

# ADP

Association of Directory Publishers

## ADVISORY

To: All U.S. Publisher Members

From: Larry Angove

Date: May 5, 2004

cc:

Re: Copyright and Trade Mark Precautions

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### MESSAGE

The following Advisory is issued as a membership service to all U.S.-headquartered ADP publisher members.

The January 2004 decision of the United States Supreme Court in *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko LLP*, No. 02-682 (Jan. 13, 2004) (“*Trinko*”), is being treated by the major telephone companies as a major victory because it can be understood to narrow the telephone companies’ exposure to antitrust liability for aggressive actions taken against competitors.

In *Trinko*, the Court literally held that a customer of a Verizon competitor could not sue Verizon under the federal antitrust laws for Verizon’s failure to provide FCC-mandated interconnections to the competitor. However, the telephone companies appear to be reading the case as making it much harder generally for competitors to sue the telephone companies under the federal antitrust laws.

One practical consequence of the *Trinko* decision for independent directory publishers is that telephone companies’ directory publishing affiliates may feel that they can get away with being more aggressive toward competitors than they might previously have been. For example, a recent upsurge in seemingly weak and frivolous -- but nonetheless expensive and burdensome – suits or threats of suits against independent publishers alleging violations of the copyright, trademark, and trade dress laws may be a consequence of the *Trinko* case.

To avoid the potentially substantial costs and burdens of such harassing and anticompetitive litigation, publishers should take increased care to avoid actions that could be characterized as copyright or trademark infringement, even if the publisher believes that its actions are legal. As you know, litigation can be expensive even when you win. If you are unsure whether your company could become a target for harassing litigation, please be sure to get advice from your legal counsel. ADP can suggest attorneys expert in the relevant areas of the law if you would like it to do so.