

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CDK GLOBAL LLC, a limited  
liability company; REYNOLDS AND  
REYNOLDS COMPANY, a corporation,  
*Plaintiffs-Appellants,*

v.

MARK BRNOVICH, Attorney General,  
*Defendant-Appellee,*

ARIZONA AUTOMOBILE DEALERS  
ASSOCIATION,  
*Intervenor-Defendant-Appellee.*

No. 20-16469

D.C. No.  
2:19-cv-04849-  
GMS

OPINION

Appeal from the United States District Court  
for the District of Arizona  
G. Murray Snow, Chief District Judge, Presiding

Argued and Submitted February 5, 2021  
Phoenix, Arizona

Filed October 25, 2021

Before: William A. Fletcher, Eric D. Miller, and  
Danielle J. Forrest,\* Circuit Judges.

Opinion by Judge Miller

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### SUMMARY\*\*

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#### **Copyright Preemption / Preliminary Injunction**

The panel affirmed the district court’s order denying plaintiffs’ motion for a preliminary injunction against enforcement of the “Dealer Law,” an Arizona statute aimed at strengthening privacy protections for consumers whose data is collected by car dealers and restricting anticompetitive business practices by technology companies that provide database services for dealers.

The Dealer Law prevents database providers such as plaintiffs from limiting access to dealer data by dealer-authorized third parties and requires providers to create a standardized framework to facilitate such access. Plaintiffs sought declaratory and injunctive relief on the basis that the Dealer Law is preempted by the Copyright Act and the Computer Fraud and Abuse Act, violates the Contracts Clause and the Takings Clause, and is void for vagueness.

The panel held that it had jurisdiction under 28 U.S.C. § 1292(a)(1) to review the district court’s order denying

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\* Formerly known as Danielle J. Hunsaker.

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

injunctive relief, but it lacked pendent appellate jurisdiction over the CFAA and vagueness claims, which the district court dismissed before ruling on the preliminary injunction.

The panel affirmed the district court's conclusion that plaintiffs were unlikely to succeed on the merits of their claims, and thus were not entitled to a preliminary injunction. As to the Copyright Act preemption claim, the panel held that there was no conflict preemption because the state and federal laws were not irreconcilable. Plaintiffs brought a facial challenge to the Dealer Law but could not establish that every possible application of the statute would conflict with the Copyright Act. In addition, the Dealer Law did not conflict with 17 U.S.C. § 106(1), which grants the owner of a copyrighted work the exclusive right "to reproduce the copyrighted work in copies."

The panel further concluded that plaintiffs were unlikely to succeed on their Contracts Clause claim. First, plaintiffs forfeited their claim that the Dealer Law impaired their contracts with third-party vendors. Second, plaintiffs did not show that the Dealer Law impaired their ability to discharge their contractual duty to keep dealer data confidential. Third, assuming, without deciding, that the Dealer Law substantially impaired contractual third-party access restrictions, the statute did not violate the Contracts Clause because it was reasonably drawn to serve important public purposes of promoting consumer data privacy and competition.

Finally, the panel held that plaintiffs were unlikely to succeed on their takings claim because the Dealer Law did not effect a per se physical taking, and it did not constitute a regulatory taking.

**COUNSEL**

Michael A. Scodro (argued), Britt M. Miller, and Brett E. Legner, Bayer Brown LLP, Chicago, Illinois; Thomas J. Dillickrath (argued) and Jonathan R. DeFosse, Sheppard Mullin Richter & Hampton LLP, Washington, D.C.; Brian A. Howie and Lauren E. Stine, Quarles & Brady LLP, Phoenix, Arizona; Molly C. Lorenzi, San Francisco, California; Mark W. Ryan, Washington, D.C.; Aundrea K. Gulley, Brice A. Wilkinson, and Denise Drake, Gibbs & Bruns LLP, Houston, Texas; for Plaintiffs-Appellants.

Brunn (Beau) W. Roysden III (argued) and Rusty D. Crandell, Office of the Attorney General, Phoenix, Arizona; Mary O'Grady and William D. Furnish, Osborn Maledon P.A., Phoenix, Arizona; for Defendants-Appellees.

Derek T. Ho (argued), Aaron M. Panner, Brendan J. Crimmins, Daniel V. Dorris, Joshua Hafenbrack, Bethan R. Jones, and Jayme L. Weber, Kellogg Hansen Todd Figel & Frederick PLLC, Washington, D.C.; John C. Norling, John J. Egbert, Jeffrey D. Gardner, and Jimmie W. Pursell Jr., Jennings Strouss & Salmon P.L.C., Phoenix, Arizona; for Intervenor-Defendants-Appellees.

R.J. "Jim" Sewell Jr, Smith Law Firm P.C., Helena, Montana, for Amicus Curiae Montana Automobile Dealers Association.

Timothy C. Fox, Attorney General; Matthew T. Cochenour, Acting Solicitor General; Jon Bennion, Chief Deputy Attorney General; Office of the Attorney General, Helena, Montana; for Amicus Curiae State of Montana.

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Craig Nichols, Nichols Law Group LLP, Portland, Oregon; Aaron H. Jacoby, Victor P. Danhi, Karen Van Essen, and Franjo M. Dolenac, Arent Fox LLP, Los Angeles, California; for Amici Curiae California New Care Dealers Association and Oregon Auto Dealers Association.

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### OPINION

MILLER, Circuit Judge:

In 2019, the Arizona Legislature enacted a statute aimed at strengthening privacy protections for consumers whose data is collected by car dealers and restricting anticompetitive business practices by technology companies that provide database services for dealers. The statute's key provisions prevent database providers from limiting access to dealer data by dealer-authorized third parties and require providers to create a standardized framework to facilitate such access. Two database providers subject to the statute filed suit and sought a preliminary injunction against its enforcement on the grounds that it is unconstitutional and that it is preempted by numerous federal statutes. After concluding that the plaintiffs were unlikely to succeed on the merits of their claims, the district court denied a preliminary injunction. We affirm.

### I

To manage their operations, car dealers use specialized software known as a dealer management system (DMS). The core of a DMS is a database containing information about a dealer's customers, vehicles, accounting, parts, and services. Some of that data, such as customers' social-security numbers and credit history, is highly sensitive. DMSs use the

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