

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

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

PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT ISSUE

I. INTRODUCTION

Plaintiffs have made a compelling showing that their trade secrets, computer network security information, and detailed pricing information and plans are protected from release under the Uniform Trade Secrets Act ("UTSA"), RCW Chap. 19.108, and the Washington Public Records Act ("PRA), RCW Chap. 42.56. As Plaintiffs have demonstrated, information of this

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY PRELIMINARY INJUNCTION
SHOULD NOT ISSUE - 1

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1 type is discussed extensively in Plaintiffs' RFP Responses and other Documents, which total
2 roughly 3,000 pages. No party challenges the showing made by Plaintiffs with respect to this
3 information and a Preliminary Injunction should therefore issue to protect that information for
4 the duration of these proceedings.

5 Defendant MuckRock.com focuses on two documents (only one is now at issue) that
6 were prematurely released by the City of Seattle, arguing that the TRO issued in this case, which
7 was narrowly tailored to protect Plaintiffs' trade secrets, amounts to a prior restraint. This is
8 incorrect. It is well recognized that the courts are fully empowered to issue injunctions to protect
9 private information like the trade secrets at issue here, and as long as the injunction is content-
10 neutral and narrowly tailored, it does not run afoul of the First Amendment. MuckRock.com is
11 also incorrect in its claim that it is free to publish trade secrets without consequence under
12 Section 230 of the Communications Decency Act ("CDA"). On the contrary, Section 230's
13 immunity does not extend to publishing information that violates intellectual property rights and
14 trade secrets are now recognized as federal intellectual property rights with Congress's recent
15 adoption of the Defense of Trade Secrets Act ("DTSA"). Furthermore, the fair reporting
16 privilege is inapplicable in this matter and does not shield MuckRock.com from suit. In any
17 event, MuckRock.com offers no reason why the remainder of the information identified by
18 Plaintiffs should not be protected by a Preliminary Injunction.

19 Only the City challenges Plaintiffs' claim that the names and individually-identifiable
20 information should not be released publicly. But no party challenges Plaintiffs' claims that this
21 information is protected as a trade secret and it should be protected under this independent
22 ground. In any event, the City's crabbed interpretation of the PRA is incorrect because the PRA
23 plainly authorizes the Court to grant injunctive relief to "any person" to prevent the kind of
24 harassment that is likely to occur if this information is released now.

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II. ARGUMENT

A. Requiring MuckRock.com To Remove Plaintiff's Trade Secrets From Its Website Is Not a Prior Restraint.

1. Factual Background.

As soon as Plaintiff Landis+Gyr discovered that two documents apparently revealing trade secret and critical computer security information had been posted on MuckRock.com's website without its knowledge or consent, and determined that the documents might compromise both its trade secrets and the security of its proprietary systems, it immediately notified MuckRock.com and Defendant Michael Morisy (the website's registered agent), on May 16, 2106, that the documents contained sensitive proprietary and trade secret information, requesting that they remove the documents so that Landis+Gyr could review and redact protected materials from the documents. *Declaration of Eric Lee Christensen In Support of Motion for Temporary Restraining Order* at ¶ 17, Exh. L ("*Christensen TRO Decl.*"). Defendants refused. *Id.* at ¶ 18, Exh. M.

Hence, Defendants knew from at least May 16 that they had published materials protected under the UTSA. Yet the materials were not removed from their website until May 27, two days after this Court issued the TRO requiring the documents to be taken down. MuckRock.com Motion at 4. For at least this period, Defendants knowingly posted Landis+Gyr's protected information on its publicly-accessible website, where Landis+Gyr's competitors, as well as hackers and saboteurs, had access to the information. In fact, internet traffic surrounding the disclosure reveals the danger caused by Defendants' refusal to remove the information. *See Second Supplemental Declaration of Eric Lee Christensen in Support of Motion for Preliminary Injunction*, ¶¶ 2, Exhs. A. ("I read all your secret information, you [expletives deleted]"), ¶ 4, Exh. C, p. 8 ("visit the link below to download disputed documents").

1 Thereafter, Landis+Gyr carefully reviewed the documents and determined that one did
2 not contain any protected information but that the second, entitled “Report on Landis+Gyr’s
3 Technology, Inc.’s Description of Its Managed Services Operations and on the Suitability of the
4 Design and Operating Effectiveness of Its Controls for the Period May 1, 2015 to October 31,
5 2015” (“Managed Services Report”), contained trade secret and protected network security
6 information. Accordingly, on May 27, 2016, Landis+Gyr delivered a redacted version of the
7 Managed Services Report, deleting only specific materials that provide detailed descriptions of
8 Landis+Gyr’s computer security and data center security operations. *Declaration of Eric Lee*
9 *Christensen in Support of Motion for Preliminary Injunction* ¶ 17, Ex. L. It is undisputed that
10 this material includes Landis+Gyr trade secrets. Although Defendant Morisy suggested that
11 MuckRock.com might be willing to republish the redacted version of the Managed Services
12 Report, we are not aware that either the redacted version of that document (or the unredacted
13 version of the second document, which Landis+Gyr has now concluded can be released to the
14 public in its entirety) have been published on MuckRock.com.

15 Defendants are therefore unquestionably guilty of misappropriating Landis+Gyr’s trade
16 secrets. The UTSA defines “misappropriation” to include “[d]isclosure . . . of a trade secret of
17 another without express implied consent” by a person who “knew or had reason to know” that
18 the information was a trade secret. RCW 19.108.010(2). It is undisputed that Defendants knew
19 at least as early as May 16 that Landis+Gyr’s documents contained trade secrets and that they
20 lacked consent to publish those documents, yet refused to take the documents down. The UTSA
21 therefore *requires* the Court to issue a preliminary injunction to protect Plaintiffs’ trade secrets.
22 RCW 19.108.050 provides that “a court shall preserve the secrecy of an alleged trade secret,”
23 including “ordering any person involved in the litigation not to disclose an alleged trade secret
24 without prior court approval.”

1 For the reasons we now demonstrate, Defendant MuckRock.com’s arguments that the
2 Court should ignore the UTSA’s requirements are without merit.

3 **2. Injunctive Relief To Protect Trade Secrets Is Not A Prior Restraint; A**
4 **Content-Neutral Injunction Is Appropriate If It Is No More Burdensome**
5 **Than Necessary To Provide Complete Relief To Plaintiffs.**

6 The prior restraint doctrine bars *only* content-based injunctions. *DVD Copy Control*
7 *Ass’n v. Bunner*, 31 Cal.4th 864, 4 Cal.Rptr.3d 69, 75 P.3d 1 (Cal. Sup. Ct. 2003). Accordingly,
8 the U.S. Supreme Court has concluded that *only* content-based injunctions are subject to prior
9 restraint analysis. *Thomas v. Chicago Park District*, 534 U.S. 316, 321-22 (2002) (licensing
10 scheme did not constitute prior restraint because “the scheme is not subject-matter censorship but
11 content-neutral time, place and manner regulation” of public forum); *see Planned Parenthood*
12 *Shasta-Diablo, Inc. v. Williams*, 7 Cal. 4th 860, 871, 30 Cal.Rptr.2d 629, 873 P.3d 1224 (1994)
13 (“A prior restraint is a *content-based restriction* on speech prior to its occurrence”).

14 If injunctive relief is content-neutral, the high standard applicable to prior restraints does
15 not apply. On the contrary, a content-neutral injunction such as that proposed here is permissible
16 if injunctive relief is “no more burdensome to the defendant than necessary to provide complete
17 relief to the plaintiffs” and “the injunction burden[s] no more speech than necessary to serve a
18 significant government interest.” *Madsen v. Women’s Health Center*, 512 U.S. 753, 765 (1994);
19 *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 374 n.6 (1997) (applying
20 same standard to preliminary injunction); *San Francisco Arts & Athletics, Inc. v. U.S. Olympic*
21 *Comm.*, 483 U.S. 522, 536-37 (1987) (“The appropriate inquiry is thus whether the incidental
22 restrictions on First Amendment freedoms are greater than necessary to further a substantial
23 government interest”).

24 As we now demonstrate, the relief requested by Plaintiffs is content-neutral, is carefully
25 tailored to provide complete relief to Plaintiffs, and burdens no more speech than is necessary to
26 serve the government’s interest in protecting property rights and promoting innovation through

1 protection of trade secrets. In short, “[t]he First Amendment does not prohibit courts from
2 incidentally enjoining speech in order to protect a legitimate property right.” *DVD Copy Control*
3 *Ass’n*, 75 P.3d at 14.

4 The Washington authorities cited by MuckRock.com are not to the contrary. Rather,
5 Washington takes the same approach, recognizing that restrictions on speech “are content neutral
6 if they do not regulate on the basis of viewpoint or classify speech in terms of subject matter”
7 and content-neutral restrictions are not unconstitutional as long as there is a “reasonable fit”
8 between the restriction and the government interest to be served. *Catsiff v. McCarty*, 167 Wn.
9 App. 698, 706, 274 P.3d 1063, 1067 (2012). The court will therefore uphold restrictions that are
10 “content neutral, reasonable, and supported by a legitimate regulatory interest” because these are
11 not prior restraints. *Id.*, 167 Wn.App. at 708, 711. See *Soundgarden v. Eikenberry*, 123 Wn.2d
12 750, 768, 871 P.2d 1050, 1060 (1994) (concluding that “State of Washington still has a strong
13 and legitimate interest in protecting minors,” and obscenity statute was overbroad in that it
14 regulated sales of music to adults); *State v. Coe*, 101 Wn.2d 364, 373, 679 P.2d 353, 359 (1984)
15 (“a regulation may not rise to the level of a prior restraint if it is merely a valid time, place or
16 manner restriction on the exercise of protected speech”).

17 **3. Injunctive Relief to Protect Trade Secrets Is Content-Neutral.**

18 In determining whether an injunction is content-based, “[t]he government’s purpose is the
19 controlling consideration,” and an injunction is content-based only if the injunction is issued
20 because of a “disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491
21 U.S. 781, 791 (1989). An injunction that “serves purposes unrelated to the content of expression
22 is deemed neutral, even if it has an incidental effect on some speakers or messages but not
23 others.” *Id.*

24 The injunction proposed here, which is aimed at protecting trade secrets, and not at
25 censoring the content of any speech, easily meets this standard. The injunction Plaintiffs seek
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1 here is content-neutral because it is aimed at maintaining “the secrecy of [Plaintiffs’] technology
2 and the competitive advantage it enjoyed from those efforts—and not because of the
3 communications’ subject matter or any disagreement with [Defendants’] message or viewpoint.”
4 *DVD Control Ass’n*, 75 P.3d at 11. That is, Plaintiffs seek a preliminary injunction to protect
5 their “statutorily created property interest in information—and not to suppress the content of
6 [Defendants’] communications. Because the injunction is justified without reference to the
7 content of [Defendant’s] communications, it is content neutral.” *Id.*

8 This is true notwithstanding the fact that Plaintiffs seek a preliminary injunction to
9 prevent release of specifically-identified information. Because the injunction seeks to remedy
10 the “specific deprivation” of “the misappropriation of a property interest in *information*,” *id.*, we
11 propose an injunction that prevents release of the specific trade secret information identified by
12 Plaintiffs in the Managed Service Report. Notwithstanding that the injunction applies to this
13 specific information, it “remains content neutral so long as it services significant governmental
14 purposes unrelated to the content of the proprietary information.” *Id.*

15 **4. A Preliminary Injunction Would Promote Important Government Interests.**

16 Trade secrecy protection promotes multiple governmental purposes. “Trade secret law
17 promotes the sharing of knowledge, and the efficient operation of industry; it permits the
18 individual inventor to reap the rewards of his labor by contracting with a company large enough
19 to develop and exploit it.” *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 493 (1974). Trade
20 secret law promotes innovation and discovery. *Id.* at 493. Without trade secret protection,
21 “organized scientific and technological research could become fragmented, and society, as a
22 whole, would suffer.” *Id.* at 486. Further, by preventing the misappropriation of another’s
23 valuable proprietary information by improper means, trade secret law minimizes the “inevitable
24 cost to the basic decency of society when one . . . steals from another,” *id.* at 487, and promotes
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1 “good faith and fair dealing,” which are “the very life and spirit of the commercial world.” *Id.* at
2 481-82.

3 **5. The Preliminary Injunction Requested Here Is Carefully Tailored To Protect**
4 **Plaintiffs’ Trade Secrets While Minimizing The Burden On Defendants’**
5 **Expressive Rights.**

6 In this case, Plaintiff Landis+Gyr seeks to enjoin the release only of specifically
7 identified trade secret information, consisting of detailed information about its proprietary
8 computer and network security systems. In fact, Landis+Gyr has authorized the release of the
9 vast majority of the Managed Service Report, carefully redacting information that specifically
10 addresses its trade secrets. *See Supplemental Declaration of Eric Lee Christensen in Support of*
11 *Motion for Preliminary Injunction*, ¶ 7, Exh. D. Enjoining the re-release of this information is
12 “the *only* way to preserve the property interest created by trade secret law.” *DVD Copy Control*
13 *Ass’n*, 75 P.3d at 14. In these circumstances, any restrictions on Defendants’ speech are
14 “properly characterized as incidental” to the primary purposes of Washington’s UTSA, which
15 is to “promote and reward innovation and technological development and maintain commercial
16 ethics.” *Id.* (quoting *San Francisco Arts & Athletics, Inc.*, 483 U.S. at 536).

17 Indeed, the protection of trade secrets and its concomitant benefits “*depend[s]* on the
18 judiciary’s power to enjoin disclosures by those who know or have reason to know of their
19 misappropriation.” *Id.* at 14. Because the injunction proposed by Plaintiffs is narrowly tailored
20 to exclude only specific trade secret information from public view, there is “no less restrictive
21 way of protecting an owner’s constitutionally recognized property interest in its trade secrets,”
22 and “the preliminary injunction burdens no more speech than necessary to serve the
23 government’s interest in encouraging innovation and development.” *Id.*

1 **6. The Trade Secrets Plaintiffs Seek To Protect Are Not Matters Of Public**
2 **Concern.**

3 The trade secrets Landis+Gyr seeks to protect contain purely private information. In fact,
4 the Managed Service Report discusses only Landis+Gyr's internal processes and procedures for
5 protecting the security of its computer networks, and the private auditor's approval of those
6 processes. The Managed Service Report contains not a single mention of the City of Seattle, any
7 official of the City of Seattle, or any other governmental entity or official. Moreover, the trade
8 secret information Landis+Gyr has redacted from the Managed Service Report focuses even
9 more narrowly on the specific details of its internal proprietary security systems. Thus, "these
10 trade secrets. . . address matters of purely private concern and not matters of public importance."
11 *DVD Copy Control*, 75 P.3d 16; *Accord Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472
12 U.S. 749, 762 (1985) ("speech solely in the individual interest of the speaker and its specific
13 business audience" raises "no public issue").

14 Speech on "matters of purely private concern" is of "significantly less constitutional
15 interest" than speech on matters of public concern, and, "[i]n light of the reduced constitutional
16 value of speech involving no matters of public concern," speech on matters of private concern
17 "warrants no special protection" and the constitution tolerates greater limitations on that speech
18 where, as here, those limitations serve a legitimate state interest. *Id.* 472 U.S. 749, 759-62
19 (1985). Indeed, "[t]he suppression of the publication of stolen information does nothing to
20 hamper the critic from denouncing any firm that chooses to preserve its trade secrets, or to chide
21 any government agency for its lackluster enforcement of the general law. It is something of a
22 mystery as to how free and open debate is frustrated by offering property protections to trade
23 secrets." Richard L. Epstein, *Privacy, Publication, and the First Amendment: The Dangers of*
24 *First Amendment Exceptionalism*, 52 *Stanford L. Rev.* 1003, 1043 (2000). In fact, in this case,
25 Mr. Mocek has heavily criticized Landis+Gyr's efforts to protect its trade secrets in multiple
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1 internet postings and has continued even after the Managed Service Report was removed from
2 MuckRock.com. *See Christensen 2nd Supp. Decl.*, ¶¶ 4-7, Exhs. B-E. There is no reason to think
3 this debate will be hampered by removing limited and highly targeted trade secret information
4 from the public forum.

5 MuckRock.com's arguments assume that the information Landis+Gyr seeks to protect
6 involves matters of public interest, and most of its arguments fail because this assumption is
7 incorrect. For example, MuckRock.com (Motion 9) asserts that it is protected under the "*Daily*
8 *Mail*" rule. But, in *Bartnicki v. Vopper*, which MuckRock.com concedes is controlling, the
9 United States Supreme Court explicitly refused to extend the *Daily Mail* rule to "disclosures of
10 trade secrets or domestic gossip or other information of purely private concern." 532 U.S. 514,
11 533 (2001). Further, the Court recognized that the statute barring interception of private phone
12 conversations "may be enforced with respect to most violations of the statute without offending
13 the First Amendment" and that enforcement of the statute is curtailed only where the information
14 involved implicates "matters of public concern." *Id.* at 533-34. In so ruling, "the court
15 recognized that the First Amendment interests served by the disclosure of purely private
16 information like trade secrets are not as significant as the interests served by the disclosure of
17 information concerning a matter of public importance," thus acknowledging that "a balancing of
18 First Amendment interests against government interests in the trade secret context may yield a
19 different result." *DVD Copy Control Ass'n*, 75 P.3d at 15. Further, the *Daily Mail* rule only
20 protects "information *republished* on the Internet after having been made *public on the Internet.*"
21 *Id.* at 27. That is not the case here, where MuckRock.com published the Managed Service
22 Report for *the first time* on the internet. Indeed, until it appeared on the MuckRock.com website,
23 the Managed Service Report, like other Landis+Gyr proprietary information, had been carefully
24 protected to ensure that it was not publicly released. *See Declaration of Jay Evensen in Support*
25 *of Motion for Temporary Restraining Order* ¶ 10.

1 The cases cited by MuckRock.com where courts refused to enjoin the public release of
2 trade secrets are distinguishable on the same grounds. Most involved information of public
3 concern, such as “unsanitary practices in the meat industry,” *CBS, Inc. v. Davis*, 510 U.S. 1315
4 (1994) (Blackmun, Circuit Justice), or “discussion of ethical matters concerning [public]
5 officials.” *VI 4D, LLLP v. Crucians in Focus, Inc.*, 2012 WL 6757243 at *8 (V.I. Super. 2012).
6 *See Rain CII Carbon, LLC v. Kurczy*, 2012 WL 3577534 at *5 (E.D. La. 2012).

7 Further, the cases uncritically applied prior restraint doctrine which is not, for the reasons
8 described above, applicable here. *See Rain CII Carbon*, 2012 WL 3577534 at *3; *State ex rel.*
9 *Sports Management News v. Nachtigal*, 324 Or. 80, 921 P.2d 1304, 1308 (Or. Sup. Ct. 1996);
10 *Ford Motor Co. v. Lane*, 67 F.Supp.2d 745, 751 (1999). *See DVD Copy Center*, 75 P.3d at 18-
11 19 (distinguishing cases relied on by MuckRock.com). In fact, *Nichtigal* recognizes that a
12 content-neutral restraint, such as Landis+Gyr advocates here, would not constitute a prior
13 restraint, 921 P.2d at 1308, a view confirmed in the Oregon Supreme Court’s subsequent
14 decision in *Outdoor Media Dimensions, Inc. v. Dept. of Transp.*, 340 Or. 275, 132 P.3d 5 (2006),
15 where it approved content-neutral restrictions on speech. Likewise, *Garth v. Shaktek*, 876
16 S.W.2d 545, 549-50 (Tex. App. 1994), found that “injunctive relief granted” to protect a trade
17 secret “is not an unconstitutional prior restraint” where the injunction is no less restrictive than
18 necessary to protect the trade secrets.

19 Further, *Proctor & Gamble Co. v. Bankers Trust Co.* is distinguishable because the lower
20 court failed to conduct review the relevant documents to determine if they were protected trade
21 secrets, 78 F.3d 219, 222 (6th Cir. 1996) (“[t]he parties and not the court ... determine[d] whether
22 the particular documents” were proprietary.) The same is true of *Nichtigal*. 921 P.2d at 1308.
23 In contrast, here we have provided a redacted copy of the Managed Services Report for the
24 record and are prepared to offer an unredacted version for *in camera* inspection, which will
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1 confirm the affidavits submitted in support of Plaintiffs' motion that the redacted material
2 constitutes protected trade secrets.

3 Apparently attributing clairvoyance to Landis+Gyr, MuckRock.com argues, without
4 benefit of authority, that Landis+Gyr was required to act the moment its trade secrets were
5 posted on MuckRock.com and to have them removed or else lose its trade secret protection. This
6 is incorrect. The UTSA requires only that Landis+Gyr make "efforts that are reasonable under
7 the circumstances to maintain its secrecy." RCW 19.108.010(4)(b). As the California Supreme
8 Court has observed, "information posted on an obscure Internet site and detected quickly" should
9 not cause the loss of trade secret status because the law recognizes that "minor disclosures of a
10 trade secret followed by a brief delay in withdrawing it from the public domain do not cause
11 trade secret status to be lost." *DVD Copy Control Ass'n*, 75 P.3d at 28 (citing *Hoechst Diafoil*
12 *Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 418 (4th Cir.1999); *Gates Rubber Co. v. Bando*
13 *Chemical Indus., Ltd.*, 9 F.3d 823, 849 (10th Cir.1993)).

14 In this case, Landis+Gyr met that requirement. As soon as it discovered that the
15 document had been published without its knowledge or consent on MuckRock.com, Landis+Gyr
16 took action, requesting through its May 16 letter than MuckRock.com and/or Mr. Mocek
17 immediately remove the documents from public view, filing this lawsuit, and successfully
18 seeking a TRO. Although the letter clearly put Defendants on notice that the document contains
19 trade secrets protected by the UTSA, Defendants refused to remove the documents. This clearly
20 subjects them to liability under the UTSA for misappropriation of trade secrets. RCW
21 19.108.020-.040. Further, the evidence currently available suggests that, to the extent
22 Landis+Gyr's trade secrets were actually compromised (a question that cannot be resolved
23 without further investigation), they were compromised after Defendants were fully aware that
24 they were protected, *see Christensen 2nd Supp. Decl.*, ¶¶ 4-6, Exhs. B-E, meaning that
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1 Defendants' refusal to remove the trade secret information from public view may have
2 accommodated further misappropriations in violation of the UTSA.

3 **7. Defendants Are Not Immune From The Consequences of Publishing**
4 **Plaintiffs' Trade Secrets.**

5 *a) MuckRock.com Is Not Immune Under the Communications Decency*
6 *Act.*

7 MuckRock argues it is immune from suit pursuant to 47 U.S.C. § 230 (“§ 230”) of the
8 Communications Decency Act of 1996 (the “CDA”). But § 230 by its plain terms does not
9 protect MuckRock.com from liability for violation of rules involving intellectual property and
10 this defense therefore fails.

11 The CDA provides immunity to the provider of an interactive computer service that
12 publishes information originating with a third-party user of the service. § 230; *Perfect 10, Inc. v.*
13 *CCBILL LLC*, 488 F.3d 1102 (2007). The immunity created, however, is limited by § 230(e)(2),
14 which makes clear that § 230 does not “limit or expand any law pertaining to intellectual
15 property.” Relying on the Ninth Circuit’s interpretation of “intellectual property” in Section
16 230(c)(1) as “federal intellectual property,” MuckRock.com asserts that the intellectual property
17 carve-out does not apply here. While it once was true that trade secrets were the domain of state,
18 not federal, intellectual property law, this is no longer true. Trade secrets are now accorded
19 federal intellectual property protection under the Defend Trade Secrets Act of 2016 (the
20 “DTSA”), Pub. L. No. 114-153, which was signed by President Obama on May 11, 2016.¹
21 Trade secret protection is now “federal intellectual property.” Accordingly, MuckRock is not
22 excused from liability for its misappropriation of trade secrets under § 230.

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25 ¹ The complete text of the DTSA is available at: <https://www.congress.gov/bill/114th-congress/senate-bill/1890/text>.

1 Further, § 230(e)(3) preserves state authority, providing that “[n]othing in this section
2 shall be construed to prevent any State from enforcing any State law that is consistent with this
3 section.” Because Washington UTSA is consistent with the DTSA and affords complimentary
4 protections to trade secrets, the Court is fully empowered to enforce the UTSA to vindicate
5 Plaintiffs’ trade secrets without running afoul of § 230.

6 Finally, even if MuckRock.com were immune from an injunction under § 230, that is not
7 true of either of the City or Mocek, neither of which are websites qualifying for § 230 immunity.
8 Accordingly, a preliminary injunction can properly issue requiring the City and Mocek (who
9 “controls” the content posted on MuckRock.com) to refrain from publicly releasing Plaintiffs’
10 trade secrets for the duration of this proceeding.

11 ***b) The Fair Reporting Privilege Does Not Protect MuckRock.com From***
12 ***Liability Under the UTSA***

13 MuckRock.com (Motion 12) claims that the fair reporting privilege excuses it from
14 liability for its violations of the UTSA. This is incorrect. The fair reporting privilege is a
15 common law, judicially-created limitation on the liability for libel and slander when public
16 media republish potentially defamatory material from court transcripts, recall petitions, or other
17 official sources. *Hauter v. Cowles Pub. Co.*, 61 Wn.App. 572, 578, 811 P.2d 231 (1991). The
18 fair reporting privilege is recognized in Washington as a conditional privilege for publication of
19 defamatory matter. *Momah v. Bharti*, 144 Wn.App. 731, 746, 182 P.3d 455 (2008).

20 The doctrine does not apply here because this case involves neither libel/slander claims
21 nor material copied from an official source like a court transcript or public hearing. Further,
22 because it is judicially-created, the doctrine does not and cannot limit Plaintiffs’ statutory rights
23 under the UTSA. Nor have Defendants simply re-published material. On the contrary, they have
24 published for the first time an internal, private Landis+Gyr document that pertains solely to the
25 operations of Landis+Gyr’s proprietary computer and network security systems. Any contrary
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1 holding would gut the UTSA by allowing those who would profit from misappropriation of trade
2 secrets to escape liability by the simple expedient of posting the trade secrets to a publicly-
3 accessible website.

4 **B. Plaintiffs Are Entitled To An Injunction to Prevent Release of The Names and**
5 **Individually-Identifiable Information of Employees and Trade References.**

6 Plaintiffs properly seek to prevent release of the names and individually-identifiable
7 information of their employees and trade references. As Plaintiffs have demonstrated, this
8 information is protected as trade secrets, *Plaintiff's Motion for Preliminary Injunction* at 25-27, a
9 contention not challenged by any Defendant, and an injunction to bar its release is therefore fully
10 justified.

11 Plaintiffs are also entitled to a preliminary injunction to protect the privacy interests of
12 their employees and trade references because “[t]he PRA is a tool to enable citizens to monitor
13 their government. It is not a mechanism for them to examine, exploit, or endanger each other.”
14 *Roe v. Anderson*, 2015 WL 4724739 at *2 (W.D. Wa. 2015). “The PRA was never intended to
15 facilitate spying or stalking, or to enable a host of other nefarious goals.” *Id.* But the evidence
16 proffered by Plaintiffs demonstrates that, in the circumstances of this case, public release of this
17 person information is likely to result in bullying, harassment, and intimidation of Plaintiffs’
18 employees and trade references from the opponents of smart metering, who have employed
19 tactics like burying opponents in huge but incomprehensible legal documents, *Christensen TRO*
20 *Declaration* at ¶ 14, and harassment and intimidation on the internet. *Second Supp. Christensen*
21 *Decl. at ¶ 3, Ex. A.*

22 The City (Response at 8-9) does not deny that Plaintiffs have demonstrated that they meet
23 the high standard for protection of privacy under the RCW 42.56.050, but argues that Plaintiffs
24 must base their privacy claims on some independent basis in the PRA. But the Court’s
25 injunctive powers under the PRA are not so limited. On the contrary, the PRA by its plain terms
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1 allows the Court to enjoin the “examination of *any* specific public record” if the Court finds that
2 “such examination would clearly not be in the public interest and would substantially and
3 irreparably damage *any person*, or would substantially and irreparably damage vital
4 governmental functions.” RCW 42.56.540. It is unchallenged here that the names and addresses
5 of Plaintiffs’ employees and trade references are of no public interest since, in most cases, they
6 have no connection at all to the City of Seattle. It is likewise unchallenged that, in the
7 circumstances of this case, those individuals could be irreparably damaged because they would
8 be subject to harassment and intimidation by unscrupulous opponents of “smart meters.”

9 This Court should therefore issue a preliminary injunction barring the release of these
10 names and individually-identifying information.

11 DATED this 2nd day of June, 2016.

12 CAIRNCROSS & HEMPELMANN, P.S.

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ATTORNEY FOR PLAINTIFF

Certificate of Service

I, Gail Glosser, certify under penalty of perjury of the laws of the State of Washington that on June 2, 2016, I caused a copy of the document to which this is attached to be served on the following individual(s):

Jessica Nadelman Seattle City Attorney's Office 701 5th Ave Ste 2050 Seattle, WA 98104-7095 jessica.nadelman@seattle.gov	<i>Counsel for Defendant City of Seattle / Seattle City Light</i>	<input checked="" type="checkbox"/> via U.S. Mail <input checked="" type="checkbox"/> via email <input type="checkbox"/> via CM ECF <input type="checkbox"/> via Legal Messenger
Aaron Mackey Electronic Frontier Foundation 815 Eddy Street San Francisco, CA 94109 amackey@eff.org Venkat Balasubramani Focal PLLC 900 1st Avenue S Suite 203 Seattle, WA 98134-1236 venkat@focallaw.com	<i>Counsel for Defendant MuckRock.com and Michael Morrisy</i>	<input checked="" type="checkbox"/> via U.S. Mail <input checked="" type="checkbox"/> via email <input type="checkbox"/> via CM ECF <input type="checkbox"/> via Legal Messenger
Ambika Kumar Doran Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101 AmbikaDoran@dwt.com	<i>Defendant Phillip Mocek</i>	<input checked="" type="checkbox"/> via U.S. Mail <input checked="" type="checkbox"/> via email <input type="checkbox"/> via CM ECF <input type="checkbox"/> via Legal Messenger

DATED this 2nd day of June, 2016, at Seattle, Washington.

/s/ Gail Glosser
Gail Glosser, Legal Assistant
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PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY PRELIMINARY INJUNCTION
SHOULD NOT ISSUE - 17

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