

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LANDIS+GYR TECHNOLOGY, INC., a
Delaware corporation, SENSUS USA INC.,
a Delaware corporation, and TRILLIANT
NETWORKS, INC., a Delaware
corporation,

Plaintiffs,

v.

CITY OF SEATTLE, a Washington
municipal corporation, SEATTLE CITY
LIGHT, a department of the City of Seattle,
PHIL MOCEK, an individual, and
MUCKROCK.COM, a website registered to
MICHAEL MORISY, an individual,

Defendants.

No. 16-2-12149-7 SEA

REQUEST OF MUCKROCK.COM AND
MORISY TO DISSOLVE TEMPORARY
RESTRAINING ORDER AND
OPPOSITION TO PLAINTIFFS' REQUEST
FOR A PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR:

June 3, 2016

INTRODUCTION AND RELIEF REQUESTED

This Court must dissolve the Temporary Restraining Order, which requires the removal of lawfully obtained material that was publicly available to the world for more than a month, because it violates MuckRock's free speech rights under both the Washington and U.S. Constitutions. The Preliminary Injunction must be denied for the same reason. Each order is a prior restraint on speech, and prior restraints are categorically prohibited under the Washington Constitution. Even if the orders were not prior restraints, MuckRock would face no liability because it has a near absolute right to publish information pertaining to a matter of public interest that it lawfully obtained.

1 And independent of the constitutional concerns, MuckRock is immune from suit in this
2 case pursuant to federal law granting Internet intermediaries such protections.

3 Whether the records at issue were ever trade secrets or were improperly released by
4 Seattle City Light is irrelevant to this motion. It is undisputed that the records were in fact
5 released, that the requestor obtained them lawfully from the agency, and that they were published
6 on the Internet and available for the world to read and download for more than a month before
7 Plaintiffs even requested that they be taken down. This is sufficient to warrant denial of
8 Plaintiffs' request for a preliminary injunction and to dissolve the Temporary Restraining Order.

9 STATEMENT OF FACTS

10 **MuckRock is a news site and public records request platform**

11 MuckRock is a nonprofit collaborative news site, public records archive, and online
12 service that provides journalists, researchers, and the general public the ability to request and
13 access hundreds of thousands of government documents. Declaration of Michael Morisy
14 (“Morisy Decl.”) ¶¶ 1-2. Through its services, MuckRock aims to make politics more transparent
15 and democracies more informed.¹ *Id.*

16 MuckRock offers online tools to facilitate requesting and tracking state and federal public
17 records requests. *Id.* at ¶¶ 2-3. MuckRock provides users with a unique email address for each
18 request they file. *Id.* at ¶¶ 3. When agencies respond to the unique MuckRock email address
19 provided to the requester, the correspondence and any documents are automatically uploaded to
20 MuckRock's website and made public, enabling users to track their requests and all the
21 documents they have received. *Id.* at ¶¶ 4-5. MuckRock also provides its users with helpful
22 information on how to file a request and hosts a forum where users can help each other with their
23 public records requests. *Id.* at ¶ 7.

24 MuckRock has no control over the requests users file or the documents they receive.

25 ¹ The site and its features have received extensive media coverage. *See, e.g.*, Joseph Lichterman, “FOIA site
26 MuckRock launches new efforts to let users track projects and contribute to reporting costs,” Nieman Lab, Sept. 3,
27 2015 (available at < <http://www.niemanlab.org/2015/09/foia-site-muckrock-launches-new-efforts-to-let-users-track-projects-and-contribute-to-reporting-costs/>>).

1 MuckRock generally supports its users' goals to make government more transparent. However,
2 MuckRock has no interest in any of its users' requests or documents they may receive. *Id.* at ¶ 6

3 MuckRock also supports investigatory journalism, academic research, and activism.
4 Because the documents requested by MuckRock's users are public and searchable, journalists
5 and other users of the site can comb through the site's archives to identify newsworthy stories or
6 unearth new areas of research. Journalists also publish reports on MuckRock daily that are based
7 on the public documents they obtained via MuckRock. *Id.* at ¶ 8.

8 **Phil Mocek's request to Seattle City Light**

9 On April 12, 2016, Phil Mocek used MuckRock's platform to file a public records
10 request with the City of Seattle and Seattle City Light. *Id.* at ¶ 9. The request sought:

11 Plans for, schedules of, policies dictating the performance of, requests for
12 proposals to, contracts for, discussion of, and results of all security audits
13 performed of "smart meter" devices (remotely-addressable electrical meters
14 sometimes referred to as "advanced metering infrastructure"), along with
15 metadata. These devices are designed to replace traditional electric meters. They
16 contain sensors that monitor activities inside subscribers' premises and
17 automatically communicate information collected by those sensors to machines in
18 remote locations.

19 On April 19, 2016, Seattle City Light responded to Mocek's request and provided him with the
20 two documents that are the subject of this Court's TRO.² *Id.* at ¶ 10. As explained above,
21 MuckRock automatically posts all correspondence between a requester and the government
22 along with any documents received. The two documents Seattle City Light produced to Mocek
23 were thus automatically made public on MuckRock's website on April 19. *Id.* at ¶ 11.

24 **Plaintiff's demand letter and TRO**

25 On May 16, 2016, MuckRock received a letter on behalf of Plaintiff Landis+Gyr
26 Technology, Inc. *Id.* at ¶ 12. The letter demanded that MuckRock remove the two documents
27 that were posted to its site on April 19 and also demanded that MuckRock identify any of its
users or visitors who may have viewed or downloaded the two documents. *Id.* at ¶ 13.

² Correspondence between Mocek and Seattle is available at <https://www.muckrock.com/foi/seattle-69/smart-meter-security-audit-plans-schedules-proposals-contracts-discussion-results-seattle-10378/#comms>.

1 On May 17, Michael Morisy, on behalf of MuckRock, responded to Plaintiff’s demand
2 letter and stated that the documents were lawfully and automatically posted to MuckRock’s
3 website after they were released by Seattle City Light. *Id.* at ¶ 15. Morisy offered Plaintiff the
4 opportunity to provide redacted versions of the documents and further offered to consider
5 replacing the previously released documents with redacted versions. *Id.* at ¶ 16. Morisy also
6 indicated that MuckRock valued its users’ privacy and would not voluntarily provide information
7 about anyone who may have viewed the documents since they had been made public. *Id.* at ¶ 15.

8 On May 25, 2016, Plaintiff alerted MuckRock that it obtained the TRO. *Id.* at ¶ 17.
9 MuckRock removed the two documents by May 27. *Id.* at ¶ 18. The two documents remain de-
10 published from MuckRock’s website and MuckRock has at all times complied with this Court’s
11 order. *Id.* at ¶ 19. On May 31, Seattle City Light released a redacted version of one of the
12 documents, which was then automatically published on MuckRock. *Id.* at ¶ 20.

13 STATEMENT OF ISSUES

14 1. Whether the issued TRO and the injunctive relief sought violates the First
15 Amendment to the Washington and United States Constitutions.

16 2. Whether MuckRock’s immunity under Section 230 or fair reporting privilege bars
17 Plaintiff’s request for injunctive relief.

18 EVIDENCE RELIED UPON

19 MuckRock relies on the declaration of Michael Morisy, and the pleadings already on file.

20 AUTHORITY

21 I. THE TRO AND PRELIMINARY INJUNCTION ARE UNCONSTITUTIONAL 22 PRIOR RESTRAINTS

23 A. THE TRO/PI ARE PRIOR RESTRAINTS

24 The TRO/PI are prior restraints because they bar the publication of speech. They require
25 MuckRock and Mocek “to remove the documents identified in Plaintiff Landis & Gyr’s letter of
26 May 16, 2016, from their website.” They further prohibit them “from sharing those documents or
27 any information contained therein with any individual or entity” and “posting the documents on

1 any website or sharing them in any other forum.”

2 “Simply stated, a prior restraint prohibits future speech.” *Soundgarden v. Eikenberry*, 123
3 Wn.2d 750, 764 (1994). Any law, or administrative or judicial order “forbidding certain
4 communications when issued in advance of the time that such communications are to occur,” in
5 contrast to orders imposing liability after publication, is a prior restraint. *In re Marriage of*
6 *Suggs*, 152 Wn.2d 74, 81 (2004) (quoting *Alexander v. United States*, 509 U.S. 544, 550 (1993)).
7 *See also City of Seattle v. Bittner*, 81 Wn.2d 747, 756 (1973) (defining prior restraints as “official
8 restrictions imposed upon speech or other forms of expression in advance of actual publication”).

9 Temporary restraining orders and preliminary injunctions that impede speech, whether by
10 preventing publication or requiring de-publication, are “classic examples of prior restraints.”
11 *Alexander*, 509 U.S. at 550 (staying a state court’s preliminary injunction because it was a prior
12 restraint); *Marriage of Suggs*, 152 Wn.2d at 81. *See also Org. for a Better Austin v. Keefe*, 402
13 U.S. 415, 418 (1971) (invalidating temporary injunction against distribution of pamphlets as a
14 prior restraint); *Suntrust Bank v. Houghton Mifflin Co.*, 252 F.3d 1165, 1166 (11th Cir. 2001)
15 (holding that a preliminary injunction preventing publication of book by copyright infringement
16 defendant was “an unlawful prior restraint in violation of First Amendment”).

17 **B. A TRO/PI AGAINST A THIRD-PARTY PUBLISHER WHO OBTAINED A**
18 **PURPORTED TRADE SECRET LEGALLY AND OWES NO DUTY OF**
19 **NONDISCLOSURE IS A PRIOR RESTRAINT**

20 The TRO/PI at issue here is a prior restraint despite Plaintiff’s trade secret allegations.
21 Courts around the country have found that temporary restraining orders and preliminary
22 injunctions against third parties who lawfully obtain putative trade secrets and who have no
23 contractual or other duty against disclosure are prior restraints. *See CBS, Inc. v. Davis*, 510 U.S.
24 1315, 1318 (1994) (Blackmun, Circuit Justice); *Proctor & Gamble Co. v. Bankers Trust Co.*, 78
25 F.3d 219, 225 (6th Cir. 1996); *State ex. rel. Sports Mgmt. News, Inc. v. Nachtigal*, 921 P.2d
26 1304, 1305 (Or. 1996); *Religious Tech. Ctr. v. Lerma*, 908 F. Supp. 1362, 1368-69 (E.D. Va.
27 1995); *Garth v. Staktek Corp.*, 876 S.W.2d 545, 550 (Tex. Ct. App. 1994); *VI 4D, LLLP v.*

1 *Crucians In Focus*, 57 V.I. 143, 153-60 & n.18 (V.I. Super. 2012); *Rain CII Carbon, LLC v.*
2 *Kurczy*, 2012 WL 3577534, *3 (E.D. La. 2012). *See also Ford Motor Co. v. Lane*, 67 F. Supp. 2d
3 745, 750 (E.D. Mich. 1999) (applying the prior restraint doctrine even though the defendant
4 likely misappropriated the trade secrets at issue).³

5 Indeed, the TRO/PI here present an even stronger case for the application of the prior
6 restraint doctrine because the documents were produced by a governmental agency responding to
7 a public records request. In each of the other cases, except for *Lerma*, the third party targeted by
8 the injunction obtained the records from a non-governmental source who may have violated
9 some contractual or fiduciary duty in transmitting the trade secrets. *See, e.g., CBS*, 510 U.S. at
10 1318 (employee secretly videotaped workplace); *Proctor & Gamble*, 78 F.3d at 222 (documents
11 leaked from sealed court file in violation of protective order). In *Lerma*, 897 F. Supp. at 1364,
12 the reporter obtained the documents at issue from an unsealed court file that the plaintiff had
13 attempted to protect by having supporters continuously check out. But the reporter, who
14 previously published an allegedly stolen version of the same document, was aware that the
15 document included trade secrets. *Id.*

16 The Washington Supreme Court has not considered the interaction of prior restraints and
17 trade secrets, but has made it clear that any order that bars the publication of speech that is
18 “lawfully obtained, true, and a matter of public record” is a prior restraint. *See Coe*, 101 Wn.2d
19 at 375.⁴ Moreover, free speech is a “‘preferred right’ when balanced against other constitutional
20 rights.” *Coe*, 101 Wn.2d at 375 (citing *Alderwood Assocs. v. Washington Env'tl. Coun.*, 96 Wn.2d
21 230 (1981)). This Court should thus apply the prior restraint doctrine to the TRO/PI presented.

22 C. PRIOR RESTRAINTS ARE CATEGORICALLY UNCONSTITUTIONAL

23
24 ³ The California Supreme Court declined to apply the prior restraint doctrine in a situation where it believed the
25 party restrained should have known that the trade secrets he obtained were trade secrets and the trade secrets did not
26 pertain to a matter of public interest. *DVD Copy Control Ass'n v. Bunner*, 31 Cal. 4th 864, 883-85, 75 P.3d 1 (Cal.
27 2003). The court nevertheless applied demanding First Amendment scrutiny, as discussed below.

⁴ In *Coe*, the order barred KHQ journalists from releasing tape recordings of a criminal defendant. *Id.* at 374. The
state prosecutors had given KHQ the copies in response to the journalists' request, and KHQ only broadcast the
recordings after they were aired in open court. *Id.* at 355.

UNDER THE WASHINGTON CONSTITUTION

1
2 The TRO/PI are prior restraints and as such are categorically prohibited by the
3 Washington Constitution. “The Washington Constitution absolutely forbids prior restraints
4 against the publication or broadcast of constitutionally protected speech.”⁵ *Coe*, 101 Wn.2d 364,
5 375 (1984) (citing Article 1, section 5). Prior restraints on constitutionally protected speech are
6 thus “categorically rule[d] out . . . under any circumstances.” *O’Day v. King Cty.*, 109 Wn.2d
7 796, 804 (1988). This state constitutional standard is even stronger than the federal standard
8 under the First Amendment. *Catsiff v. McCarty*, 167 Wn. App. 698, 711 (2012) (“a prior restraint
9 is unconstitutional per se under article I, section 5”).

10 The TRO must thus be dissolved and the preliminary injunction denied under the
11 Washington Constitution.

12 **D. THE TRO/PI ALSO FAIL FIRST AMENDMENT PRIOR RESTRAINT** 13 **SCRUTINY**

14 Even if the Washington Constitution did not bar the TRO/PI, neither can survive First
15 Amendment scrutiny. Prior restraints are “the most serious and least tolerable infringement on
16 First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). *See also*
17 *New York Times*, 403 U.S. at 719 (Black, J. concurring) (“No one can read the history of the
18 adoption of the First Amendment without being convinced beyond any doubt that it was
19 injunctions [infringing freedom of the press] that Madison and his collaborators intended to
20 outlaw in this Nation for all time.”); *In re Providence Journal Co.*, 820 F.2d 1342, 1349 (1st
21 Cir. 1986) (temporary restraining order against publication of documents allegedly wrongly
22 obtained from the government was an invalid prior restraint). Even for temporary orders, when
23 “a direct prior restraint is imposed upon the reporting of news by the media, each passing day
24 may constitute a separate and cognizable infringement of the First Amendment.” *Nebraska Press*

25 ⁵ “Constitutionally protected speech,” as used here, refers to the categories of unprotected speech specified by the
26 U.S. Supreme Court in cases such as *United States v. Stevens*, 559 U.S. 460, 468-69 (2010). *See JJR Inc. v. City of*
27 *Seattle*, 126 Wn.2d 1, 11 (1995); *Marriage of Suggs*, 152 Wn.2d at 81 (Prior restraints are permissible only in
“exceptional cases such as war, obscenity, and ‘incitements to acts of violence and the overthrow by force of orderly
government.’”). Trade secrets are not a category of unprotected speech.

1 *Ass'n. v. Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, Circuit Justice, in chambers).

2 Although it does not impose a categorical bar, the First Amendment renders prior
3 restraints exceedingly rare, issued only when they are *necessary* to further a governmental
4 interest of the highest magnitude. *See Nebraska Press*, 427 U.S. at 562. A prior restraint will be
5 deemed necessary *only if*: (1) the harm to the governmental interest will definitely occur; (2) the
6 harm will be irreparable; (3) no alternative exists for preventing the harm; and (4) the prior
7 restraint will in fact prevent the harm. *See id.* at 562; *id.* at 571 (Powell, J., concurring). *See also*
8 *New York Times*, 403 U.S. at 730 (Stewart, J., concurring) (explaining that the order barring
9 temporarily publication of the *Pentagon Papers* was an unconstitutional prior restraint because
10 government failed to show the publication would clearly result in direct, immediate, and
11 irreparable harm to the nation). Even in cases concerning questions of allegedly urgent national
12 security, *see New York Times*, 403 U.S. at 714, or competing constitutional interests, *see*
13 *Nebraska Press*, 427 U.S. at 559, the Supreme Court has declined to impose this “most
14 extraordinary remed[y]’ because of a lack of proof that “the evil that would result from the
15 reportage is both great and certain and cannot be mitigated by less intrusive measures.” *CBS*, 510
16 U.S. at 1317. Indeed, the Supreme Court has never upheld a prior restraint on the publication of
17 news. *Providence Journal*, 820 F.2d at 1348-49.

18 This federal test cannot be met where, as here, the asserted trade secrets have been
19 publicly available on the Internet for more than a month. As a result, the prior restraint will not
20 prevent the harm. Thus in *Nebraska Press*, the Supreme Court dissolved a temporary injunction
21 against the publication of a confession because the fact of the confession was publicly known.
22 427 U.S. at 565-66. Moreover, “economic harm is insufficient in itself to justify a prior restraint,
23 especially when based on speculative predictions.” *Rain CII Carbon*, 2012 WL 3577534 at *4.

24 **II. THE TRO/PI VIOLATE THE FIRST AMENDMENT EVEN IF THEY WERE
25 NOT PRIOR RESTRAINTS**

26 **A. PUBLISHERS HAVE A NEAR ABSOLUTE RIGHT TO PUBLISH
27 INFORMATION LEGALLY OBTAINED THAT PERTAINS TO A
MATTER OF PUBLIC INTEREST**

1 The U.S. Supreme Court has repeatedly held that First Amendment gives people a near
2 absolute right to publish truthful information about matters of public interest that they lawfully
3 acquire. *See Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979) (striking down law
4 prohibiting newspapers from publishing juvenile offender names without court permission). The
5 “*Daily Mail* rule” has special force when the information at issue was obtained from the
6 government, even if the governmental official erred in producing it. *See The Florida Star v.*
7 *B.J.F.*, 491 U.S. 524, 525 (1989) (reporter obtained victim’s name from police report placed in
8 pressroom); *Daily Mail*, 443 U.S. at 98 (reporters learned juvenile suspect’s name by asking
9 police and a prosecutor at the crime scene); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975)
10 (reporter learned victim’s name by reviewing indictments made available in the courtroom).

11 The *Daily Mail* rule has been applied to a wide variety of information in which there
12 were significant governmental interests in keeping the information confidential. In *Daily Mail*
13 itself, the Court protected the publication of the name of a juvenile defendant despite the fact that
14 state law deemed such information confidential. 443 U.S. at 104. *See also Oklahoma Publ'g Co.*
15 *v. Dist. Court*, 430 U.S. 308, 311-12 (1977) (same). The *Daily Mail* rule has similarly protected
16 the publication of other information deemed confidential by law, including information regarding
17 judicial disciplinary proceedings, *see Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839
18 (1978), and the name of a sexual assault victim, as in *Florida Star*, 491 U.S. at 537-38 (1989),
19 and *Cox Broad.*, 420 U.S. at 495.

20 The rule has been applied to both criminal and civil penalties against publication. *See*
21 *Bartnicki*, 532 U.S. at 521 & n.3 (both); *Florida Star*, 491 U.S. at 526 (civil); *Landmark*
22 *Commc'ns*, 435 U.S. at 830 (criminal); *Daily Mail*, 443 U.S. at 99 (criminal); *Cox Broad.*, 420
23 U.S. at 471 (civil). The rule has also been applied to judicial orders enjoining publication, thus
24 overlapping with the prior restraint doctrine. *See Oklahoma Publ'g*, 430 U.S. at 308. Most
25 recently, in *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001), the Supreme Court affirmed that the
26 *Daily Mail* rule applies even if a re-publisher of information knew that its source obtained the
27

1 information illegally.

2 The upshot of this well-established body of law is that, subject to exceptions not
3 applicable here, the First Amendment does not permit courts to treat information relating to
4 matters of public concern as contraband that cannot be published by anyone. Liability for, or
5 restrictions on, publication can only be imposed on those who took part in the unlawful activity.
6 MuckRock took no part in any unlawful activity when it posted the documents at issue here, and
7 thus it has a First Amendment right to publish them.

8 **B. THE TRO/PI FAIL FIRST AMENDMENT INJUNCTION SCRUTINY**

9 Independent of these other First Amendment protections, any injunction against speech
10 must satisfy “injunction scrutiny,” as set forth in *Madsen v. Women’s Health Ctr.*, 512 U.S. 753,
11 762-764 (1994). *See DVD Copy Control Ass’n*, 31 Cal. 4th at 880-85 (applying *Madsen* to a
12 trade secret injunction where the party enjoined should have known that the computer code he
13 published was protected trade secrets). In order to justify the TRO and PI, Plaintiffs must prove
14 that “the challenged provisions of the injunction burden no more speech than necessary to serve
15 a significant government interest.” *Madsen*, 512 U.S. at 765.

16 Plaintiffs cannot carry that burden here. As discussed above, the governmental interests
17 here are sharply diminished for two reasons: (1) the document containing the purported trade
18 secrets was an official release by a governmental agency; and (2) the document was published on
19 the Internet for a month before Plaintiffs even requested its removal, and was available for the
20 world to read and download. And even if Plaintiffs can prove that their purported trade secrets
21 deserve to be protected, they cannot prove that the entirety of both documents must be censored.
22 *Madsen* requires that “no more speech than necessary” be enjoined; thus at most only those
23 portions of the documents that are proved to be trade secrets are properly barred from
24 publication.

25 **III. MUCKROCK IS IMMUNE FROM SUIT PURSUANT TO SECTION 230**

26 This Court must dissolve the TRO and deny the preliminary injunction because
27

1 MuckRock is immune from suit pursuant to 47 U.S.C. § 230, a provision of the Communications
2 Decency Act of 1996 (“Section 230”). Plaintiffs will thus not be able to demonstrate a likelihood
3 of success on the merits independent of the constitutional concerns discussed above.

4 Section 230 provides immunity for Internet intermediaries, like MuckRock, that are sued
5 for providing a platform for content provided by their users. Section 230 provides that “[n]o
6 provider or user of an interactive computer service shall be treated as the publisher or speaker of
7 any information provided by another information content provider.” 47 U.S.C. § 230(c)(1).⁶
8 “Under the CDA, an ‘information content provider’⁷ may be subject to state law liability in
9 relation to content that it develops but an ‘interactive computer service’ is immune from suit for
10 state law claims in relation to merely hosting such content on a website.” *J.S. v. Village Voice*
11 *Media Holdings LLC*, 184 Wn.2d 95, 101 (2015) (quoting *Carafano v. Metrosplash.com, Inc.*,
12 339 F.3d 1119, 1123 (9th Cir. 2003)) (footnote in original; other footnotes omitted).

13 Importantly, Section 230 provides immunity from suit, not just liability: “No cause of
14 action may be brought and no liability may be imposed under any State or local law that is
15 inconsistent with this section.” 47 U.S.C. § 230(e)(3). MuckRock thus is not a proper defendant.

16 Section 230’s limited exception for “intellectual property” claims, 47 U.S.C. § 230(e)(2),
17 does not apply to state law intellectual property claims, including the trade secret claims at issue
18 here. The Ninth Circuit has construed Section 230’s intellectual property exception to be limited
19 to well-established federal intellectual property claims, such as copyright and patents. *Perfect 10,*
20 *Inc. v. CCBill LLC*, 488 F.3d 1102, 1119 (9th Cir. 2007). Thus, even if a state trade secret claim
21 were considered an intellectual property claim—which it should not be—Section 230 would
22 nevertheless bar it. *See Stevo Design, Inc. v. SBR Mktg.*, 919 F. Supp. 2d 1112, 1125 (D. Nev.

23
24 ⁶ MuckRock is plainly a provider of an “interactive computer service” under Section 230(c)(1). An “interactive
25 computer service” is “any information service, system, or access software provider that provides or enables
26 computer access by multiple users to a computer server, including specifically a service or system that provides
27 access to the Internet and such systems operated or services offered by libraries or educational institutions.” 47
U.S.C. § 230(f)(2).

⁷ An “information content provider” is “any person or entity that is responsible, in whole or in part, for the
creation or development of information provided through the Internet or any other interactive computer service.” 47
U.S.C. § 230(f)(3).

1 2013) (Section 230 gave website immunity from state law trade secrets claims).

2 **IV. PLAINTIFF CANNOT SHOW A LIKELIHOOD OF SUCCESS AND**
3 **OVERCOME MUCKROCK'S FAIR REPORT PRIVILEGE**

4 Additionally and independently of the preceding arguments, MuckRock can bear no
5 liability for accurately republishing documents produced by the government in response to a
6 public records request, pursuant to the fair reporting privilege. This privilege shields publishers
7 from liability when the publisher attributes a statement to an official record and the report is an
8 accurate and substantially complete reproduction of the record. *Clapp v. Olympic View Publ'g*
9 *Co.*, 137 Wn. App. 470, 476-77 (2007). Washington courts have applied the privilege to a broad
10 range of public records and statements by public officials. *See, e.g., Herron v. Tribune Publ'g*
11 *Co.*, 108 Wn.2d 162, 179 (1987) (recall petition); *Haueter v. Cowles Publ'g Co.*, 61 Wn. App.
12 572, 586-87 (1991) (statement by Attorney General).

13 The privilege clearly applies to MuckRock's republication of the two documents in this
14 case and shields MuckRock from any liability that results from their publication. MuckRock
15 published exact copies of the documents released by Seattle City Light, and accurately attributed
16 the agency as the source of the documents.

17 **CONCLUSION**

18 For the reasons set forth above, the Temporary Restraining Order must be dissolved and
19 the Preliminary Injunction sought by Plaintiffs denied.

20 DATED: June 1, 2016

Respectfully submitted,

21 ELECTRONIC FRONTIER FOUNDATION

22 By: *s/ David Greene*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify under penalty of perjury under the laws of the State of Washington that I
3 caused a true and correct copy of the foregoing to be served upon the following person(s) in the
4 manner indicated:

5

6 Eric Lee Christensen CAIRNCROSS & HEMPELMANN, P.S. 524 Second Avenue, Suite 500 Seattle, WA 98104-2323 7 8 <i>Counsel for Plaintiffs</i>	<input checked="" type="checkbox"/> E-Service, via the E-Filing System <input checked="" type="checkbox"/> Email, by Agreement of the Parties <input type="checkbox"/> First Class U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Federal Express
9 Jessica Nadelman 701 Fifth Avenue, Suite 2050 Seattle WA 98104-7097 10 11 <i>Counsel for Defendant City of Seattle/ 12 Seattle City Light</i>	<input checked="" type="checkbox"/> E-Service, via the E-Filing System <input checked="" type="checkbox"/> Email, by Agreement of the Parties <input type="checkbox"/> First Class U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Federal Express
13 Ambika Kumar Doran Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101 14 15 <i>Counsel for Defendant Phillip Mocek</i>	<input checked="" type="checkbox"/> E-Service, via the E-Filing System <input checked="" type="checkbox"/> Email, by Agreement of the Parties <input type="checkbox"/> First Class U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Federal Express

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19 DATED: June 1, 2016

s/ Venkat Balasubramani
Venkat Balasubramani, WSBA No. 28269