



FIFTH JUDICIAL DISTRICT

COUNTY OF CLACKAMAS
COUNTY COURTHOUSE, OREGON CITY, OREGON 97045

September 30, 2008

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RE: Doe v. TS *et al*
Case No: CV08030693
Plaintiff's Motion to Compel Production of Information Identifying the Author of
Anonymous Blog Comment

Dear Counsel:

Thank you for your excellent presentations before me on Monday, September 29, 2008.

In the present action, plaintiff has brought a motion to compel the production of information helpful to identify the authors of anonymous web blog comments. Web host Willamette Week's response argued that the information sought was protected from compelled disclosure by Oregon's 'Media Shield Law', ORS 44.510 *et seq.* Web host Portland Mercury argued that the information sought was protected by Oregon's Media Shield Law and the First Amendment of the U.S. Constitution. In his Motion to Compel, plaintiff argued that (1) the Communications Decency Act does not preclude discovery, (2) Oregon's Media Shield Law does not apply to the information sought, and (3) reporter's privilege does not bar discovery. Since there appears to be no disagreement regarding the nondispositive nature of the CDA to the present controversy this argument will not be addressed.

The core questions is, then, whether Oregon's Media Shield Law governs the present controversy. Both the Portland Mercury and the Willamette Week fall within the purview of ORS 44.520 (1) in that they are "***person(s) connected with, employed by or in engaged in any medium of communication to the public***".

A related question is whether the discovery sought is protected under ORS 44.510. The first prong of ORS 44.510 (1) protects information defined as follows:

“Information has its ordinary meaning and includes, but is not limited to, any written, oral pictorial, or electronically recorded news or other data”.

The e-mail addresses and IP address of the blog comment posters are information both within the ordinary meaning of “information” and also are “electronically recorded. . . data” which is specifically referenced in the statutory definition.

ORS 44.520 (1)(a) protects:

“The source of any published or unpublished information obtained by the person in the course of gathering, receiving, or processing information for any medium of communication to the public”.

Plaintiff’s Motion to Compel seeks unpublished information that was obtained for a medium of communication to the public. While plaintiff does not tie his argument to this particular statutory language, it would appear that plaintiff’s position is that the language “in the course of gathering, receiving, or processing information for a medium of communication to the public” is synonymous with ‘in the course of gathering news’.

The statutory language, however, deliberately protects not only news but also “data” and what is commonly understood as information. It would seem clear that Oregon’s Media Shield Law is intended to have a wider scope than “news gathering”. The posting on the Portland Mercury Website titled “Busy Day at City Hall, Part 2” discussed actions taken by Sho Dozono to qualify for public financing in his run for mayor of the City of Portland. The Portland Mercury invited readers to comment on the blog post. An anonymous reader calling himself “Ronald” responded with a comment related to Mr. Dozono’s candidacy which was allegedly defamatory of plaintiff. If the comment had been totally unrelated to the blog post, then the argument could be made that the Portland Mercury did not receive it in the “course of gathering, receiving, or processing information for any medium of communication to the public”.

The Oregon Media Shield Law is broadly written and it is intended to protect a broad range of media activity, not simply news gathering. This court feels compelled to follow the broad statutory language in regard to plaintiff’s motion to compel and therefore denies plaintiff’s motion to compel.

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The court requests that attorney Kevin Kono prepare and submit, within ten days of the date of this letter, an order reflecting the court's ruling.

Very truly yours,



James E. Redman
Clackamas County Circuit Court Judge, Pro Tem

JER/jk