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West Publishing Loses a Decision On Copyright

By DAVID CAY JOHNSTON

In a decision that experts said would drive down the price of legal research, a Federal judge has stripped away much of the copyright protection claimed by West Publishing, the nation's dominant publisher of court cases, for its law books.

For 124 years, West Publishing's books containing major court decisions have been the standard in every court and law firm in the nation and its method of identifying cases has been the standard for citations in decisions and legal briefs. The law books, and in recent years their electronic versions, became so valuable that last June the Thomson Corporation paid \$3.4 billion for the company.

But the ruling, by Judge John S. Martin Jr. of the Federal District Court in Manhattan, means that rival publishers can electronically scan the

decisions in West law books into their computers and then issue them in books, on line and in CD-ROMs. Under the ruling, only West's headnotes and other added material are protected.

The judge said on Monday that West Publishing had no copyright protection to the actual decisions by the United States Supreme Court and Federal Appeals Court that are reprinted in its law books. The 13-page decision follows up on a ruling by the judge in December, when he granted summary judgment against West in a case brought by Mathew Bender & Company, a unit of the Times Mirror Company. The judge said then that West's system for citing cases was not protected by copyright.

Judge Martin said on Monday that the changes that West Publishing made in the court decisions were "trivial" and "mechanical." He noted that West corrects spelling and obvious factual errors, sometimes after consulting with the judge who wrote an opinion.

"The most significant additions that West makes to the opinions that it reports," Judge Martin wrote, are to add citations to the same case in each of the various law books it publishes.

Thomson said yesterday that it would appeal. Thomson's general counsel, said that West had never claimed a copyright to the actual court decisions, only to its published versions of them with the changes that its staff makes.

Thomson officials said that they were confident both that the decision would be

overturned and that their dominance in the lucrative field of legal research would be unaffected.

Several copyright and electronic publishing experts, though, said they expected new competition to emerge that would erode West Publishing's profit margins.

"You are about to see the price of legal research spiral downward," said Joe Action, owner of Versus Law Publishing, a seller of specialty legal research data bases in Bellevue, Wash. "West's monopoly pricing is finished."

Carl J. Hartmann 3rd, lawyer for Hyperlaw, a New York legal publisher that was the co-plaintiff in the case, called the decision significant because "West's power is based on its central positioning in the legal industry through its control of legal material, citations and a large volume of other content and now a judge has ended that control."

Peter Jaszi, a professor at American University law school who specializes in copyright issues, said that if the decision was upheld it would "reduce the strength of West Publishing's claims to exclusivity and make it easier for competitors to enter the market, which will bring prices down."

West has long courted judges. For example, it sent Supreme Court justices and other judges, The Minneapolis Star Tribune reported in 1995, on all-expense-paid trips to Caribbean resorts and gambling casinos.