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Google Ordered to Delist Search Results

Google Inc v Equustek Solutions Inc, Robert Angus and Clarma Enterprises Inc^[1]

On 28 June 2017, the Supreme Court of Canada granted an injunction compelling search engine operator, Google Inc, to delist certain search results from its search engines across the world.^[2]

The judgment arose out of an intellectual property infringement suit between Equustek and Datalink.^[3] Equustek's claim against Datalink was for passing off and breach of confidentiality. Numerous court orders were granted against Datalink, which then moved their business from Canada to an unknown location and continued their operations online. Equustek then obtained an interlocutory injunction compelling Google to delist Datalink's websites from its search results worldwide. The injunction was upheld by the Court of Appeal for British Columbia.^[4]

In a 7-2 majority decision, the court found that Google's search engine facilitated Datalink's breaches of the orders against it, and that it was a determinative player in allowing the harm against Equustek to occur. Google did not argue that it would be inconvenienced in delisting the websites, which tilted the balance of convenience test overwhelmingly in Equustek's favour. On the point of jurisdiction, the court found that it had power *in personam* against Google by virtue of its operations in Canada.

Cote and Rowe JJ in their dissenting judgment pointed out that the injunction granted was effectively a permanent injunction against a non-party which had neither acted unlawfully, nor aided or abetted any illegal action. The scope of the injunction had, in fact, exceeded the original relief sought by Equustek. They questioned the efficacy of the injunction, as it would only affect results on Google's search engines, and not its alternatives such as Bing, Yahoo or social media platforms.

It would appear that one may become a victim of one's own success. We live in a time where if something is not visible on Google, it may as well be non-existent. It may, therefore, be an attractive proposition for potential claimants to go after Google instead. However, such a remedy is premised upon Google being a facilitator, which suggests a lack of appreciation for the passive nature of search engines. As correctly pointed out in the dissenting judgment, the court's "quest for

elusive effectiveness”^[5] would be easily undone by end users who persist with their searches through other channels.

It is anticipated that this judgment may embolden courts in other jurisdictions to exercise their powers in cyberspace through their *in personam* jurisdiction in equity. This case brings up some interesting issues for the future, ranging from the borderless nature of cyberspace, the jurisdiction of courts in cyberspace, the competing interests between the free flow and access of information versus the proprietary rights of a private entity, as well as the role of search engine operators.

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^[1] Interveners: Attorney General of Canada, Attorney General of Ontario, Canadian Civil Liberties Association, OpenMedia Engagement Network, Reporters Committee for Freedom of the Press, American Society of News Editors, Association of Alternative Newsmedia, The Center for Investigative Reporting, Dow Jones & Company Inc, First Amendment Coalition, First Look Media Works, Inc, New England First Amendment Coalition, News Media Alliance, AOL Inc, California Newspaper Publishers Association, The Associated Press, The Investigative Reporting Workshop at American University, Online News Association, Society of Professional Journalists, Human Rights Watch, ARTICLE 19, Open Net (Korea), Software Freedom Law Centre, Center for Technology and Society, Wikimedia Foundation, British Columbia Civil Liberties Association, Electronic Frontier Foundation, International Federation of the Phonographic Industry, Music Canada, Canadian Publishers' Council, Association of Canadian Publishers, International Confederation of Societies of Authors and Composers, International Confederation of Music Publishers, Worldwide Independent Network and International Federation of Film Producers Associations.

^[2] *Google Inc v Equustek Solutions Inc* 2017 SCC 34

^[3] *Equustek Solutions Inc v Jack*, 2012 BCSC 1490

^[4] *Equustek Solutions Inc v Jack*, 2015 BCCA 265

^[5] *Google Inc v Equustek Solutions Inc* 2017 SCC 34, at para 80