If an entity that collects data from websites through an automated device, including but not limited to “scraping, “ “harvesting, “ and “crawling” (such entities, “**Data Collectors**”), and receives a cease and desist from the owner of such a website, then the Data Collector has been put on notice and should address it in a timely manner.

The Data Collector has three options when responding to a cease and desist:

* + Option 1: Respond to inform the website that scraping will be halted.
  + Option 2: Respond by stating the rationale for why the data collection activity is legal, and why there is no need to comply with the cease and desist. Ideally this response should be drafted by a lawyer. Data Collectors may also consider filing a declaratory action for a court declaration indicating the web data collection activity may continue.
  + Option 3: Consider negotiating a commercial remedy with the owner of the website.
  + Regardless of the option, the Alternative Data Council recommends that Data Collectors consult with a lawyer prior to addressing the cease and desist. If counsel advises to refrain from responding to the cease and desist, this may be a fourth option to consider.

Option 1 Process – Halting Scraping

* + The details within the response letter may vary, but the letter should make clear the Data Collector’s intent to comply with the cease and desist and the timing for compliance.
  + If the Data Collector believes that the web scraping is lawful but is choosing to comply with the cease and desist anyway, and legal arguments are provided to that effect in the response, ensure that these have been reviewed by a lawyer because the response letter could be used in future litigation.
  + Following responding to the letter, scraping should be halted. If the Data Collector has contractual obligations with regard to customer notification, following up to ensure compliance with those notification requirements would be prudent.

Option 2 Process – Stating Your Position

* + If the Data Collector decides that the cease and desist is not valid and response is warranted, it is recommended to consult with a lawyer to respond. Counsel can advise of the best process in this case. It is important to consider that this response option may give rise to litigation.
  + Data Collectors may also want to consult with a lawyer to file a declaratory action in court; this is where the court is asked to explicitly declare the web data collection activity as legal. If this route is chosen, it is important to be mindful that this is taking the offensive position and directly becoming involved in litigation.

Option 3 Process – Commercial Remedy

* + The Data Collector may also consider entering into commercial negotiations such as resolving the cease and desist by setting up a licensing agreement.

Some reasons Data Collectors may receive a cease and desist are as follows:

* + Excessive volume on the website
  + Copyright Violations
  + Breach of Contract
  + Computer Fraud and Abuse Act
  + Personal Data is being collected

The following are useful to minimize potential legal liability as a result of a cease and desist:

* Audit logs to ensure that you have a record of your scraping,
  + Technical controls enforcing best practices,
  + Policies and procedures to enforce legal best practices, including terms of service, copyright, trade secret, and data protection considerations (See Terms of Service Considerations and Competition Considerations)
  + Minimize request volumes to levels that don’t impair site reliability (see Volume Considerations),
  + Take steps to ensure copyright compliance (See Copyright Considerations),
  + Do not use fake identities and have an easy way for website owners to log abuse reports (See Proxy Considerations), and
  + Ensure personal data compliance (See Privacy Considerations).