SCC Court file no. 36602

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

BETWEEN:

GOOGLE INC.

Appellant

- and -

EQUUSTEK SOLUTIONS INC., ROBERT ANGUS, and CLARMA ENTERPRISES INC.,

Respondents

- and -

MORGAN JACK, ANDREW CRAWFORD, DATALINK TECHNOLOGY GATEWAYS INC., DATALINK 5, DATALINK 6, JOHN DOE, DATALINK TECHNOLOGIES GATEWAYS LLC, AND LEE INGRAM

Non-Parties to the Appeal

- and -

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Table of Contents

PART I: OVERVIEW AND FACTS

1. EFF seeks to assist the court by proposing a principled test, with specific requirements, as guidance for Canadian courts when considering the granting of mandatory worldwide injunctions affecting non-parties in foreign jurisdictions, particularly where such orders restrain free expression on the Internet. The proposed EFF test, aided by reference to US law, will provide consideration of foreign legal systems and citizens.

2. Notably for the for the following analysis, the courts below issued and upheld the injunction without analysis of the specific content of the impugned websites (BCSC at [137] and BCCA at [110]) and without a substantive finding of trade secret violations on the merits. The EFF test, set out in detail below, expands on the test proposed by Google at paragraph 111 of its factum, by adding a threshold consideration of the law in affected foreign jurisdictions, the strength of the case on the merits (vs. on default), among other factors.

PART II: STATEMENT OF POSITION

3. In this appeal, the Electronic Frontier Foundation ("EFF") submits that the extraterritorial effects of mandatory worldwide injunctions that restrain free expression on the Internet are anathema to judicial comity. Pursuant to its mandate to promote and protect civil rights in the digital world, EFF seeks to ensure that free expression, which necessarily includes the right to receive speech on the Internet, is appropriately considered and balanced against other competing private rights when Canadian courts consider granting such injunctions. In particular, EFF seeks to encourage proper consideration of the principles of comity, with specific reference to the American approach of balancing competing interests in protecting trade secrets, free expression, and Internet users' rights.

PART III: ARGUMENT

4. In this case, the trial court issued an injunction requiring de-indexing of certain websites because of who operated them (BCSC at [137]), finding it was more convenient for Google to de-index entire sites, as de-indexing specific URLs or webpages was insufficient because it would result in an "endless game of whack-a-mole" (BCSC at [72]). In the court's conclusion the plaintiffs' commercial interests and convenience weighed more heavily than any public interest.

5. EFF submits that the approach under U.S. law would be significantly different than the approach below. These submissions will first address the test for preliminary injunctions generally in the U.S., focusing on the heightened requirements for mandatory injunctions. The submissions will then address preliminary injunctions that have the potential to restrain lawful speech, and the heavy burden that must be met in order for such an injunction to issue. The submissions will then review statutory protections that immunize Internet intermediaries, such as search engines, from being subject to injunctions restraining free expression, and other considerations of U.S. law that would counsel against issuing such an order. Finally, EFF proposes a test to guide Canadian courts that takes into consideration the varying laws of foreign jurisdictions, the merits of the underlying claim, harm to the plaintiff, the availability of alternative measures, the breadth of the injunction, the efficacy of the injunction balanced against possible deleterious effects on the enjoined party, the public and expressly on free expression.

The Preliminary Injunction Test in the U.S.

6. In the United States, an interlocutory injunction is known as a preliminary injunction, and is issued to "protect [a] plaintiff from irreparable injury and to preserve the court's power to render a meaningful decision after a trial on the merits."[1] An applicant must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favour; and (4) an injunction is in the public interest.[2]

7. While similar to the *RJR MacDonald* test for an interlocutory injunction, the U.S. test for issuing a preliminary injunction has two notable differences. First, the U.S. test requires the plaintiff to demonstrate it is likely to succeed *on the merits* of its claim. EFF submits that this aspect of the test often requires a court to look beyond a default order to assess the strengths of a particular claim. While a default judgment may be sufficient to ground an order affecting the rights of the defaulting party, there is good reason to pause before relying on that same default to take away the rights of non-parties who were unable to advance a defence on the merits.

[1] Wright & Miller, *Purpose and Scope of Preliminary Injunctions*, 11A Fed. Prac. & Proc. Civ. § 2947 (3d ed.)

[2] *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008); see also eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 394 (2006)

8. Second, the U.S. test for a preliminary injunction requires an explicit consideration of the public interest.[3] The public's interest may be separate and distinct from that of the parties[4], allowing the court to examine the impact of such an order on non-parties. When an injunction has potential implications for expression, the public interest consideration necessarily includes an assessment of any potential impact on free expression and access to information as a factor separate and apart from balancing the equities between the parties.[5]

9. More broadly, U.S. law also requires that equitable relief "be tailored to remedy the specific harm alleged."[6] In other words, U.S. courts hesitate to make orders with wide-reaching effects that go beyond the narrow purpose of curtailing a specified harm. The standard for mandatory injunctions - injunctions that alter rather than maintain the status quo, such as by removing information from public view - is particularly high. In the Ninth Circuit, the home of Silicon Valley and a hub of online commerce, the courts have emphasized that mandatory injunctions are particularly disfavoured.[7]

10. There is a good policy reason for this caution. Where an injunction alters rather than preserves the status quo, the risk of harm to the parties and the public interest is high. The public may be deprived of valuable information and/or services, or an innovative business may be forced to close its doors forever, even though its business could ultimately prove lawful.[8]

Free Expression in Preliminary Injunctions

11. The First Amendment to the U.S. Constitution broadly protects the free expression of individuals and recognizes that the public's right to "receive information and ideas, regardless of

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[3] *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)

[4] Salinger v. Colting, 607 F.3d 68, 83 (2d Cir. 2010) (citing Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal., 475 U.S. 1, 8 (1986))

[5] In addition to the "public interest" in the content of the speech itself, courts have emphasized that free expression concerns must be taken into account in weighing the "irreparable harm" and "balance of equities" factors. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 828 (9th Cir. 2013) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))

[6] *Park Village Apt. Tenants v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011) (citation and quotation omitted)

[7] *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994); *see also Cachchillo v. Insmed, Inc.*, 638 F.3d 401, 406 (2d Cir. 2011); *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994)

[8] *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007) (reversing trial court grant of a preliminary injunction on Google from creating and displaying thumbnails of infringing copyrighted images); *Author's Guild v. Google, Inc.*, 954 F. Supp. 2d 282 (S.D.N.Y. 2013) (granting summary judgment to Google that its mass digitization of copyrighted literary works is fair use)

their social worth […] is fundamental to [America's] free society."[9] "[T]he right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom."[10] This fundamental right in the U.S. to receive information applies fully to receiving content over the Internet,[11] including Internet search results.[12]

12. Where a party seeks an injunction to restrain expression, the scales are tipped sharply in favour of judicial restraint,[13] even where the impugned expression may be unlawful. The U.S. Supreme Court has observed that where liability lies on the line between unlawful and protected expression, an "[e]rror in marking that line exacts an extraordinary cost." If the line is drawn incorrectly so as to encompass legitimate expression, fundamental rights are abridged:

> It is through speech that our convictions and beliefs are influenced, expressed, and tested. It is through speech that we bring those beliefs to bear on Government and on society. It is through speech that our personalities are formed and expressed. The citizen is entitled to seek out or reject certain ideas or influences without Government interference or control.[14]

13. Thus, where there is at least some risk that constitutionally protected expression will be enjoined, "only a particularly strong showing of likely success, and of harm to the defendant as well, could suffice" to justify an injunction.[15] In other words, any injunction requiring a search engine to limit online search results implicates the public interest in free expression and the standard to restrain such speech is quite stringent.

14. Preliminary injunctions that impede expression, whether by preventing publication or requiring de-publication, are considered "prior restraints" under U.S. law.[16] Prior restraints are

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[9] *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (internal citations omitted)

[10] *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1027 n.5 (9th Cir. 1998) (citation and quotation omitted)

[11] *See Reno v. ACLU*, 521 U.S. 844, 870-71 (1997)

[12] *See, e.g., Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 629-30 (D. Del. 2007); *Zhang v. Baidu.com, Inc.*, 10 F. Supp. 3d 433, 436-440 (S.D.N.Y. 2014); Eugene Volokh & Donald M. Falk, *First Amendment Protection for Search Engine Search Results*, 8 J.L. Econ. & Pol'y 883 (2012)

[13] *Ashcroft v. ACLU*, 542 U.S. 656, 670-71 (2004)

[14] United States v. Playboy Entm't Grp., Inc., 529 U.S. 803, 817 (2000) ("Playboy")

[15] *Overstreet v. United Bhd. of Carpenters & Joiners of Am. Local Union No. 1506*, 409 F.3d 1199, 1208 n.13 (9th Cir. 2005)

[16] *Alexander v. United States*, 509 U.S. 544, 550 (1993) (staying a state court's preliminary injunction because it was a prior restraint). *See also Org. for a Better Austin v. Keefe*, 402 U.S. 415, 418 (1971) (invalidating temporary injunction against distribution of pamphlets as a prior restraint).

the most serious and least tolerable infringement on First Amendment rights.[17] As stated by the U.S. Supreme Court, "[n]o one can read the history of the adoption of the First Amendment without being convinced beyond any doubt that it was injunctions [infringing on freedom of the press] that Madison and his collaborators intended to outlaw in this Nation for all time."[18] Injunctions such as the one at issue here are considered prior restraints, even when they seek to stop the disclosure of alleged trade secrets.[19]

15. In the U.S., any system of prior restraints bears "a heavy presumption against its constitutional validity."[20] Although it does not impose a categorical bar, the First Amendment renders prior restraints exceedingly rare, issued only when they are *necessary* to further an interest of the highest magnitude,[21] as long ago recognized by Justice Blackmun:

> Although the prohibition against prior restraints is by no means absolute, the gagging of publication has been considered acceptable only in 'exceptional cases.' Even where questions of allegedly urgent national security, or competing constitutional interests, are concerned, we have imposed this most extraordinary remedy only where the evil that would result from the [speech] is both great and certain and cannot be militated by less intrusive measures.[22]

16. A plaintiff seeking such a restraint must meet an extremely high burden: (1) the harm will *definitely* occur; (2) the harm will be irreparable; (3) no alternative exists for preventing the harm; and (4) the prior restraint will in fact prevent the harm.[23] Moreover, U.S. laws against prior restraint apply even if enjoined expression may be entirely unlawful.[24] Where it may implicate speech, even a post-trial injunction is often an impermissible prior restraint.[25]

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[17] *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) ("*Nebraska Press*"). Even for temporary orders, when "a direct prior restraint is imposed upon the reporting of news by the media, each passing day may constitute a separate and cognizable infringement of the First Amendment." *Nebraska Press Ass'n. v. Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, Circuit Justice, in chambers).

[18] *New York Times Co. v. United States*, 403 U.S. 713, 719 (1971) (Black, J. concurring)

[19] *CBS, Inc. v. Davis*, 510 U.S. 1315, 1318 (1994) ("*Davis*")

[20] *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)

[21] See *Nebraska Press*, *supra* at 562

[22] *Davis*, *supra*, at 1317 (Blackmun, J., in chambers) (citations and quotations omitted). *See also Near v. Minnesota*, 283 U.S. 697, 706 (1931) (invalidating statute allowing courts to enjoin publication of future issues of newspaper based on previous editions found to be "'chiefly devoted to malicious, scandalous and defamatory articles'"); *cf. Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 225 (6th Cir. 1996) ("The private litigants' interest in protecting their … commercial self-interest simply does not qualify as grounds for imposing a prior restraint.").

[23] *See Davis*, *supra*, at 1317.

[24] *Id.* (citations and quotations omitted). *See also Near supra*, at 706 (1931) (invalidating statute allowing courts to enjoin publication of future issues of newspaper based on previous editions found to be "'chiefly devoted to malicious, scandalous and defamatory articles'")

[25] *See* Erwin Chemerinsky, *Injunctions in Defamation Cases*, 57 Syracuse L. Rev. 157, 165 (2007)

U.S. Courts Demand A High Bar Where Access to Information is Restricted

17. Independent of considering the public's interest in the preliminary injunction analysis, a U.S. court would also consider whether the order issued here interferes with Internet users' free expression rights to receive information. The right to receive information includes those who seek to receive information for solely private use[26] and those who gather information to later publicly disseminate it to broader audiences.[27]

18. The court would first ask whether the restriction prohibits access to particular topics or ideas to determine whether the injunction would create a content-based restriction on speech. Under U.S. law, a restriction is content based if it regulates "the topic discussed or the idea or message expressed."[28] Such restrictions are subject to strict scrutiny by courts, meaning they are permissible only where the restriction is narrowly tailored to meet a compelling interest.[29]

Statutory Protections of Internet Intermediaries in the U.S.

19. Further, U.S. law immunizes Internet intermediaries from legal action for providing a platform for content provided by their users. Specifically, 47 U.S.C. § 230, a provision of the Communication Decency Act of 1996 ("Section 230") provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[30] Under Section 230, an "information content provider"[31] may "be subject to state law liability in relation to content that it develops, but an 'interactive computer service' is immune from suit for state law claims in relation to merely hosting such content on a website."[32]

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[26] *Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, 757 (1976) (protecting the right to advertise, based in part on the consumer's "reciprocal right to receive the advertising" in order to make informed decisions); *Stanley*, 394 U.S. at 564 (protecting the right to possess obscene materials at home, because "the right to receive information and ideas, regardless of their social worth . . . is fundamental to our free society")

[27] *See, e.g., Richmond Newspapers v. Virginia*, 448 U.S. 555, 576 (1980) (plurality) (protecting the right to gather information in courtrooms, because "free speech carries with it some freedom to listen"); *Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (plurality) (protecting the right to gather information in libraries, because "the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom")

[28] *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015)

[29] *Playboy*, *supra* at 813

[30] 47 U.S.C. § 230(c)(1)

[31] An "information content provider" is "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3)

[32] *J.S. v. Village Voice Media Holdings LLC*, 184 Wash.2d 95, 101 (2015) (quoting *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003)) (footnotes omitted)

20. In passing Section 230 in 1996, the U.S. Congress explicitly stated that its goals were, among others, "to promote the continued development of the Internet and other interactive computer services" and "to preserve the vibrant and competitive free market" online.[33] Accordingly, Section 230 was intended to "recognize the special role of intermediaries, who serve as a vehicle for the speech of others."[34] Congress thus made the policy choice that fostering an unrestrained, robust communication forum on the Internet was more important than deterring potentially harmful online speech by imposing liability on intermediaries "for other parties' potentially injurious messages."[35]

21. Importantly, Section 230 provides immunity from suit, not just liability. "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."[36] While Section 230 provides for limited exceptions for "intellectual property" claims,[37] the exceptions would not apply to the trade secret claims at issue in this appeal. The intellectual property exception is limited to well-established federal intellectual property claims, such as copyright and patents,[38] and does not apply to trade secrets.[39]

Consideration of U.S. Law

22. EFF submits there are notable differences between how U.S. and Canadian courts would approach granting a mandatory injunction restraining free expression on the Internet. First, the trial court considered the public's interest only to extend to "the ab[ility] to find and buy the defendants' products as easily" (BCSC at [155]). The courts did not consider the public's interest in the free expression, a consideration required by U.S. law. As noted above, under U.S. law, when an injunction has potential implications for speech, the public interest consideration necessarily includes an assessment of any potential impact on free speech and access to information as a factor separate and apart from balancing the equities between the parties. More

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[33] *See* 47 U.S.C. § 230(b)(1)–(2)

[34] Anupam Chander & Uyên P. Lê, *Free Speech*, 100 Iowa L. Rev. 501, 514 (2015)

[35] *Zeran v. America Online, Inc.*, 129 F.3d 327, 330–31 (4th Cir. 2008)

[36] 47 U.S.C. § 230(e)(3)

[37] 47 U.S.C. § 230(e)(2)

[38] *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1119 (9th Cir. 2007)

[39] *Stevo Design, Inc. v. SBR Mktg.*, 919 F. Supp. 2d 1112, 1125 (D. Nev. 2013) (Section 230 gives website immunity from state law trade secrets claims)

importantly, where a party seeks to remove speech from the public eye, there is a presumption of against its constitutional validity and the scales tip in favour of judicial restraint.

23. Second, the courts below relied on the defendants' default on judgment to determine that the plaintiff met its requirement of demonstrating a strong *prima facie* case (BCCA at [101]; and BCSC at [151]). However, the courts below did not make any substantive findings on the merits of the plaintiff's claims. Under U.S. law, facts found in reaching a judgment - default or otherwise - generally cannot bind a non-party unless that non-party is given an opportunity to litigate and make submissions on any fact relevant to the relief sought against the non-party.[40]

24. Third, the injunction as entered by the court is not narrowly tailored to affect only the allegedly unlawful disclosure of trade secrets. The trial court has attempted to restrain the receipt of all information from a particular speaker at all websites, based on findings regarding certain information contained at certain URLs (BCSC at [137]). Thus, the order may well require Google to block lawful as well as unlawful content. Under U.S. law, "[b]road prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone."[41]

Proposed Injunction Test

25. EFF submits that a mandatory injunction against innocent non-parties to restrain expression with extraterritorial effect should be an order of last resort and issued only in the rarest of circumstances. It is not sufficient that mere convenience tips in favour of protecting a plaintiff's private interests when weighed against the impact on a non-party restrained by the order. Such a narrow focus ignores the impact on the rights and interests of other non-parties, including foreign states and individuals. Rather, an absence of consideration of broader policy considerations, foreign interests, and comity, leads to the supercilious export of Canadian laws and societal values on non-parties otherwise beyond the reach of Canadian courts.

26. Accordingly, the threshold question in the analysis of whether Canadian courts should issue orders effectively restraining the rights of non-parties to receive expression, should be whether an order with extraterritorial effect may offend another state's core values or run contrary to the law of any jurisdiction whose citizens the order might affect. Justice would

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[40] *See Zenith Radio Corp. v. Hazeltine Research Inc.*, 395 U.S. 100, 110-112 (1969); *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 n.7 (1979) ("It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never has an opportunity to be heard").

[41] *NAACP v. Button*, 371 U.S. 415, 438 (1963) (citations omitted)

require the onus and cost of proving lack of extraterritorial effects to be borne by the plaintiff seeking to promote its interests, not the innocent non-party seeking to maintain the status-quo in the public's interest.

27. Where there is a realistic possibility that an order with extraterritorial effects may offend another state's core values, or run afoul of its law, the order should not be made.[42] In the instance of an order that seeks to restrict free expression on the Internet in foreign jurisdictions, such a threshold is exceedingly high and unlikely to be met. For example, in this case it appears that such an order runs contrary to U.S. policy and law, restricting the rights of Internet users to receive speech that may yet be shown to be lawful.

28. Where a plaintiff demonstrates that an injunction with extraterritorial effects does not offend another state's core values or law, then the plaintiff should be required to demonstrate the following in order to obtain its order seeking to restrain free expression:

(a) A strong prima facie case on the merits against the underlying defendant.

(b) The conduct of the defendant will cause substantial and irreparable harm to the interests of the plaintiff.

(c) Reasonable alternative measures, proven on a balance of probabilities, will not prevent the irreparable harm.

(d) The order is no broader than necessary to restrain the harm at issue - that is, it is minimally impairing.

(e) The order will be technically feasible and effective, including enforceability in the foreign jurisdiction(s) at issue.

(f) The salutary effects of the order outweigh the deleterious effects on the rights and interests of the enjoined party and the public, including the effects on the right to free expression.

29. In determining whether the plaintiff has established a strong *prima facie* case, the court should be mindful that the affected non-party will not have had an opportunity to challenge the underlying claim against the defendants on its merits. Making an order in such circumstances is

[42] *See* BCCA at [92]

an extraordinary remedy. As with the Anton Piller remedy, EFF submits it should require the applicant to establish a strong *prima facie* case on the merits of the claim.[43]

30. EFF further submits that where the issue involves questions of free expression, particularly with potential global reach, the scales should tilt towards the public interest and a refusal to make an order restraining free expression. Only in the rarest of circumstances should Canadian courts seek to restrain free expression in the interest of narrow private rights.

31. When applied with the threshold question of offending foreign state's laws and norms, this test would provide the necessary protections for the public interest with respect to free expression, including the right to receive content on the Internet. Such a specific test, developed with reference to the stricter American approach, provides guidance to Canadian courts in addressing Internet disputes with international ramifications, while at the same time providing a level of international consistency.

PART IV: SUBMISSIONS CONCERNING COSTS

32. EFF requests that no order for costs be made against it and seeks no costs.

PART V: ORDER SOUGHT AND PERMISSION TO PRESENT ORAL ARGUMENT

33. EFF takes no position on the disposition of the appeal, other than to urge this Honourable Court to adopt the tests outlined above. In addition, EFF seeks leave to present ten (10) minutes of oral argument at the hearing of the within appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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October 5, 2016
Vancouver, British Columbia

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[43] *See e.g. XY, LLC v. Canadian Topsires Selection Inc.*, 2013 BCSC 780 at paras 56-57, citing *Celanese Canada Inc. v. Murray Demolition Corp.*, 2006 SCC 36.

PART VI: TABLE OF AUTHORITIES

Secondary Sources

PART VII: STATUTORY PROVISIONS

(b) Policy

It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(e) Effect on other laws

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

f) Definitions

As used in this section:

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.