

COCKFIELD – CYBERLAW AND POLICY

JURISDICTION AND THE INTERNET

PROBLEM NO. 1

Penelope Ann Trafalgar of Rosedale, Toronto, raises champion Pekinese poodles. Ms. Trafalgar also runs a profitable dog grooming business, which often attracts clients as a result of her success with her poodles at her dog shows. Ms. Trafalgar's top champion stud, Mr. Poofie, develops a severe hairball health problem.

Ms. Trafalgar accesses the Internet and locates a web site for an online business called "Professional Veterinarians." The site announces in large bold letters "We can fix your pet's health problem. We offer the best pet health care advice on the Web!"

Ms. Trafalgar clicks on a link labeled "Hairball Treatment" and locates another web page that sets out a suggested treatment, which includes cod liver oil. Ms. Trafalgar follows the health care instructions on the web page and forces Mr. Poofie to swallow the specified amount of cod liver oil. Mr. Poofie collapses and dies of an apparent heart attack.

Ms. Trafalgar becomes furious that her top stud is dead and feels certain she will lose significant revenues in her grooming business. Ms. Trafalgar hires an attorney to pursue a legal claim against Professional Veterinarians. The attorney finds out that Professional Veterinarians is a corporation incorporated in the country of Oceanworld. The web site was also hosted on a computer server located in Oceanworld. Oceanworld is a sovereign nation that is really an old oil refinery platform located three hundred miles east of Newfoundland in the Atlantic Ocean (this location is outside of the political jurisdiction of any country). Data from Oceanworld servers is uploaded to servers located in satellites and then transmitted to other computers throughout the world.

The Professional Veterinarians web site contains a "legal disclaimer" in small print at the bottom of the home page. When clicked, a new web page appears that asserts, among other things, that any disputes will be resolved under the laws of Oceanworld in a court within Oceanworld.

Discuss whether a Canadian court would assert jurisdiction over Professional Veterinarians in order to permit Ms. Trafalgar's legal claim to go forward. State clearly any assumptions you make.

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SPEECH AND THE INTERNET

PROBLEM NO. 2

AOP, Inc. is a Canadian Internet Service Provider that provides a service called “RumorsAtSchool” to its subscribers. The RumorsAtSchool service is a series of web pages posted by AOP, Inc. that collect and publish online messages sent from high school students throughout Canada. The service organizes the messages on a regional basis (for example, high schools in Eastern Ontario) and archives previous messages. The messages are generally posted on an anonymous basis. AOP, Inc. has a policy whereby the company refuses to divulge the identity of the message sender unless AOP, Inc. is served with a subpoena. At its own discretion, AOP, Inc. censors or deletes messages posted through the RumorsAtSchool service.

Many of the messages that appear on the RumorsAtSchool web pages are fairly harmless and involve, for example, allegations that one student has a crush on her/his classmate. Other messages appear to target students in order to embarrass these students. For example, a high school student in Toronto named Amanda was tormented by messages that appeared daily at a RumorsAtSchool web page. Most of these messages essentially alleged that the student was “a slut”, and often included elaborate descriptions of sexual acts between Amanda and certain other individuals.

Amanda and her parents contacted representatives at AOP, Inc. and asked the company to delete all of these messages. The company refused to comply with the request. Amanda was so distraught by the affair that she attempted suicide, was subsequently hospitalized and changed high schools.

Assuming that all of the posted statements concerning Amanda are untrue, discuss whether AOP, Inc. could be held liable for any damages suffered by Amanda.

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PRIVACY AND THE INTERNET

PROBLEM NO. 3

HMP Records is a Canadian company that sells music CDs to the public through its retail outlets. HMP Records also maintains a web site called "hmprecords.ca" that advertises products and permits web site visitors to purchase CDs which are shipped via a courier to the consumer. Finally, the company sells digital music to consumers via its website.

At the bottom of the hmprecords.ca home page, there is a link for a "Privacy Policy." Site visitors can click on this link to review the terms and conditions of HMP Records' privacy policy.

The privacy policy reads in part:

Section 4: HMP Records respects the privacy concerns of users of this website. As a general rule, no personal information is automatically collected from users of HMP Records' website. Personally identifiable information may be collected from users of the HMP Records' website when users voluntarily provide this information. All such personal information is retained by HMP Records and is not sold or otherwise transferred by HMP Records unless the express consent to do so has been obtained or if HMP Records is required by law or by a court or governmental order to disclose such information in a particular circumstance. Aggregate information may be shared with advertisers. The method by which the foregoing information is gathered is known as "cookies." HMP Records uses "cookies," which are pieces of information that are transferred to an individual user's hard drive for record-keeping purposes. Cookies do not contain any personally identifying information.

Section 10: HMP Records sometimes uses e-mail addresses and other personally identifiable information to contact users who provide their e-mail addresses for specific purposes.

Section 11: By using the HMP Records' website, you signify your consent to this Privacy Policy. If you do not agree to the terms of this policy, please do not use the HMP Records' website. HMP Records reserves the right, at their sole discretion, to change, modify, add or remove portions of this policy at any time. Please check this page periodically for changes. Your continued use of the HMP Records' website following the posting of changes to these terms will mean that you accept those changes.

You have been retained by HMP Records to determine whether its privacy policy complies with recent changes to Canadian federal privacy law. Please advise.

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COPYRIGHT LAW AND THE INTERNET

PROBLEM NO. 4

VirtualDVR.com is an Internet company based in Ottawa. The company provides a service that records broadcast television programs requested by its customers. These customers will later be able to view digital versions of their recorded TV programs at their convenience via video streaming through VirtualDVR.com's web site.

In order to circumvent potential copyright problems, VirtualDVR.com wants to ensure that its customers are only viewing personal copies of television shows that are taped by the company. As a result, the company requires its customers to fax a copy of their cable TV bill to VirtualDVR.com before the company will record any programs.

VirtualDVR.com customers begin saving the streamed TV programs in the hard drives of their personal computers. Many of these same customers begin to trade these digital TV programs with other Internet users (many of whom do not subscribe to either VirtualDVR.com's services or any broadcast television service) through peer-to-peer file sharing online services. These file sharing services are not affiliated with VirtualDVR.com.

VirtualDVR.com hires you to provide the company with legal advice. Discuss whether VirtualDVR.com could be held liable for copyright infringement.