

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GOOGLE LLC,
Plaintiff,
v.
EQUUSTEK SOLUTIONS INC., et al.,
Defendants.

Case No. [5:17-cv-04207-EJD](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF**

Re: Dkt. No. 16

Plaintiff Google LLC brings this action against Defendants Equustek Solutions Inc.,
Clarma Enterprises Inc., and Robert Angus (together, "Equustek") to prevent enforcement of a
Canadian court order requiring Google to delist search results worldwide. Google now moves for a
preliminary injunction. Equustek has not filed an opposition brief.¹ Google's motion will be
granted.

¹ In its reply brief, Google indicates that Defendant Robert Angus faxed a letter "to Google's
counsel" and "to the Clerk of Court for this district." Dkt. No. 36 at 1. According to Google, the
letter "declared Defendants' intention not to defend against Google's suit" and argued that
Google's motion for preliminary injunctive relief is "unnecessary and unfair." *Id.* The letter has
not been filed on the docket for this case, and in any event, the Court does not review or respond
to letters or letter briefs. *See* Standing Order II ("Judge Davila does not review or respond to
letters or letter briefs providing case information or seeking relief from the Court even if the letter
is filed on the docket."). As such, the Court will not consider facts or arguments raised in Angus's
letter.

1 **I. BACKGROUND**

2 In 2011, Equustek filed suit in Canada against a group of individual and corporate
3 defendants associated with Datalink, a rival computer hardware distributor and seller. Compl.
4 ¶ 17, Dkt. No. 1; Equustek Solutions Inc. v. Jack, Case No. S112421 (Sup. Ct. British Columbia).
5 Equustek alleged that Datalink had colluded with a former Equustek engineer to incorporate
6 Equustek’s trade secrets into Datalink’s products, and that Datalink misled customers who
7 believed they were buying Equustek’s products. Compl. ¶ 5. In 2012, Equustek obtained several
8 Canadian court orders against Datalink. Id. ¶ 18. Datalink refused to comply and fled the country.
9 Id. The Canadian court issued an arrest warrant for the primary individual defendant, but he has
10 not been apprehended. Id.

11 In September 2012, Equustek asked Google to remove Datalink’s websites from its search
12 results. Id. ¶ 19. Google refused. Id. However, after the Canadian court granted Equustek’s request
13 for injunctive relief against Datalink, Google blocked more than 300 Datalink websites from
14 appearing in its Canada-specific search results at www.google.ca. Id. Google did not remove
15 Datalink websites from search results targeted to users outside of Canada. Id.

16 Equustek then sought a Canadian court order requiring Google to remove Datalink
17 websites from its global search results. Id. ¶ 20. On June 13, 2014, the Canadian trial court issued
18 an order requiring Google to delist Datalink search results worldwide. Id. ¶ 20; see also id. Ex. A
19 (attaching the order from the Canadian trial court). The trial court later issued nine supplemental
20 orders directing Google to delist additional websites associated with Datalink. Id. ¶ 21. Google has
21 complied with the Canadian order. Id.

22 Google appealed to the Court of Appeal for British Columbia, which affirmed, and then to
23 the Supreme Court of Canada, which issued an order affirming the trial court’s order on June 28,
24 2017. Id. ¶¶ 24–25; see also id. Ex. B (attaching the order from the Supreme Court of Canada).

25 Google filed this action on July 24, 2017, seeking “a declaratory judgment that the
26 Canadian court’s order cannot be enforced in the United States and an order enjoining that
27

1 enforcement.” Compl. ¶ 4. Google now moves for preliminary injunctive relief. Pl.’s Mot. for
2 Prelim. Inj. Relief (“Mot.”), Dkt. No. 16.

3 **II. LEGAL STANDARD**

4 A party seeking a preliminary injunction must establish that (1) it is likely to succeed on
5 the merits of its claims, (2) it is likely to suffer irreparable harm in the absence of preliminary
6 relief, (3) the balance of equities weighs in its favor, and (4) an injunction is in the public interest.
7 Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008). Courts in the Ninth Circuit apply a
8 “sliding scale” approach in which “the elements of the preliminary injunction test are balanced, so
9 that a stronger showing of one element may offset a weaker showing of another.” Alliance for the
10 Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting Winter, 555 U.S. at 20).

11 **III. DISCUSSION**

12 Google argues that the Canadian order is “unenforceable in the United States because it
13 directly conflicts with the First Amendment, disregards the Communication Decency Act’s
14 immunity for interactive service providers, and violates principles of international comity.”
15 Mot. 2.

16 **A. Likelihood of Success on the Merits**

17 Section 230 of the Communications Decency Act “immunizes providers of interactive
18 computer services against liability arising from content created by third parties.” Fair Hous.
19 Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1162 (9th Cir. 2008)
20 (en banc). It states that “[n]o provider or user of an interactive computer service shall be treated as
21 the publisher or speaker of any information provided by another information content provider.”
22 47 U.S.C. § 230(c)(1). Congress enacted Section 230 in 1996 to address “the threat that tort-based
23 lawsuits pose to freedom of speech in the new and burgeoning Internet medium.” Zeran v. Am.
24 Online, Inc., 129 F.3d 327, 328, 330 (4th Cir. 1997). Section 230 does not allow internet users to
25 escape accountability for publishing unlawful material; rather, it reflects Congress’s policy choice
26 “not to deter harmful online speech through the separate route of imposing tort liability on
27

1 companies that serve as intermediaries for other parties’ potentially injurious messages.” Id. at
2 330–31.

3 To qualify for Section 230 immunity, Google must show that (1) it is a “provider or user of
4 an interactive computer service,” (2) the information in question was “provided by another
5 information content provider,” and (3) the Canadian order would hold it liable as the “publisher or
6 speaker” of that information. Klayman v. Zuckerberg, 753 F.3d 1354, 1357 (D.C. Cir. 2014)
7 (quoting 27 U.S.C. § 230(c)(1)); see also Caraccioli v. Facebook, Inc., 167 F. Supp. 3d 1056, 1065
8 (N.D. Cal. 2016).

9 Here, Google satisfies all three elements. First, there is no question that Google is a
10 “provider” of an “interactive computer service.” See 47 U.S.C. § 230(f)(2) (“The term ‘interactive
11 computer service’ means any information service, system, or access software provider that
12 provides or enables computer access by multiple users to a computer server.”); O’Kroley v.
13 Fastcase, Inc., 831 F.3d 352, 355 (6th Cir. 2016) (“Google is an interactive computer service, an
14 entity that provides ‘access by multiple users to a computer server.’ ”); Parker v. Google, Inc., 422
15 F. Supp. 2d 492, 501 (E.D. Pa. 2006) (“[T]here is no doubt that Google qualifies as an “interactive
16 computer service.”); Gonzalez v. Google, Inc., No. 16-cv-03282-DM, 2017 WL 4773366, at *9
17 (N.D. Cal. Oct. 23, 2017) (finding that Google is a provider of an interactive computer service).

18 Second, Datalink—not Google—“provides” the information at issue. Google crawls third-
19 party websites and adds them to its index. Compl. ¶¶ 14–16. When a user queries Google’s search
20 engine, Google responds with links to relevant websites and short snippets of their contents. Id.
21 Google’s search engine helps users discover and access content on third-party websites, but it does
22 not “provide” that content within the meaning of Section 230. See O’Kroley, 831 F.3d at 355
23 (holding that Google cannot be liable “for merely providing access to, and reproducing, the
24 allegedly defamatory text” in the form of links and snippets in search engine results).

25 Third, the Canadian order would hold Google liable as the “publisher or speaker” of the
26 information on Datalink’s websites. The Supreme Court of Canada ordered Google to “de-index
27

1 the Datalink websites” from its global search results because, in the Court’s view, Google is “the
2 determinative player in allowing the harm to occur” to Equustek. Compl. Ex. B ¶¶ 49, 53. The
3 Ninth Circuit has held that, regardless of the underlying cause of action, a claim treats an
4 intermediary as a publisher when it requires the intermediary to remove third-party content.
5 Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1103 (9th Cir. 2009). The Barnes panel held that
6 “removing content is something publishers do, and to impose liability on the basis of such conduct
7 necessarily involves treating the liable party as a publisher of the content it failed to remove.” Id.
8 at 1103. The Canadian order treats Google as a publisher because the order would impose liability
9 for failing to remove third-party content from its search results.

10 Google meets the requirements for Section 230 immunity. As such, the Court finds that
11 Google is likely to prevail on the merits of its Section 230 argument.²

12 **B. Irreparable Harm, Balance of the Equities, and the Public Interest**

13 Google is harmed because the Canadian order restricts activity that Section 230 protects. In
14 addition, the balance of equities favors Google because the injunction would deprive it of the
15 benefits of U.S. federal law. See, e.g., Arizona Dream Act Coal. v. Brewer, 757 F.3d 1053, 1069
16 (9th Cir. 2014) (“[I]t is clear that it would not be equitable or in the public’s interest to allow the
17 state . . . to violate the requirements of federal law, especially when there are no adequate remedies
18 available.”) (quoting Valle del Sol Inc. v. Whiting, 732 F.3d 1006, 1029 (9th Cir. 2013)).

19 An injunction would also serve the public interest. Congress recognized that free speech on
20 the internet would be severely restricted if websites were to face tort liability for hosting user-
21 generated content. See Zeran, 129 F.3d at 330. It responded by enacting Section 230, which grants
22 broad immunity to online intermediaries. See, e.g., Batzel v. Smith, 333 F.3d 1018, 1027 (9th Cir.
23 2003) (“Congress wanted to encourage the unfettered and unregulated development of free speech
24 on the Internet.”); 47 U.S.C. § 230(a)(3), (b)(2), (b)(3) (“The Internet and other interactive
25

26 ² Since Google is likely to prevail on the merits of its Section 230 claim, it is unnecessary to
27 address Google’s arguments based on the First Amendment and international comity.

1 computer services offer a forum for a true diversity of political discourse, unique opportunities for
2 cultural development, and myriad avenues for intellectual activity . . . It is the policy of the United
3 States . . . to promote the continued development of the Internet and other interactive computer
4 services and other interactive media [and] to preserve the vibrant and competitive free market that
5 presently exists for the Internet and other interactive computer services, unfettered by Federal or
6 State regulation.”).


7 The Canadian order would eliminate Section 230 immunity for service providers that link
8 to third-party websites. By forcing intermediaries to remove links to third-party material, the
9 Canadian order undermines the policy goals of Section 230 and threatens free speech on the global
10 internet.

11 **IV. CONCLUSION**

12 Google’s motion for preliminary injunctive relief is GRANTED.

13
14 **IT IS SO ORDERED.**

15 Dated: November 2, 2017

16 
17 _____
18 EDWARD J. DAVILA
19 United States District Judge
20
21
22
23
24
25
26
27