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## Response Received from LexisNexis Corporate Counsel

Editor

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happening. First, publishers and authors all across the spectrum are tightening up and clarifying their relationships and contracts, so that what is transferred, and what is expected in return, are much more directly and carefully specified. Because this is a buyer's market with regard to publishers and authors, this specificity is probably not, on balance, in favor of authors.

Second, some information is being withdrawn from online databases, much to the public consternation of Mr. Tasini, who claims that such draconian action is unnecessary. This leaves readers in the unfortunate position of having to turn to microfilm archives to retrieve articles they may have no convenient way of discovering in the first place, a course of action incredibly advocated by none other than the **American Library Association** in arguing their astonishing brief in support of Tasini.

These things are happening now, and will continue as the impact and meaning of Tasini and other cases gradually becomes clear. Other effects, which I expect will also occur, are in the realm of prediction.

Among these –

1 There will be fewer documents available “by the drink” from document suppliers. Articles published since the 1976 Act are at risk, absent explicit transfer of rights to reproduce from authors to publishers. In fact, all of the existing docu-

ment suppliers are probably operating illegally – see the direction *Ryan v. Carl* was taking before the settlement. Efforts by such groups as Tasini's own National Writers Union, the Authors Guild, and even the Copyright Clearance Center to establish easily accessible electronic rights clearing supporting authors have either failed or not developed anything like critical mass.

2 There will be a number of cases against existing document suppliers and third party database producers and operators filed as class actions by entrepreneurial lawyers, and some of them will be successful, further tilting the environment against readers.

3 Sooner, rather than later, I expect that there will be a case against an academic institution, or a group of them, directed toward interlibrary loan of copies of articles, and I expect such a case to be successful. After all, the volume of commercial document supply is small relative to the volume of interlibrary lending, and this must come under scrutiny.

4 There will have to be a substantial new effort to invent comprehensive legislation to govern intellectual property. There are many stakeholders and many issues, and the laws as they exist are clearly misunderstood, confused, ineffective, lopsided, and sometimes downright silly in their effects. I have no great expectation, though, that we'll get it right anytime soon. Accordingly, we'll continue to operate in a very difficult environment.

These are general predictions, and although probably wrong, are pretty obvious. It is important to remember, in thinking about all of this, that there are many different kinds of publishing and writing, and many different kinds of reading. Scholarly publishing is very unlike newspaper publishing, for example, just as research is very unlike the reading of popular mystery novels. Those differences will lead to different paths of evolution.

All, however, will be affected by the current environment, which clearly slants toward the property rights of authors. I find it difficult to see how readers are being helped by any of this, and I hope (rather than predict) that somehow these interests will be served as we create new worlds.

It is instructive to actually read the Supreme Court opinion, and the dissent. Go to <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=00-201>, for example, and read the whole thing for yourself – it will only take 15 minutes, and will do more toward understanding of the case than any mountain of commentary. I was particularly struck by **Justice Stevens'** closing comment in his dissent. He wrote: “The majority is correct that we cannot know in advance the effects of today's decision on the comprehensiveness of electronic databases. We can be fairly certain, however, that it will provide little, if any, benefit to either authors or readers.”

I agree. 🐼

# corporate response

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As you know, because of the *Tasini* decision, some older articles on the LexisNexis database and other online services will no longer be available. However, for the past several years, publishers have been obtaining broader rights from freelancers that allow freelance articles to be reproduced in the LexisNexis database and other online services. In fact, LexisNexis has agreements with all its content providers to obtain the appropriate rights and licenses to freelance articles.

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Again, I apologize for not being able to provide more detailed responses at this time to your questions on fair use or case specifics. 🐼