Canada: Supreme Court Landmark Decision Declaring "The Internet Has No Borders"

***Google, Inc. v. Equustek Solutions Inc.* (2017 SCC 34).**

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Google, Inc. v. Equustek Solutions Inc. (2017 SCC 34).

In what is being hailed as a landmark decision, the Canadian Supreme Court has affirmed a holding granting a global injunction against Google, even though it was a non-party to the underlying infringement action, requiring it to remove links from infringing websites from its global search results. In doing so the Supreme Court declared:

"The Internet has no borders – its natural habitat is global."

The case involved Equustek, a small technology company in British Colombia, and its former distributor Datalink. Datalink sold counterfeit industrial networking interface hardware via the misappropriation of Equustek's trade secrets and other intellectual property. A local court in British Colombia granted an initial injunction requiring Google to de-index certain web pages from its worldwide search results. Google voluntarily complied to remove specific webpages and URLs (uniform resource locations) from its "Google.ca" search results, but resisted the request to de-index their search results worldwide.

The decision is remarkable not only under Canadian jurisprudence but also appears to be the first time that the highest court of any jurisdiction has granted a global injunction of this kind. Understandably, the decision has generated a flurry of commentary not only from local practitioners in Canada but also from several other jurisdictions expressing concerns that the granting of a global injunction against a non-party could have far reaching and negative consequences, especially if the injunction reflects local

political or censorship issues that could infringe free speech rights, including First Amendment rights in the U.S. and similar protective legislation.

The Supreme Court decision in Canada was split (7-2) and the minority court questioned the majority decision not only as over-reaching in nature but also difficult or impossible to modify if there were changed circumstances. The minority court stated that "Courts should avoid granting injunctions that require such cumbersome court-supervised updating."

There is some speculation that the decision may encourage international companies to purposely forum shop in choosing Canada as a basis for seeking a worldwide remedy where courts in other countries may well be reluctant to do so. In fact the extra-territorial scope of the Canadian Supreme Court decision is currently being challenged in the U.S. courts via a suit filed by Google in federal district court in California (*Google Inc. v. Equustek Solutions, Inc.*, *U.S. District Court, Northern District of California, suit no. 5:17-cv-04207*). Google is asking the U.S. court to prevent the enforcement of the "unprecedented global injunction" granted by the Canadian court in the United States as contrary to their First Amendment rights and other U.S. protective legislation shielding non-parties from restrictive court injunctions. It will be interesting to see if courts in other jurisdictions are willing to grant similar global injunctions in other cases. Perhaps the most likely forums will be those sharing a similar British law tradition with Canada such as Australia, the United Kingdom itself, and Hong Kong (where, indeed, a local court is currently being asked to consider similar issues).

Primary Contacts

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