

Using Court Record Information for Marketing in the United States: It's Public Information, What's the Problem?

Karen Gottlieb, PhD, JD
Department of Health and Behavioral Sciences
University of Colorado at Denver
Karen.Gottlieb@cudenver.edu

Influence of Technology in the Court:

Scanning
E-Filing
XML



PAPERLESS COURT

PREVIOUSLY:

- **PRACTICAL OBSCURITY** in the clerk's file room for Private Information in the court record

NOW:

- **DISSEMINATION** on the Internet of Private Information in the court records AND downloading into marketer's databases

Arguments For Court Documents on the Internet Being Downloaded to Marketer's Databases

- End Use Does Not Matter
- It's Public Information, What's the Problem?


Arguments Against

- Damages Public Trust and Confidence in the Courts
- Data Collected to Resolve Disputes, not Sell Refrigerators
- Electronic Access is Qualitative, not Quantitative Difference - Paradigm Shift
- Not Public Access, but Public Dissemination

Privacy Protections

- California – Family law court documents only at the courthouse
- Vermont – Case by case downloading prohibited
- Washington – Data dissemination contracts required for secondary users

United States

- No Federal Constitutional Right to Public Access
- Common Law Right to View Trials
  View Court Records
- Each State has Judicial Discretion to Decide How to Protect the Privacy of Individuals & Still Ensure Court Can Do Its Business

Federal Law Possible?

- **YES**
- Analogy to Fair Credit Reporting Act – Tracking of Secondary Uses
- Ground in Commerce Clause of US Constitution
- States Could Enact More Protective Law, but Not Less