	16.36	10/4/2018 9:56:11 PM
Andrew	2	16.36	10/3/2018 5:57:36 PM
Heather's Work Computer	1	3.64	9/19/2018 4:58:37 PM
Laptop	1	1.82	9/10/2018 10:41:49 AM





# Heather's Security Mode is Elevated to Facial



Enrolled Image



Status: Success  
Score: 99.98%  
Date: 2018/10/01 15:42:05



Status: Success  
Score: 85.27%  
Date: 2018/10/02 10:07:58



Status: Success  
Score: 99.96%  
Date: 2018/10/02 10:08:50



Status: Fail  
Score: 1.02%  
Date: 2018/10/02 10:12:41



Status: Fail  
Score: 2.05%  
Date: 2018/10/02 10:12:41



Status: Fail  
Score: 0.00%  
Date: 2018/10/02 10:12:41



Status: Fail  
Score: 0.00%  
Date: 2018/10/02 10:12:41



Status: Fail  
Score: 0.00%  
Date: 2018/10/02 10:12:41

- Heather and unauthorized users are locked out and unable to access
- Company B signs up for CoStar subscription



## Case Study 2: Technology + Theft Team

Legit CoStar credentials are issued to Lawyer V. at the V. Law Firm

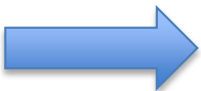
1. Lawyer's account triggers a suspicious mobile phone number alert
2. SMS code for Lawyer's account is being sent to mobile phone associated with Tim G. of G & Co.



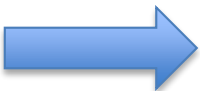


# Lawyer V's Security Mode is Elevated to Facial

Tim G attempts to access Lawyer V's account (in a disguise)



Tim G's identity confirmed through public sources



G & Co. brokerage signs up for CoStar



CoStar  
Information  
Subscription Form

FOR INTERNAL USE ONLY (204) 452-7442

CoStar

Licensee: G & Company		Location ID: 45461251	
Address: 14 E Washington St, Suite 402		City/State/Zip: Orlando, FL 32801-2754	
Fax:		Telephone: 4077779622	
Bill To Contact: Tim G		Email for Bill to Contact: tim@z.com	
USE	BILLING CYCLE	PAYMENT METHOD	
Total No. Sites: 1	<input checked="" type="checkbox"/> Monthly	<input checked="" type="checkbox"/> Check	
Total No. Authorized Users (All Sites): 4	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Automatic Withdrawal	
	<input type="checkbox"/> Yearly		
TERM	COMP'S HISTORICAL DATA		KEY TOKENS
Close Year Initial Term:	From 06/01/12 12/31/12		Total Number of Key Tokens: 0
START DATE			
Immediate Start			
LICENSE TYPE			
Site License			
SCHEDULE			
Site	Market	Product Description	Monthly License Fees (Before Tax)
45461251	Orlando/Orlando Beach	Office Suite	\$0.00
45461251	Orlando	Office Suite	\$1,750.00
45461251	Orlando	Office Suite	\$0.00
Total Monthly Fees From Additional Schedule of Services			\$0.00
Discount			
Total Monthly License Fees			\$1,750.00
Discounted Monthly License Fees			



## CoStar Litigates When Necessary

Recent judgments in CoStar's favor include damages up to **\$14,000/image** and future infringement payments of between **\$10,000 and \$50,000 per image per day**.

- *CoStar v. RealMassive* (W.D. Tex. 2015)
- *CoStar v. ApartmentHunters* (C.D. Cal. 2015)
- *CoStar v. RE BackOffice* (W.D. Pa. 2017)
- *CoStar v. Sandbox* (D.N.J. 2019)





## Case Study 3: Litigation Against Xceligent

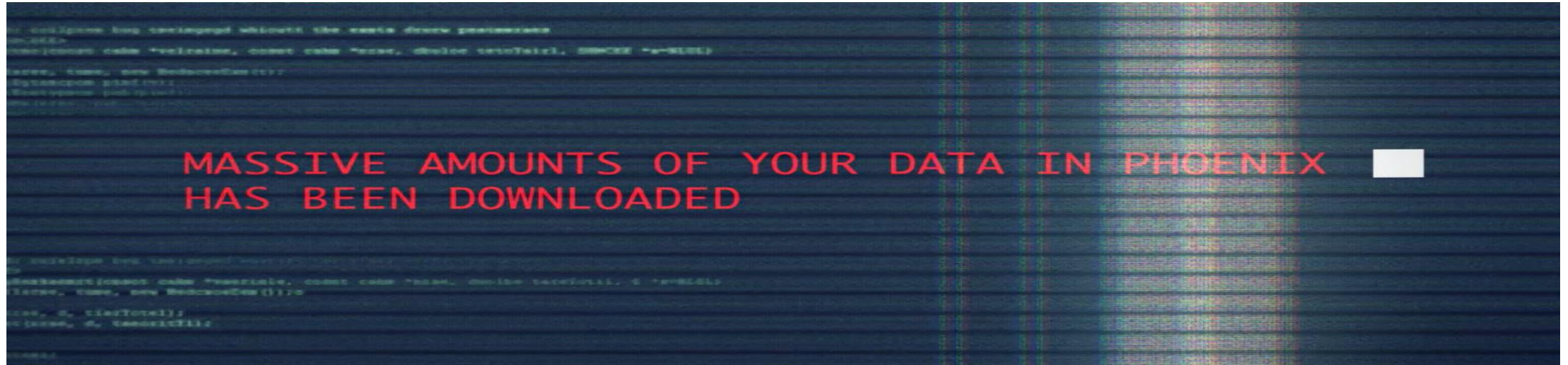
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- Xceligent, based in Kansas City, was one of CoStar's largest direct competitors
- Like CoStar, Xceligent offered a subscription database and a CRE marketplace



- Xceligent's ultimate majority owner was a publicly traded company in London

# The Genesis: A Whistleblower



- **Theft Team swings into action**
  - Traffic analysis / IP log review = **The Philippines**
  - Public information searches / LinkedIn = **Xceligent**
  - Competitor website review ...



# CoStar Built a Record of Xceligent's Theft

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**~9,000**

**COSTAR COPYRIGHTED PHOTOS**  
found in preliminary review of  
**Xceligent's public website**

**3.8 million**

**PAGE VIEWS** on CoStar's Websites

**800,000+**

**PROPERTIES** Accessed on  
CoStar's Websites

**10+ million**

**HITS** to CoStar's Websites

# The Record Showed Notice and Sustained Improper Access

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## Access Denied

You are in breach of the binding [LoopNet Terms](#) and are blocked from accessing LoopNet. By continuing to access LoopNet or accessing after the block has expired, you are reaffirming your agreement to the LoopNet Terms. Users who do not comply with these Terms are not authorized to access LoopNet.

**600+**

times notified that they were  
in breach of LoopNet's terms and what  
they were doing was ILLEGAL

**45,000+**

**new** requests for information after  
receiving notice of their breach






# How Did Xceligent Try to Cover Its Tracks? By Outsourcing the Theft




# And Seeking to Circumvent CoStar's Digital Security

- Xceligent and its agents in the Philippines and India circumvented CoStar's blocking software using:
  - TOR browsers
  - Proxy servers
  - VPNs
  - IP address rotation

Over 1,500,000 people use KProxy monthly for protecting their privacy and identity online since 2005.

		
<b>Bypass any filter</b>	<b>Evade hackers</b>	<b>Surf privately</b>
Bypass online blocks to access foreign content like a local. Get to websites back home when you are abroad. And bypass government or workplace censorship.	Enjoy complete security with our extension, even on public wifi connections. Prevent hackers stealing your personal passwords, bank account and credit card details.	Hide your IP address (your location and personal information) online. Protect your data from snooping by your internet service provider.




# Legal Goals Checklist

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- **Goal #1: Protect the IP.** Prevent future infringement and further dissemination of CoStar content.
- **Goal #2: Protect the Evidence.** Build a strong case despite circumvention of security, potential destruction of evidence, and fake or non-existent record keeping by the adversaries.
- **Goal #3: Hold the Violators Accountable.** Hold Xceligent *and* its foreign contractors accountable.

# Ex Parte Civil Seizure Orders

- Although uncommon in the U.S., many countries permit plaintiffs to apply for **ex parte civil seizure orders to protect evidence**.
- Generally requires an evidentiary hearing without notice to adversary.
- Legal standard is high, but if met this is an extremely effective tool at preserving evidence of infringement.

<p>REPUBLIC OF THE PHILIPPINES REGIONAL TRIAL COURT NATIONAL CAPITAL JUDICIAL REGION BRANCH 159 PASIG CITY</p> <p>COSTAR GROUP, INC., COSTAR REALTY INFORMATION, INC., and LOOPNET, INC.</p> <p>Applicants,</p> <p>- versus -</p> <p>Writ of Search and Seizure No. 2016-57-PSG</p> <p>AVION BPO CORPORATION AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND REPRESENTATIVES,</p> <p>Respondents.</p> <p>X ----- X</p> <p><b><u>ORDER</u></b></p> <p>In today's hearing on the Application for Writs of Search and Seizure filed by applicants COSTAR GROUP, INC., COSTAR REALTY INFORMATION, INC., and LOOPNET, INC., the applicants' representative Mr. Curtis Ricketts and his counsel from the ACCRA Law Office, namely Attys. Patricia Ann Prodigalidad, Jose Martin Tensuan, Victor De Leon, Jose Eduardo T. Genilo and Catherine Anne L. Dino and the applicants' witnesses Attys. Bernard Joseph V. Tumaru and Harry Gwynn Omar M. Fernan are present in Court.</p> <p>After the conduct of probing and cross-examination of the applicants' representative and his witnesses, the Court finds probable cause to issue the Writs of Search and Seizure under Section 216 (c) of Republic Act No. 10372. Accordingly, let Writs of Search and Seizure be issued for immediate implementation at res 1 Building, A. Castro Street, Barangay Unit C, Ground Floor, ADLS Building and (c) Jomel 3 Corporate Building Acosta Street corner Domingo Samal, Ilocos Norte, Philippines.</p>		<p><b>SO ORDERED.</b></p> <p>Given in open Court this 7<sup>th</sup> day of December, 2016 in Pasig City.</p> <p> <b>ELMA M. RAFFALLO-LINGAN</b> Presiding Judge</p>
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# Three Lawsuits, Three Countries



**December 6, 2016**

File for *ex parte* civil seizure against Xceligent agent in Manila

**December 7, 2016**

*Ex parte* civil seizure order granted in Manila

**December 12, 2016**

**7:35PM Eastern**

Sheriff in Laoag City and CoStar team begin seizure

**December 12, 2016**

**10:35PM Eastern**

Complaint filed against Xceligent in W.D. Mo.

**December 7, 2016**

File for *ex parte* civil seizure against Xceligent agent in Mumbai

**December 9, 2016**

*Ex parte* civil seizure order granted in Mumbai

**December 12, 2016**

**9:00AM Eastern**

Seizure begins in Mumbai



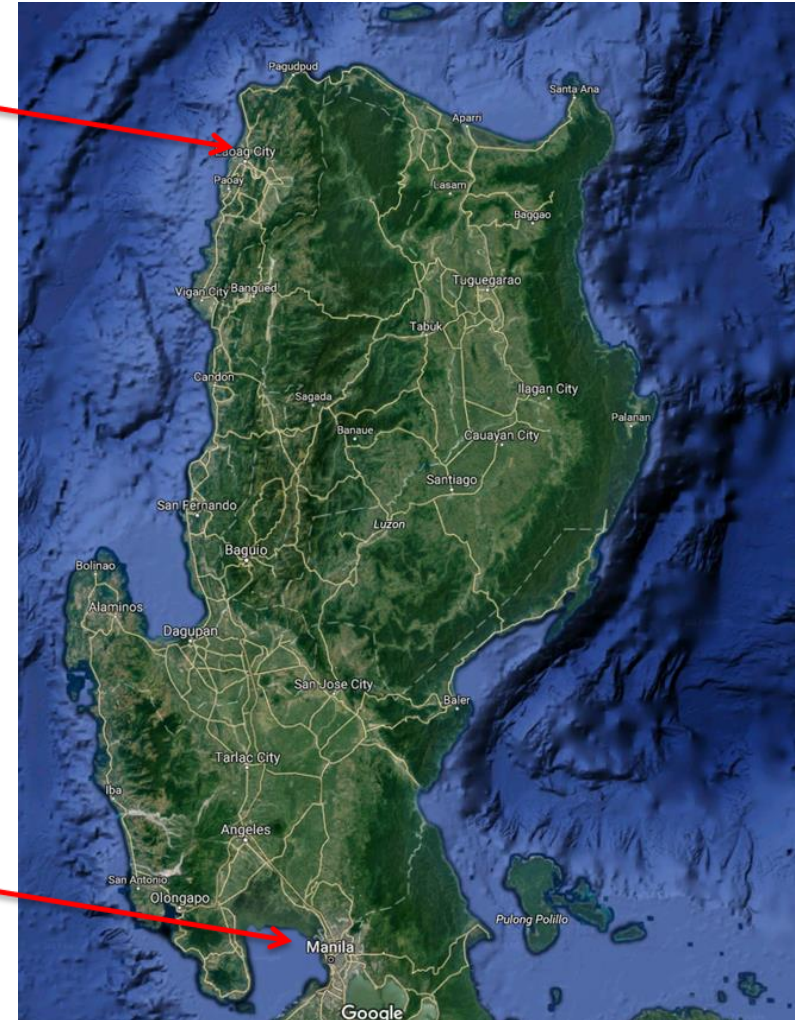
**To be successful, the timing had to work just right.**

# Executing the Seizure Order in The Philippines

- 2 planes.
- 4 trucks.
- **Large team:** court commissioners, sheriffs, lawyers, forensic experts, corporate rep, security personnel.

Laoag City

Manila





# Evidence Seized in The Philippines

- **262** computers.
- **34** terabytes of data.
- **6** million documents.
- **1.8** million images.



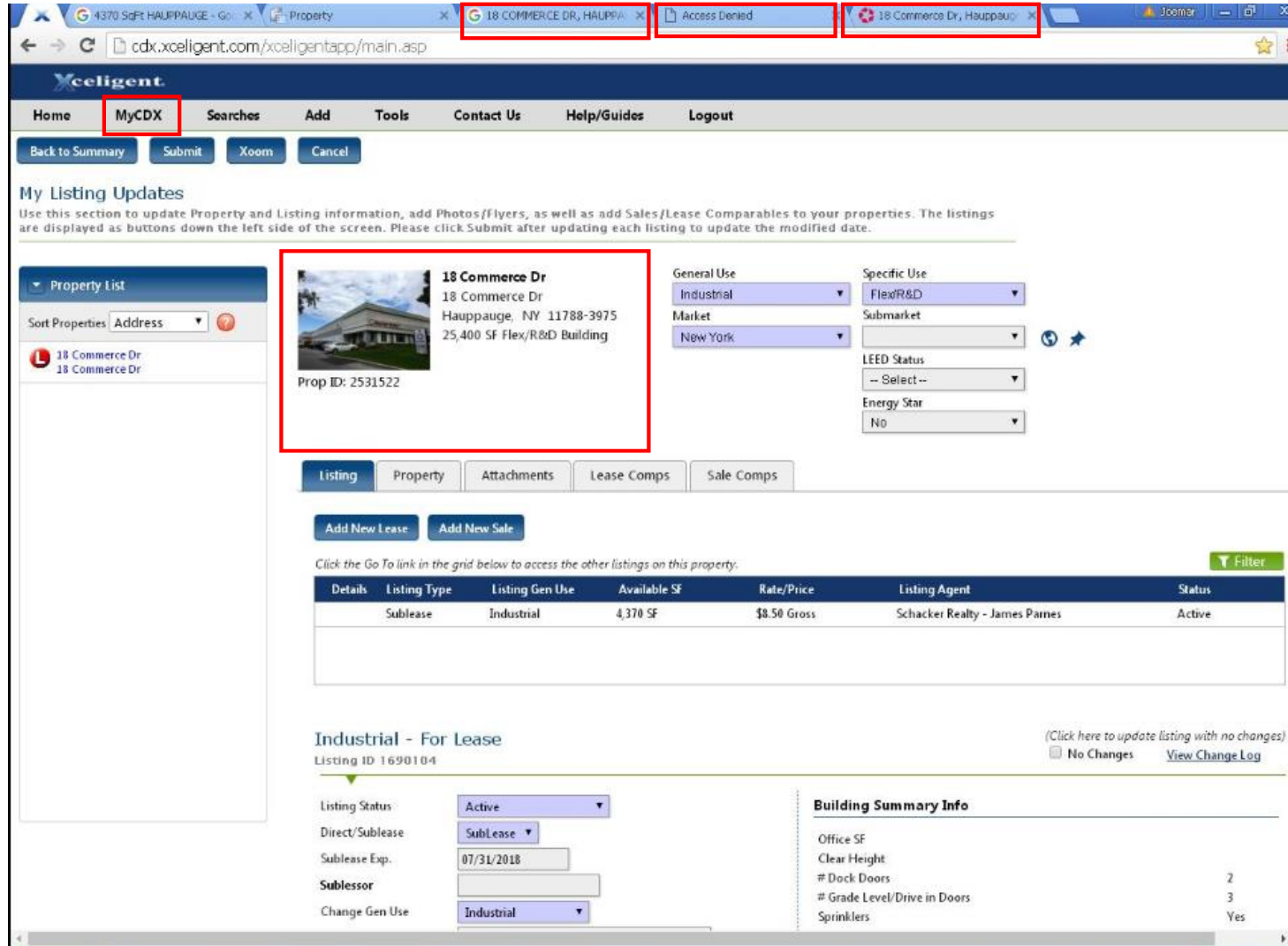
## The Seized Evidence Was Devastating

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- Screenshots of Avion employees *in the act* of circumventing CoStar security and copying content from CoStar websites.
- Skype logs documenting Xceligent's instructions to Avion on *how* to circumvent CoStar's digital security.
- E-mails from Xceligent managers *directing* foreign researchers to steal CoStar content.
- Significant evidence of other wrongdoing.



# Screenshots Show the Xceligent M.O.: Copy from CoStar



- Open Xceligent's backend system
- Google address using the term "LoopNet"
- Receive Access Denied message
- Access LoopNet through other methods, KProxy
- Update Xceligent System with CoStar content

# Xceligent Researchers Caught in the Act

Town West Center, Indianapolis, IN 46254 – being added to CDX

Town West Plaza, Indianapolis, IN 46254 – viewed and took a screenshot on LoopNet

The screenshot displays two web browser windows side-by-side. The left window shows the Xceligent app's 'Park/Complex/Condo Information' form. The 'Complex Name' field is populated with 'Town West Center - (Indianapolis, Indiana 46254)'. The 'Building Information' section shows 'Building Size SF' as 88,200, 'Year Built' as 1984, and 'Tenancy' as 'Multi-Tenant'. The right window shows a LoopNet listing for '5615-5633 W 38th St, Indianapolis, IN 46254'. The listing includes a photo of a retail building, a price of 'Price Not Disclosed', and a gross leasable area of 92,522 SF. A red box highlights the address and the 'Price Not Disclosed' text. A red arrow points from the 'Complex Name' field in the Xceligent form to the address in the LoopNet listing. Another red arrow points from the 'Price Not Disclosed' text to the 'Town West Plaza' label in the LoopNet listing. A third red arrow points from the 'Town West Plaza' label to the 'Contact Listing Broker' button. A white circle with a black crosshair is overlaid on the bottom right of the LoopNet listing.

**Building Information (Xceligent Form):**

Field	Value
Building Size SF	88,200
Year Built	1984
Tenancy	Multi-Tenant
Construction Status	Existing
Construction Type	-- Select --
Est. Completion	
# of Floors	1
Year Renovated	2000
Energy Provider	-- Select --
MUH Units	
Total SF	

**Property Listing (LoopNet):**

Property	Price	No. Stories	Tenancy
5615-5633 W 38th St, Indianapolis, IN 46254	Price Not Disclosed	1	Multiple

**Property Details (LoopNet):**

Property Sub-type	Property Use Type	Occupancy	Year Built	Lot Size	APN / Parcel ID
Neighborhood Ce...	Investment	91%	1985	5.87 AC	9047876

# Chat Logs Show Xceligent Managers Directing the Circumvention of CoStar Security

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“Guys you can **use TOR browser to access Loop[N]et...**”

– Xceligent’s Leslie Houston to Avion

“Good Morning [sir,] I believe that Brent [Hansen, an Xceligent manager] sent you sir an email regarding a **software that shall be used by a couple of our agents in accessing [L]oop[N]et**. . . . If you have the copy sir if it would be possible to forward it to the ITs. Thank you sir and have a great morning.”

– Avion to Xceligent’s Leslie Houston





# Xceligent Faked Records to Hide Its Copying of Data From LoopNet

Auditor Notes
When copying listing notes from Loopnet, please rephrase it.

Auditor Notes
Lease Term of 36 months.
We cannot use the term "Loopnet" in the verification notes.
No marketing website added.
*marketing web: <a href="http://www.svn.com/find-properties/?propertyId=82106-lease">www.svn.com/find-properties/?propertyId=82106-lease</a>
*Please revise verification notes (do not mention "loopnet" as much as possible, if the loopnet link has been sent through email, you can use "per email" as your reference and/or for google searches, you can use "third party source")
*add lease terms: 36 months (listing tab)
*add Zoning Code: C-3

# Xceligent Cropped Out the CoStar Watermark



Example of image editing  
process: Cropping Tool



# And Even Replaced CoStar's Watermark with Its Own



CoStar logo to the right of the tree.



The image is cropped precisely to exclude only the original logo. CommercialSearch logo placed to the left of the tree.



# The Seized Evidence Led to a Breakthrough

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- Evidence led to U.S.-based affiliate of Indian contractor (MaxVal) known as **RE BackOffice, Inc. (“REBO”)**.



- CoStar subpoenaed REBO for documents and took a third-party deposition in which it admitted misappropriating CoStar’s IP.
- Based on these admissions CoStar filed suit against REBO.

# Xceligent's Contractor Stipulated to Judgment in Federal Court

“[A]t Xceligent's direction, the REBO/MaxVal operations team . . . circumvent[ed] CoStar's security and thereby hack[ed] into CoStar's sites in order to populate the Xceligent databases.”



Case 2:17-cv-01354-AJS Document 6 Filed 10/20/17 Page 1 of 16

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COSTAR GROUP, INC., and COSTAR REALTY INFORMATION, INC.	)	Civil Action No. 2:17-01354-AJS
Plaintiffs,	)	
v.	)	Judge Arthur J. Schwab
RE BACKOFFICE, INC.	)	
Defendant.	)	

JOINT STIPULATION FOR ENTRY OF [PROPOSED] JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs CoStar Group, Inc., and CoStar Realty Information, Inc. (collectively “CoStar”), and Defendant RE BackOffice, Inc. (“REBO”), hereby stipulate to the entry of the [Proposed] Judgment and Permanent Injunction attached as Exhibit A. REBO hereby stipulates to the following facts:

1. REBO provides outsourcing services to the commercial real estate industry. One of its functions is to provide commercial real estate property research.
2. CoStar is a leading provider of commercial real estate data and photographs. It provides commercial real estate information and listing products including CoStar's subscription database, LoopNet.com, Showcase.com, and Cityfeet.com.
3. Xceligent, Inc. (“Xceligent”) is a CoStar competitor. Xceligent contracted with REBO to conduct commercial real estate research on its behalf. REBO currently has an oral agreement with Xceligent.
4. REBO's operations for the Xceligent account are handled by its affiliate and agent MaxVal Technologies, Pvt., Ltd. (“MaxVal”) in India. MaxVal takes direction directly from Xceligent, or from Xceligent but via REBO.

# Judgment Was Entered for Conspiring with Xceligent

Holding: REBO infringed CoStar's copyrights and conspired with X to violate the CFAA and engage in unfair competition by copying CoStar content and populating X's database.

Case 2:17-cv-01354-AJS Document 11 Filed 10/23/17 Page 1 of 5

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COSTAR GROUP, INC. AND COSTAR  
REALTY INFORMATION, INC.,

Plaintiffs,

v.

RE BACKOFFICE, INC.,

Defendant.

Civil Action No.

Electronically Filed

**JUDGMENT AND PERMANENT INJUNCTION**

Present to the Honorable Judge [Name] of the United States District Court for the Western District of Pennsylvania, the Court hereby [judgment] and [order] in the above captioned matter, pursuant to Federal Rule of Civil Procedure 58, as follows:

1. Judgment is hereby entered in favor of Costar and against REBO and Costar Realty's claims of contributory copyright infringement and vicarious copyright infringement, and Costar's claims of conspiracy to violate the Computer Fraud and Abuse Act and civil conspiracy to engage in unfair competition.
2. Judgment is entered in Costar's favor in an amount equal to 100% of the profits earned by REBO under its connection with Xceligent, Inc.
3. The permanent injunction by the preceding paragraph and the injunctive relief provided herein relates only to acts, omissions, and injuries that are attributable to REBO alone; the permanent and injunctive relief to not relate acts, omissions, or injuries that are attributable to any other entity. Nothing in this judgment shall deprive either REBO or Costar's cause of action, claims, or rights with respect hereto in this action, including without limitation



# The Very Next Day Xceligent's Founder and CEO Was Fired

October 23, 2017

**BISNOW**  
(ALMOST) NEVER BORING

## Xceligent Contractor Supports CoStar's Data Theft Claims

October 23, 2017 | Jon Banister, Bisnow Washington, D.C. ✉

[Facebook](#) [Twitter](#) [LinkedIn](#) [Email](#) [Print](#)



October 24, 2017

**BISNOW**  
(ALMOST) NEVER BORING

## Doug Curry Out As Xceligent CEO

October 24, 2017 | Jon Banister, Bisnow Washington, D.C. ✉

[Facebook](#) [Twitter](#) [LinkedIn](#) [Email](#) [Print](#)



# Xceligent's Bankruptcy

After filing counterclaims against CoStar and vowing to fight back, Xceligent declared bankruptcy after its parent company wrote down its investment to zero.

**THE WALL STREET JOURNAL.**

**THE REAL DEAL**  
NEW YORK REAL ESTATE NEWS

**BISNOW**  
(ALMOST) NEVER BORING

BUSINESS

## Property Data Firm Xceligent Files for Chapter 7 Protection

Move to liquidate comes after talks with CoStar Group to settle litigation over alleged data theft collapse

## After Xceligent bites the dust, CoStar announces Kansas City deal

*KC-based data company declared bankruptcy in December*

News

National

## Xceligent Shuts Down Operations, Files For Chapter 7 Liquidation

December 14, 2017 | Jon Banister and Ethan Rothstein

# Practice Pointers from the Xceligent Case

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- Institute Protections With One Eye on Litigation
- Take Time to Build Your Record
- Evidence Can Be Seized and Preserved Before It Goes Missing
- Wrongdoers Can be Held Accountable—Across the Globe



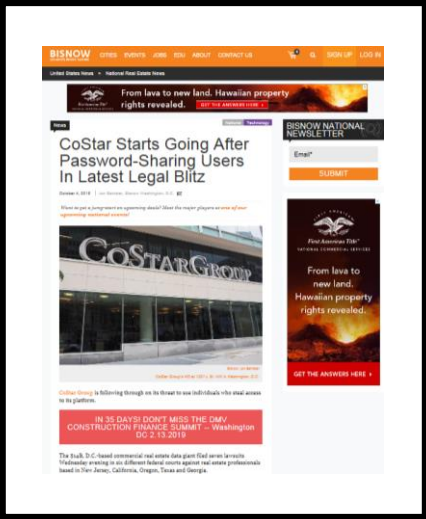
# Case Study 4: Database-Fraud Litigation



## Daily Dicta: Williams & Connolly Launches Litigation Blitzkrieg for CoStar (Pity the Defendants)



## CoStar files lawsuits from D.C. to California alleging widespread unauthorized use



## CoStar Starts Going After Password-Sharing Users In Latest Legal Blitz

# Seven Lawsuits, Across the Country, Filed on the Same Day

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- First Wave:
  - Three cases in California, and one each in Oregon, New Jersey, Washington, DC, and Georgia
- Against individuals and companies, alleged to have:
  - Fraudulently accessed CoStar's database
  - Downloaded thousands of pieces of data
  - Infringed CoStar's copyrights
- Rejected CoStar's reasonable efforts to end the theft without litigation



# Legal Goals Checklist

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- **Goal #1: Protect the IP.** Stop fraudulent access and prevent future misconduct.
- **Goal #2: Hold Fraudsters Accountable.** Recover from the individuals and entities that misused CoStar.
- **Goal #3: Educate the Market.** Demonstrate CoStar's commitment to protecting its IP and illustrate the significant damages that come with accessing CoStar without proper credentials.
- **Goal #4: Develop Precedent.** Achieve results that can be used in future cases.



# Developing the Evidence

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- **IP Addresses.** Access to CoStar using subscriber credentials from an IP address affiliated with a non-subscriber
- **Device Affiliations.** Access to CoStar using subscriber credentials from a device (e.g., laptop, cellphone) affiliated with a non-subscriber
- **Device Names.** Subscriber registers a device with a name related to the non-subscriber
- **Other evidence.** Search histories, calls to CoStar

# Developing the Evidence—Choi & Sandbox

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## Initial Findings

- Credentials of two CoStar subscribers used to access CoStar's database from IP addresses and devices affiliated with a non-subscriber (Choi)
- Search histories of CoStar subscribers included a folder labeled with the initials of Choi
- Dueling logins: Access credentials would be used to attempt logins from different IP addresses in different geographic locations at the same time

## Further Findings

- Review of records indicate that Choi created property reports containing CoStar-copyrighted photographs

# Choi & Sandbox—A Chronology

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- **Summer 2018**
  - CoStar detects unauthorized access and writes to Choi
  - No resolution, as Choi claims it is an “accident”
- **Summer-Fall 2018**
  - CoStar develops evidence of sustained unauthorized access and infringement
- **October 3, 2018**
  - CoStar files suit against Choi and his company, Sandbox Real Estate
- **November 13 & 16, 2018**
  - Choi and Sandbox served
- **January 4, 2019**
  - Stipulated judgment and permanent injunction entered; no discovery needed



# The Result: A Stipulated Judgment & Permanent Injunction

Case 2:18-cv-14611-JLL-SCM Document 11 Filed 01/04/19 Page 1 of 10 PageID: 147

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CoStar Group, Inc. and CoStar Realty Information, Inc.,  Plaintiffs,  v.  Sandbox Real Estate and Development LLC and John Choi,  Defendants.	Civil Action No. 2:18-cv-14611-JLL-SCM  <b>JOINT STIPULATION FOR ENTRY OF JUDGMENT &amp; PERMANENT INJUNCTION</b>
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Plaintiffs CoStar Group, Inc. and CoStar Realty Information, Inc. (together, "CoStar") and Defendants Sandbox Real Estate and Development LLC ("Sandbox Real Estate") and John Choi ("Choi," and together with Sandbox, "Defendants"), hereby stipulate to the entry of the [Proposed] Judgment & Permanent Injunction attached as Exhibit A. Defendants hereby stipulate to the following facts:

1. Sandbox is a commercial real estate agency located in Edgewater, New Jersey. Choi is the President of Sandbox.
2. CoStar is a leading provider of commercial real estate data and photographs. It provides commercial real estate information and listing products, including CoStar's subscription database. The database was developed, and is maintained, at a cost of billions of dollars.
3. CoStar's subscription database is licensed to subscribers for a significant monthly fee on strict terms that limit access. Subscribers pay for, and designate, specific individuals who are authorized to access the database and are issued non-transferable credentials, known as Passcodes, in order to do so.

**"Defendants acknowledge that their actions constitute a serious violation of CoStar's Terms of Use" and that Choi's actions violate the Copyright Act, Computer Fraud and Abuse Act, the New Jersey Computer Related Offenses Act, and constitute fraud, and that Sandbox aided and abetted Choi's statutory violations."**



# Practice Pointers from Database-Fraud Cases

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- Develop and use a continuum of responses:
  - Technological defenses—IP blacklists and security modes
  - Confront apparent lone wolves and seek out-of-court resolution when the damage is not widespread
  - If a syndicate of bad actors, identify weaknesses in the group, but, if necessary, pursue simultaneously
  - Do not be afraid to litigate when appropriate
- Choose litigation candidates based on scope of misconduct and effect on company's goals
- If litigating, develop complete record before suit



# Conclusion

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- Questions?

# Jaye S. Campbell

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Jaye is Deputy General Counsel and Head of Litigation for CoStar Group, an international provider of commercial real estate information, marketplaces, and analytics. Her primary responsibility is protecting, through legal and technological means, CoStar's content, which includes a comprehensive subscription database of property photos and information and the content on dozens of websites in the U.S., Canada and Europe, including LoopNet.com, Apartments.com, and LandsofAmerica.com. She also has primary responsibility for disputes – big or small – involving CoStar, and leads antitrust matters, including interfacing with the FTC in pre-merger review and other contexts.

Originally from Texas, Jaye came to Washington, DC to attend college and never left. Her first client-service job was at Clyde's in Georgetown, where she was a bartender.

Prior to joining CoStar, Jaye was an associate in the intellectual property group of Drinker Biddle & Reath LLP focusing on trademark and information technology matters.

# Nicholas J. Boyle

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Nick Boyle handles a wide variety of litigation, with an emphasis on complex civil cases with an international component. His experience spans federal and state courts around the United States; various arbitral fora—including AAA/ICDR, FINRA, JAMS, and ad hoc arbitrations; and, acting as coordinating counsel, courts around the world. In 2018 Nick was recognized by *The National Law Journal* as a “Trailblazer” for his pioneering legal strategy in global litigation over data theft by a client’s competitor. In 2016, *Law360* featured Nick in its inaugural Trial Pros series, a Q&A highlighting his career as a trial attorney. Nick was also recognized as a D.C. “Super Lawyer” in 2017 and 2018. Nick co-chairs the firm’s Unfair Competition and Trade Secrets practice group.

Nick has represented investment banks, a global private equity fund, inter-dealer brokers, movie studios, technology companies, and the leading commercial real estate data provider. His practice encompasses commercial disputes; copyright and trade secrets cases, particularly involving the Internet; securities actions, including several RMBS cases; employment disputes in the financial sector; and defense of antitrust and RICO claims. His client representations take him to New York and London on a regular basis, and have also involved depositions and other work in multiple other locations from Australia to Estonia.



# David Randall J. Riskin

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An experienced commercial litigator at both the trial and appellate level, David Riskin manages complex matters in state and federal courts, with a particular focus on defending professional liability and conflict-of-interests claims against law firms. He engages all aspects of a matter by developing case themes, building expert strategies, preparing and defending key witnesses, and designing early-stage litigation strategies resulting in pre-trial dismissals and favorable settlements.

David's broader commercial litigation experience has spanned a variety of industries, including financial services and securities, commercial real estate, medical devices, aerospace, healthcare, and technology. And he has represented individuals in civil, criminal, and governmental proceedings, both domestically and abroad.

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