disability ceased during his lifetime. Such a result is possible under the words of the statute and might be reached if the statute were viewed with disfavor for policy reasons. But since it is clear that the legislature was simply not thinking about the possibility of inheritance of the cause of action, the court should be free to give H the disability extension on the argument that H inherits the disability extension along with the cause of action.

5. TO was 5 in 1980. He became insane in 1985. He is alive and not well today. [2006, or still tolled under the English statute; 2006 under the Ohio statute] There is a possible argument under the English statute that all disabilities must be removed before the statute runs. The Ohio statute is clearer on this point. Its reference to "such disability" pretty clearly refers only to the disability that existed at the time the cause of action accrued.

6. TO had no disability in 1980. He died in 1985. H is his heir and was 6 in 1985. [2010 under the English statute; 2001 or 2010 under the Ohio]. As I read the Ohio statute, in order to claim disability, the holder of the cause of action must be the holder of the cause of action at the time the cause of action accrued and disabled. The words to focus on are "if *any* person ... bring *his* action in the English statute, and "if a person *entitled* ... *such* person ... *such* disability" in the Ohio. It is possible, however, to read the Ohio statute to refer to the person *now* entitled to bring the cause of action. Another road to the same result is discussed in Question 7, below.

7. TO was 5 in 1980. He is alive and competent today. [2006 under the English statute; 2001 or 2006 under the Ohio statute]. The earlier result under the Ohio statute is predicated on the proposition that the statute refers only to those disabilities that are removed after the expiration of the 21 year period. This leads to harsh results in the limiting case, but such is the nature of statutes of limitation. The mention of the age of minority as a possible disability may indicate legislative intent not to achieve this result, but it may have been a drafting error. The fundamental problem is why did the legislature change the perfectly clear "notwithstanding" in the English statute to the at least ambiguous "after" if it did not intend to change the result? Supporting this reading of the intent is the fact that Ohio eliminated the disability of imprisonment and is probably stricter than the English is situations (5) and (6).

If one is convinced that the result under the Ohio statute is simply irrational, it is possible to arrive at the same result under the English statute by reading the first "after" as if it were a second "if" and by reading the second "after" as referring only to the immediately preceding phrase. This reading ignores the fact that legislature made a change and the fact that the Ohio statute is generally stricter.

8. TO was insane in 1980. TO died insane in 1985. H was 6 at the time of TO's death. [2001 or 2010 under the English statute; 2001 under the Ohio.] This basically combines arguments previously made.

9. Would your answers to any of the above questions be different if you were told that all the disabled parties had a judicially-appointed guardian or conservator who could sue on their behalf?

10. TO disappeared in 1975. You are representing P who wishes to buy the property from AP. When would you advise P that such a purchase is safe? [Consider not only the possible effect of disability provisions but also the possible effect of TO's having divided the land between life estate and remainder before the entry of AP.]

GERAGOSIAN v. UNION REALTY CO.

Supreme Judicial Court of Massachusetts
289 Mass. 104, 193 N.E. 726, 96 A.L.R. 1282 (1935)

LUMMUS, J. In 1927 one Vartigian built a theatre in Somerville on land the rear of which adjoined the rear of land of one Aaronian. Both lots bounded also in the rear upon a private way called Sewall Court, which ran into Sewall Street. There is no finding as to the ownership of the fee in Sewall Court, but it is found that rights of way over Sewall Court are appurtenant to both the Vartigian land and the Aaronian land. The plaintiff, now owning the Aaronian land, seeks an injunction against the present owners of the theatre, for the removal of trespassing structures.

The platforms of the fire escape on the theatre at all three levels, and the stairway between the first and second levels, overhang the end of Sewall Court to a maximum extent of two to three feet. This overhang is all at a considerable height above the ground, and is close to the wall of the theatre, at a point where the use of the way could be of no benefit to the Aaronian land. The record does not show that the owner of the Aaronian land has a right to have Sewall Court kept open to the sky. The final decree was erroneous in ordering the removal of the fire escapes so far as they extend over Sewall Court. ...

The theatre encroaches upon the Aaronian land itself in two respects. First, the platform of the fire escape on the theatre, at the third level, far above the ground, overhangs a piece of the Aaronian land eleven inches wide and three feet long, but causes no interference with the present use of that land. Second, a drain from the theatre runs, at a depth of eight or nine feet below the surface, about fifty-three feet through the unoccupied rear part of the Aaronian land, and a further distance through the soil of Sewall Court, to a manhole, where it empties into a sewer which runs from that manhole in Sewall Court through Sewall Street. This drain does not interfere with the use of the right of way over Sewall Court, and does not interfere with the present use of the Aaronian land, upon the front of which a block of thirteen one-story garages is maintained for hire.

The defendant Union Realty Company took from Vartigian two mortgages covering the theatre, and assigned the first one to the defendant Charlestown Five Cents Savings Bank in 1927. In 1928 Vartigian conveyed his equity of redemption to Sidney Realty Co., in which Union Realty Company held three fourths of the stock and Vartigian's wife held the rest. A dispute arose as early as 1929 between Union Realty Company and Vartigian over a candy stand which Vartigian or his wife maintained in the theatre. On January 28, 1930, Union Realty Company, controlling Sidney Realty Co., prevented the further maintenance of the stand.

On January 30, 1930, Vartigian induced his wife's stepbrother, the plaintiff Geragosian, to buy the Aaronian land for $6,500. Title passed to him on February 4, 1930. Vartigian then knew of the encroachments, and his purpose in inducing the plaintiff to buy the land was to control it and to make trouble for Union Realty Company. But when the theatre was built, the encroachments were unintentional on the part of Vartigian. The master does not find that Geragosian shared in the purpose of Vartigian, or is under the control of Vartigian. On June 12, 1931, Union Realty Company foreclosed its second mortgage on the theatre, and bought in the theatre at the foreclosure sale. The land and buildings of the plaintiff Geragosian are worth about $2,800. The theatre, with its land, is worth about $250,000. The cost of a new drain which would not trespass on the plaintiff's land would be $4,300. The small part of the fire escape platform that overhangs the plaintiff's land, it is found, "could be removed without much difficulty and without materially interfering with the defendant's use of its fire escapes."

This bill was filed on October 26, 1932, although the controversy had existed since early in 1932, and the fact of encroachment had been called to the attention of Union Realty Company in 1930 or 1931.

The right of property which the plaintiff seeks to protect is legal, not merely equitable. [Citations omitted.] It is not a mere easement. ... although an injunction has often been granted for the protection of an easement. [Citations omitted.] Neither is the plaintiff's right a mere leasehold, soon to expire. [Citations omitted.] It is the fee.

The protection by injunction of property rights against continuing trespasses by encroaching structures has sometimes been based upon the danger that a continuance of the wrong may ripen into title by adverse possession or a right by prescription. [Citations omitted.] Other cases point out that, since trespassing structures constitute a nuisance [citations omitted], and a plaintiff obtaining a second judgment for nuisance has a right to have the nuisance abated by warrant of the court (G.L. [Ter.Ed.] c. 243, § 3), the denial of an injunction would only drive the plaintiff to a more dilatory remedy to obtain removal or abatement. ... But the basic reason lies deeper. It is the same reason "which lies at the foundation of the jurisdiction for decreeing specific performance of contracts for the sale of real estate. A particular piece of real estate cannot be replaced by any sum of money, however large, and one who wants a particular estate for a specific

use, if deprived of his rights, cannot be said to receive an exact equivalent or complete indemnity by the payment of a sum of money. A title to real estate, therefore, will be protected in a court of equity by a decree which will preserve to the owner the property itself, instead of a sum of money which represents its value." Knowlton, J., in *Lynch v. Union Institution for Savings*, 159 Mass. 306, 308. Leaving an aggrieved landowner to remove a trespassing structure at his own expense and risk, would amount in practice to a denial of all remedy, except damages, in most cases. If a landowner should attempt to right his own wrongs, a breach of the peace would be likely to result.

The facts that the aggrieved owner suffers little or no damage from the trespass [citations omitted] that the wrongdoer acted in good faith and would be put to disproportionate expense by removal of the trespassing structures [citations omitted] and that neighborly conduct as well as business judgment would require acceptance of compensation in money for the land appropriated [citation omitted] are ordinarily no reasons for denying an injunction. Rights in real property cannot ordinarily be taken from the owner at a valuation, except under the power of eminent domain. Only when there is some estoppel or laches on the part of the plaintiff [citations omitted] or a refusal on his part to consent to acts necessary to the removal or abatement which he demands [citations omitted] will an injunction ordinarily be refused. It is true that in *Methodist Episcopal Society in Charlton City v. Akers*, 167 Mass. 560, the court refused an injunction for the removal of a building from a small piece of rough rural land; that in *Harrington v. McCarthy*, 169 Mass. 492 (compare *Tramonte v. Colarusso*, 256 Mass. 299; *Crosby v. Blomerth*, 258 Mass. 221), a slight encroachment of a foundation under ground was held not to require an injunction; that in *Laughlin v. Wright Machine Co.*, 273 Mass. 310, the court refused an injunction against the maintenance of a sewer across a useless six-inch strip owned by the plaintiff; and that in *Malinoski v. D. S. McGrath, Inc.*, 283 Mass. 1, 11, and cases cited, the right of the court to refuse an injunction because of hardship was stated. But such cases are exceptional. The general rule is that the owner of land is entitled to an injunction for the removal of trespassing structures. *Harrington v. McCarthy*, 169 Mass. 492. *Kershishian v. Johnson*, 210 Mass. 135. *Brown v. Peabody*, 228 Mass. 52, 56. *Nelson v. American Telephone & Telegraph Co.*, 270 Mass. 471, 481. *Tyler v. Haverhill*, 272 Mass. 313, 315, and cases cited. *Carter v. Sullivan*, 281 Mass. 217.

Nothing takes this case out of the general rule. No estoppel or laches is shown. The motives of Vartigian cannot impair the property rights of Aaronian or his grantee Geragosian. The final decree rightly restrained the further use of the drain across the plaintiff's land, and ordered the removal of the fire escape platform so far as it overhangs said land. ... The final decree is modified by striking out the provision for an injunction requiring removal of the fire escape overhanging Sewall Court, and as modified is affirmed with costs.

NOTE

For more than you probably wanted to know about the *Geragosian* case, see Donahue, *A Legal Historian Looks at the Case Method*, 19 N.KY.L.REV. 17, 32–44 (1991).

NOTE ON "EQUITY"

Geragosian was an "equity case." A "master" tried the case in the lower court. The remedy sought was the equitable one of an injunction. Today, we supposedly have "merger of law and equity," but the distinctions between the two, both procedural and substantive remain. A brief rehearsal of how we got to where we are may be in order:

1. The story of the branch of the English the central royal courts that came to be called the chancellor's court, the English side of the chancery, the court of conscience, and, most confusingly, equity has in many ways has never really been properly told. The nature of the sources makes it most difficult.

Throughout the Middle Ages, there were certain types of cases that could not be heard in the central royal courts of common law. A notable example of this is certain types of cases that involved the king himself. For example, when the defendant in a land action traced his title to a charter, he was entitled to call the grantor to court so that the grantor would warrant the charter. But if the charter were a royal charter, the

justices could not call the king to come to court. Therefore in such cases, they dismissed the case and the plaintiff went without a day.

The justices cannot call the king, but the king is the fountain of all justice and the place to petition him is in his highest court, the High Court of Parliament or in his Council, and that is where many such plaintiffs went. These petitions would allege that the common law courts have dismissed the case because they cannot handle it. Therefore the plaintiff had no remedy at common law. The absence of remedy is key, and it is to become even more important as time goes on. At some point, perhaps very early, it becomes associated with the "due process" clause in Magna Carta (c. 29 [1225]). If a remedy is available at common law, then other central royal courts cannot intervene. But the king is still the fountain of all law. As early as 1406, however, the CJCB (Gascoigne) will remark that the king has committed all his judicial powers to divers courts and in the 17th century Lord Coke will argue to James I that the king has exhausted all his jurisdiction in delegating it to his courts and can no longer participate in its decisions.

But the assumption of the petitioners in the earlier cases is that the king can give a remedy if he will. Early in the reign of Edward III (1327–1377) we hear of a court being held in the chancery. It is a little hard to figure out what the nature of the jurisdiction is but it looks like it is dealing with rather ordinary land cases that cannot be heard in the common law courts because they involve suits against royal officers and interpretation of royal charters. The procedure in this court is in Latin, and it uses forms quite like those in the other central royal courts. A later age will call it the Latin side of the Chancery, and it remains a significant but narrow part of the Chancery's business well into the early modern period.

2. In the late fourteenth century, perhaps because of the troubled nature of the times, the Council began to receive more and more petitions, alleging that something had gone seriously wrong with the normal course of justice, riots and affrays, the poverty of the petitioner, something with which the common law courts could not deal substantively. There may be some connection with the decline of regular hearing of petitions in Parliament. There is almost certainly a connection with the growth of the Council as a permanent aspect of governance. It may be one of just those serendipitous happenings, but people start to petition the Chancellor directly about these things rather than stopping off at the Council on the way. Out of this was born the English side of the Chancery.

3. In the early fifteenth century the petitions grow into the hundreds per year. Unfortunately in most cases the petitions is all we have. But they do tell a story. Riots and affrays, poverty, predominate as the reasons for seeking the Chancellor's help, but we begin to see more of special kinds of substantive claims: my land is held to use and the feofees haven't done what they're supposed to do; someone has agreed to convey land to me and he won't do it; I discharged my bond but I have no acquittance. These are good examples of early chancery jurisdiction, and they are going to have a glorious future. We will spend more time on the problem of feofees to uses, but the basic concept is simple. I convey land to someone else but the understanding is that that is person is to manage the land for my benefit. The common law sees only the legal title in the feofee, but equity will enforce the benefit in me. The analogy to the modern trust is strong. The second problem is not that the common law is conceptually deficient. The common law will enforce the contract, but the remedy will be money damages. Equity will compel the defendant to make the conveyance. This is the source of equitable jurisdiction for the specific performance of contracts. The third problem is the illustration of a broader class: to make the debtor pay twice in these situations would be inequitable. Perhaps the notion is that the creditor is committing a kind of fraud, perhaps the notion is that to make the debtor pay twice would be a penalty. When the common law cleaned up its act so far as evidence is concerned, something that did not occur until the end of the 17th century (see Stat. 4&5 Anne c. 16 § 11 (1705)), this specific jurisdiction dropped out, but equity remained the home for people seeking relief from fraud and penalties.

4. Although relatively few documents tell us what happened, a few do, and a number of the petitions give us enough to indicate what the petitioners hoped the chancellor would do: subpoena the defendant, take his deposition and that of the witnesses, issue an injunction or an order. It would seem that judgment was almost always had on the basis of a written record without a jury, after argument before the Chancellor

himself or his chief deputy, the Master of the Rolls. We are badly informed about remedies in this period, but it seems rarely to have been a money judgment. There are elements of ecclesiastical procedure in all of this. To the extent that the modern rules of civil procedure are based on the old equity rules (and many of the most important ones are) our modern civil procedure is more a civil-law type of procedure than it is a common-law one.

5. Throughout the fifteenth century the jurisdiction of the Chancellor continued to expand both numerically and as to subject matter. By the end of the century he was not only deeply involved in the enforcement of uses and trusts of land, but he had some, as yet ill-defined jurisdiction with regard to the enforcement of contracts and considerable jurisdiction in relieving from the enforcement of contracts: penal bonds and the debtor without a release being among the most notable. By the early 16th century, it became clear to common lawyers that something was going on that was worth considering. But what was it? Two words were in common use, "equity" and "conscience." The distinction between the two is subtle, and we cannot deal with it here. Let us see if we can make sense of "equity" because that is the one that was to last.

a. The idea of equity is older than the court of equity. The word is derived from Latin *aequitas* which is an abstract noun derived from the adjective *aequus* which means flat, plain, like or similar, equal. *Aequitas* as an abstract noun means a lot of things, but equality is not the most common of them; it is better translated by "reasonableness" or "similarity" depending on the context. In Roman law and Roman legal philosophy the word *aequitas* took on three specialized meanings:

i. It referred to the principle that like cases were to be judged alike; it is not too far from the mark that the word was one of the ways the Romans expressed the basic idea of the rule of law.

ii. It referred to a body of principle that lay beyond the law, or at a higher level of abstraction than the law. In this context it was frequently qualified by the adjective "natural". It was a principle of natural equity that emancipated children should inherit equally with unemancipated, and the positive law was changed to conform to this principle. It was a principle of natural equity that treasure trove should belong to the finder, though the positive law did not always conform to this principle.

iii. Finally, equity was a principle of interpretation which allowed the jurist to create exceptions to the positive law in situations where it did not seem fair that the law should apply. In this meaning the word is very close to Aristotle's *epieíkeia* the necessity of which is stated in the Nichomachean Ethics this way: "The data of human behavior simply will not be reduced to uniformity. So when a case arises where the law states a general rule, but there is an exception to the rule, it is then right ... to fill the gap by such a modified statement as the lawgiver himself would make if he was present at the time, and such an enactment as he would have made, if he had known the special circumstances." When Lord Ellesmere, the Chancellor in the early 17th century, says that the office of the chancellor was founded because "men's actions are so diverse and infinite that it is impossible to make any general law which may aptly meet with every particular and not fail in some circumstances" (Baker, p.90), it's pretty clear that the man had been reading his Aristotle.

b. Legal philosophers of the Middle Ages picked up all three ideas. They tended to associate natural equity with the principles of Christian morality and to use *epieíkeia* to argue that the strict law should be interpreted in the light of Christian morality. The most sophisticated of them, Thomas Aquinas is a notable example, saw how this could create a tension with the first principle, the rule of law. Many medieval authors, Thomas among them, were also quite clear that morality and law were not the same thing. "The church does not judge about things that are hidden" was a necessary maxim in a system of morality which devotes so much to the state of mind of the actor.

c. English churchmen and intellectuals in the Middle Ages shared a common culture with the continent and they were well aware of these ideas. Notions of equity in all three senses can be found in *Glanvill* at the end of the 12th c., even more so in *Bracton* in the first half of the 13th. And there is no notion in either of these writers that the common-law courts were somehow precluded from applying these ideas in appropriate cases. At the end of the 13th and the beginning of the 14th centuries when statutory interpretation first became an important part of the business of the common law courts, we hear the phrase "equity of the

statute" and what it means is something quite close to Artistotle's *epieíkeia*, coupled with the related notion that the statute might be applied in some situations where the strict language of the statute did not fit.

d. The development of a separate court of conscience in the late 14th century, then, cannot be attributed to any sudden discovery of these ideas. It must be attributed to the jurisdictional limits of the central royal courts. Once it happens, however, the two jurisdictions tend to settle down into law and equity, and by the 16th century it is possible to announce a theory of the chancellor's court as a court of equity in contradistinction to the strict law of the common-law courts.

6. Thomas Wolsey, at the beginning of the 16th century, was the last of the clerical chancellors. All of them were laymen after this, and most of them were common lawyers. Despite the Coke-Ellesmere debate in 1616, the chancery as a court was sufficiently well established that it alone of the royal courts not of common law survived into the Commonwealth. England had come to the point where she couldn't run her legal system without it.

7. The 17th century does, however, see important developments in the equity jurisdiction. Equity, so much a matter of discretion even in the 16th century, becomes a matter of rule. Reports of equity cases become regular in 17th c. Francis Bacon when he was chancellor from 1618–1621 played a key role in establishing the procedural rules. Heanage Finch, lord Nottingham, 1675–1682, played an equally important role in establishing the substantive rules.

8. The end result is that around the year 1700, we can conveniently divide the jurisdiction of the chancellor into a (1) a body of substantive jurisdiction of which by the most important are those concerning trusts, equitable interests in land, mortgages, supervising of fiduciary accounts (guardians, trustees) and equitable relief against fraud, mistake, accident, and undue influence. (2) There are also a series of equitable remedies that can be used in conjunction with what would otherwise be ordinary actions at common law: injunctions, declaratory judgments, rescission, accounting, receivership. The declaratory judgment is particularly complicated because it arises out multiple suits in ejectment at common law. This leads to *quia timet*; then the action to quiet title; and finally the declaratory judgment. In all the other cases the successful plaintiff at law will take the action into equity to get it enforced. (3) There are thirdly a series of equitable defenses to ordinary actions at common law: set-off, release, laches, estoppel. In these cases the defendant will go into equity to get the action enjoined in order to raise the defense, but a jury may well be used to try the legal issues. (4) All of this is governed by a series of equitable concepts of which, I suggest, there are really only three, though they have substantial ramifications: (a) relief from an obligation on the basis of fraud, mistake, accident; (b) relief from penalties and forfeitures in both contracts and deeds; and (c) conversion of an obligation into property, particularly, but not exclusively, with regard to land. The equitable servitude of the early 19th century, with which we deal later in the course, is a familiar example. (5) Finally, and somewhat curiously, equity even more than common law is characterized by maxim jurisprudence: he who seeks equity must do equity, equity does not aid a volunteer, equity regards as done what ought to have been done, equity delights to justice and that not by halves, equity follows the law, equity suffers not a right without a remedy—all of which were summarized by the cruder generation of law students of my day in one overarching maxim: equity takes no shit.

9. The decline of Chancery was already happening in Queen Anne's reign. The problem was that there was only one judge. As business grew, more and more had to be prepared so that the one judge could handle the matter in the time available, and that was frequently not full time, since the chancellor was a great officer of state. In addition, the masters, the six clerks, and the sixty clerks owned their jobs and made their money on fees for piece work. The more work, the larger the fees. Matters came to a head under Lord Eldon, Chancellor in the early 19th century, who was said to preside over a court of "oyer sans terminer." In 1824, the court had £39 million in its coffers, deposits into the court of funds at issue in litigation, moldering in the court without interest, the remains of undecided cases and wrecked fortunes. In the same year, a royal commission was told of a case that had begun in 1808 that was still in its interlocutory stages; no trial had been scheduled; costs of £3719 had already been paid. It was out of such material that Charles Dickens wrote *Bleak House*. Reform did not come until the middle of the 19th century with expansion of the judges

and abolition of the sinecures. Ultimately, Chancery was merged into the High Court. Similar things happened in the United States, though much of our law today and that of England is still troubled by the uncertain law/equity line.

FEIST PUBLICATIONS, INC., v. RURAL TELEPHONE SERVICE COMPANY, INC.

Supreme Court of the United States
499 U.S. 340 (1991)

O'CONNOR J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, MARSHALL, STEVENS, SCALIA, KENNEDY, and SOUTER, JJ., joined. BLACKMUN, J., concurred in the judgment.

O'CONNOR J. This case requires us to clarify the extent of copyright protection available to telephone directory white pages.

I

Rural Telephone Service Company, Inc., is a certified public utility that provides telephone service to several communities in northwest Kansas. It is subject to a state regulation that requires all telephone companies operating in Kansas to issue annually an updated telephone directory. Accordingly, as a condition of its monopoly franchise, Rural publishes a typical telephone directory, consisting of white pages and yellow pages. The white pages list in alphabetical order the names of Rural's subscribers, together with their towns and telephone numbers. The yellow pages list Rural's business subscribers alphabetically by category and feature classified advertisements of various sizes. Rural distributes its directory free of charge to its subscribers, but earns revenue by selling yellow pages advertisements.

Feist Publications, Inc., is a publishing company that specializes in area-wide telephone directories. Unlike a typical directory, which covers only a particular calling area, Feist's area-wide directories cover a much larger geographical range, reducing the need to call directory assistance or consult multiple directories. The Feist directory that is the subject of this litigation covers 11 different telephone service areas in 15 counties and contains 46,878 white pages listings—compared to Rural's approximately 7,700 listings. Like Rural's directory, Feist's is distributed free of charge and includes both white pages and yellow pages. Feist and Rural compete vigorously for yellow pages advertising.

As the sole provider of telephone service in its service area, Rural obtains subscriber information quite easily. Persons desiring telephone service must apply to Rural and provide their names and addresses; Rural then assigns them a telephone number. Feist is not a telephone company, let alone one with monopoly status, and therefore lacks independent access to any subscriber information. To obtain white pages listings for its area-wide directory, Feist approached each of the 11 telephone companies operating in northwest Kansas and offered to pay for the right to use its white pages listings.

Of the 11 telephone companies, only Rural refused to license its listings to Feist. Rural's refusal created a problem for Feist, as omitting these listings would have left a gaping hole in its area-wide directory, rendering it less attractive to potential yellow pages advertisers. In a decision subsequent to that which we review here, the District Court determined that this was precisely the reason Rural refused to license its listings. The refusal was motivated by an unlawful purpose "to extend its monopoly in telephone service to a monopoly in yellow pages advertising." Rural Telephone Service Co. v. Feist Publications, Inc., 737 F.Supp. 610, 622 (Kan.1990).

Unable to license Rural's white pages listings, Feist used them without Rural's consent. Feist began by removing several thousand listings that fell outside the geographic range of its area-wide directory, then hired personnel to investigate the 4,935 that remained. These employees verified the data reported by Rural and sought to obtain additional information. As a result, a typical Feist listing includes the individual's street address; most of Rural's listings do not. Notwithstanding these additions, however, 1,309 of the 46,878 listings in Feist's 1983 directory were identical to listings in Rural's 1982-1983 white pages. App. 54 (¶ 15-16), 57. Four of these were fictitious listings that Rural had inserted into its directory to detect copying.