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### Lassoing Legal Software

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# Lassoing Legal Software

*When Texas banned a self-help legal software program, it marked the first salvo in what could become a major regulatory battle over software and the Internet.*

**T**here have been plenty of complaints about bad software, but what about software so helpful it's illegal to use? That was just the problem many people faced, after a judge in April banned the use of a self-help program in Texas.

Quicken Family Lawyer is interactive legal guide that helps Americans draft their own wills, rent or lease forms, contracts, agreements and other legal documents. But federal Judge Barefoot Sanders ruled that the software acts too much like a lawyer and could provide "overly simplistic legal advice" to the public and thus, should be banned.

The ruling launched a fierce debate among state lawyers over whether such actions protect consumers from misguided legal advice, or if prohibiting the material violates the right to free speech. Software makers and libraries also expressed outrage at the court's decision. Eventually, through legislation signed into law by Gov. George W. Bush in June, the state overturned the software ban.

But the trouble in Texas and similar acts of government control elsewhere have alarmed software publishers and Internet companies. They fear a wave of regulation limiting public access to information and guides for other professional fields, such as financial investing, accounting and medicine.

It's a debate brought on by the digital economy and the relentless push to free the flow of information. "These are the first battles in the war between the old economy, where you could draw neat little lines between the practice of law and medicine, and the new economy, where the barriers are breaking down," said Bill Myers, chief executive officer for the U.S. Internet Council.

For years, a number of professions have enjoyed control over their domain, but now face competition from software and the Internet, explained Myers. "So they are responding with the same old-fashioned, traditional regulatory

**By Patricia Newcombe**  
Contributing Writer

legal responses. These are extremely important battles."

## Tough Texas Stand

In Texas, a statute prohibiting the unlicensed practice of law dates back to the Depression. Overseeing this statute is the Unauthorized Practice of Law (UPL) Committee, a state judicial panel formed to investigate and prosecute companies and individuals who practice law without a license. Last year, the panel brought charges against Iowa-based Parsons Technology Inc., publisher of Quicken Family Lawyer.

The committee claimed the software was designed in a manner that crossed the line of practicing without a license. They alleged that the

the software's sale and distribution in Texas.

Parsons appealed the ruling, saying the program simply provides accurate and truthful information and is not intended to replace professional legal services. Darrell Jordan, Parsons' lawyer, said there were two faults with the ruling. First, it denied Texans the First Amendment right to free speech by preventing them from being able to choose what they will read. Second, there were no victims in the charges brought by the panel. "The UPL Committee says they're bringing this action to protect consumers, yet they can't name a single consumer who has been injured because of this program," Parsons told *The Dallas Morning News* in April.

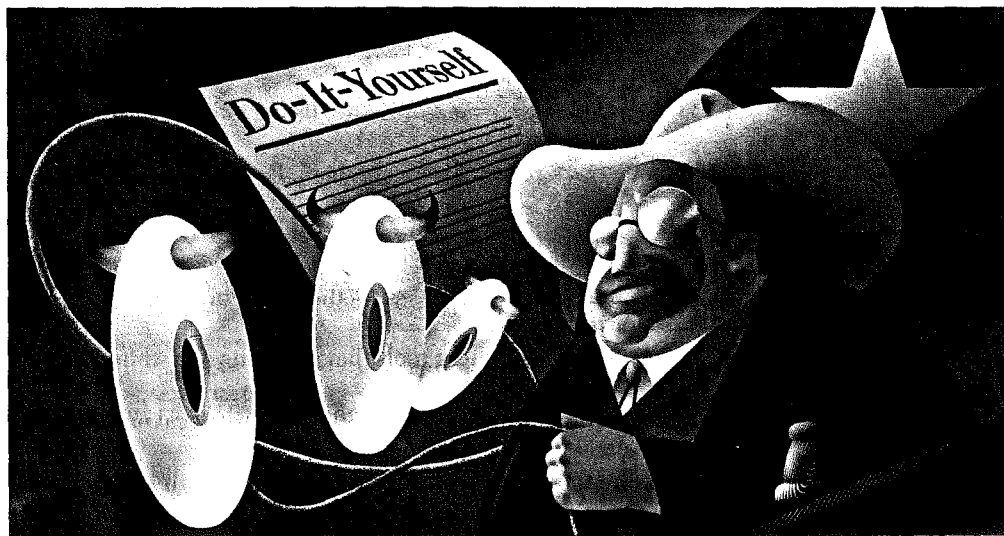
The UPL Committee declined to identify who complained about Quicken Family Lawyer or to produce an individual who claims to have

economic motivations, saying the committee was only following state precedent. "I understand other states will do the same and are investigating [Quicken Family Lawyer]," he said.

Ticer countered Parsons' argument that its software simply provides information. "It's not about information," he retorted. "It's about legal advice clothed in the robes of simplicity by nonlawyers. It's also about money. Parsons earned between two and 10 million dollars in Texas last year."

## Self-Help Material Widespread

Not surprisingly, other state bars, publishers of similar software programs and other interested parties watched the case — the first of its kind in the country — very closely. At the same time that Family Lawyer was banned, the Texas UPL Committee was also investigating Nolo Press, a



software program, which features Harvard University law professor Arthur Miller guiding users through the steps to produce an individualized legal document, is giving advice and thereby functions as a lawyer. Committee members said the software should be banned to protect the public from shoddy legal advice. Judge Sanders of Dallas agreed and, in May issued an order prohibiting

been hurt from using it. That cloak of secrecy had many in the state legal community upset with the committee's charges. They saw a small band of lawyers trying to protect their turf and wallets at time when few Americans can afford the increasing hourly fees of lawyers. But Dallas lawyer Mark Ticer, who heads the subcommittee for the region, rejected allegations that the UPL acted due to

publisher of self-help legal information. In a premeditated move, Nolo joined with the Texas Library Association and the American Association of Law Libraries and filed suit against the UPL, seeking a judgment in favor of the legal self-help industry.

Libraries joined out of concern that access to a wealth of information could become heavily restricted. "Self-help materials have been available to the

public for more than 100 years, and it is essential that the public have access to this type of material," said Ms. Keith Ann Stiverson, deputy law librarian at the School of Law of the University of Texas at Austin.

She noted that patrons use self-help materials for informational purposes all the time, often just to gain a better understanding of how complicated a legal issue can be. With regard to the Quicken Family Lawyer decision, she noted, "Although I haven't used the product, I don't understand why it should be distinguished from other self-help materials just because it is software. If there is a concern that the public might be misled by using such a product, there must be some way short of a ban to inform them of the possible dangers."

The legal-software injunction remained in effect until the Legislature amended Texas code to allow the sale and distribution of legal guides in the form of books or software, as long as they clearly state that the products are not a substitute for an attorney's advice.

### Regulating with Fingerprints

The issue of advice vs. information isn't limited to the legal field. A First Amendment lawsuit recently settled challenged the boundaries for government regulation of speech and commerce on the Internet. U.S. District Court Judge Ricardo Urbina of Washington, D.C., ruled in August that the Commodity Futures Trading Commission (CFTC) could not regulate Web sites, newsletter publishers and software developers that gave investing advice by subjecting them to stringent licensing procedures, including fingerprints and background checks.

The CFTC, which regulates the commodity and futures markets in the United States, contended that it must license individuals working in those markets, including anyone paid for opinions and general information about commodities. While publications, such as *The Wall Street Journal* and *Barron's*, were considered exempt because they give "incidental" commodity advice as part of a general-purpose news service, other dispensers of advice, such as Web sites, were not.

Several publishers joined with the Institute for Justice, a Washington, D.C.-based public-interest law firm, and sued the CFTC. Judge Urbina ruled in their favor, calling the agency's actions "an impermissible prior restraint upon the exercise of free speech and runs afoul of the First Amendment of the United States Constitution."

The CFTC appealed Judge Urbina's ruling to the U.S. Court of Appeals for the D.C. Circuit in August.

For those who analyze government

responses to the new world of Internet-based information, the current spate of regulatory lawsuits is not surprising. "It's not unexpected that the government wants to regulate self-help materials," said Myers. "They are doing what comes naturally to a regulator. You know the saying: 'If you are a hammer, then everything looks like a nail.'"

With these recent court victories, Myers is optimistic that, in the long run,

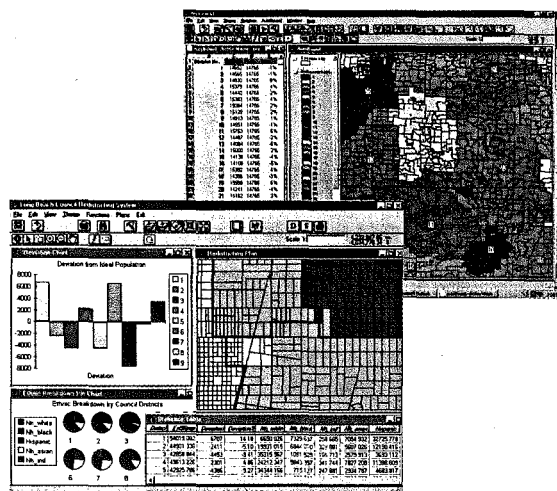
the Internet, and not the regulators, will prevail. "The Internet is hostile to regulation: it's decentralized," he said. "Think about it. Who do you send the regulatory compliance notice to? There's no one!"

Yet, the battle is far from over. In 1998, state legislators introduced more than 1,500 bills calling for some kind of Internet regulation, according to the Internet Council. At the same time, the professions that

could be affected by the Internet — law, investment, accounting, medicine — haven't been affected where it hurts the most: income and job loss. When that starts to happen, expect to see the regulatory fight heat up significantly.

Pat Newcombe is the reference librarian at Western New England College School of Law. E-mail: <pnnewcombe@law.wnec.edu>. ☺

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