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Center for Democracy & Technology,  
10 and Public Knowledge

11  
12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

15 **GOOGLE INC.,**

16 Plaintiff,

17 v.

18 **EQUUSTEK SOLUTIONS INC., CLARMA**  
19 **ENTERPRISES, INC., AND ROBERT**  
20 **ANGUS,**

21 Defendants.

) No. 5:17-cv-04207-EJD

) **NOTICE OF MOTION AND MOTION**  
) **FOR LEAVE TO FILE PROPOSED**  
) **AMICUS CURIAE BRIEF OF**  
) **ELECTRONIC FRONTIER**  
) **FOUNDATION, COMPUTER &**  
) **COMMUNICATIONS INDUSTRY**  
) **ASSOCIATION, CENTER FOR**  
) **DEMOCRACY & TECHNOLOGY,**  
) **AND PUBLIC KNOWLEDGE IN**  
) **SUPPORT OF PLAINTIFF**  
) **GOOGLE'S MOTION FOR**  
) **PRELIMINARY INJUNCTION**

) Date: September 14, 2017  
) Time: 9:00 AM  
) Courtroom 4, 5th Floor  
) Hon. Edward J. Davila

1 TO EACH PARTY AND ATTORNEYS OF RECORD IN THIS ACTION:

2 PLEASE TAKE NOTICE that on September 14, 2017, at 9:00 a.m., or as soon thereafter  
3 as counsel can be heard in Courtroom 4 of the United States District Court, Northern District of  
4 California, San Jose Division, located on the 5th Floor at 280 South 1st Street, San Jose,  
5 California, 95113 amici curiae Electronic Frontier Foundation, Computer & Communications  
6 Industry Association, Center for Democracy & Technology, and Public Knowledge will move  
7 this Court, for leave to file an amicus brief in support of Plaintiff Google, Inc. Google consents  
8 to this Motion. Defendants have not consented to the filing.  
9

10 Please note also that although counsel are prepared to argue this matter on the date  
11 noticed above, Amici have no objection should the Court choose to decide this matter on the  
12 papers.  
13

14 **STATEMENT OF INTEREST**

15 The Electronic Frontier Foundation (“EFF”) has an interest in this case because it  
16 concerns the extent to which a single foreign court can determine what content Internet users in  
17 the United States and around the world can access online. EFF, a non-profit civil liberties  
18 organization with more than 37,000 dues-paying members, works to protect rights in the digital  
19 world. Based in San Francisco and founded in 1990, EFF regularly advocates in courts on behalf  
20 of users and creators of technology in support of free expression, privacy, and innovation online.  
21 With permission from the Court of Appeal for British Columbia and the Supreme Court of  
22 Canada, EFF intervened in the underlying Canadian litigation in light of EFF’s concerns about  
23 the conflict with U.S. law and the rights of U.S.-based persons. *See Equustek Solutions Inc. v.*  
24 *Jack*, 2015 BCCA 265<sup>1</sup> & *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34.<sup>2</sup>  
25

26  
27 <sup>1</sup> Available at <https://www.canlii.org/en/bc/bcca/doc/2015/2015bcca265/2015bcca265.html>.

28 <sup>2</sup> Available at <https://www.canlii.org/en/ca/scc/doc/2017/2017scc34/2017scc34.html>.

1 The Computer & Communications Industry Association (“CCIA”) represents over twenty  
2 companies of all sizes providing high technology products and services, including computer  
3 hardware and software, electronic commerce, telecommunications, and Internet products and  
4 services—companies that collectively generate more than \$540 billion in annual revenues.<sup>3</sup>  
5 CCIA members provide services to countries around the world and are frequently confronted  
6 with orders to block content in one jurisdiction that is lawful in another. An environment in  
7 which such orders are enforceable — even against online services not party to the underlying  
8 case—could do extraordinary damage to the Internet economy.

9  
10 The Center for Democracy & Technology (“CDT”) is a nonprofit public interest  
11 organization working to ensure that the human rights we enjoy in the physical world are realized  
12 online, and that technology serves as an empowering force for people worldwide. Integral to this  
13 work is CDT’s representation of the public interest in the creation of an open and innovative  
14 Internet that promotes the constitutional and democratic values of free expression, privacy, and  
15 individual liberty. For more than twenty years, CDT has advocated in support of laws and  
16 policies to expand access to information and promote the vibrant exchange of ideas.

17  
18 Public Knowledge is a non-profit organization that is dedicated to preserving the  
19 openness of the Internet and the public’s access to knowledge, promoting creativity through  
20 balanced intellectual property rights, and upholding and protecting the rights of consumers to  
21 access information and use innovative technology lawfully.

### 22 ARGUMENT

23  
24 Amici represent a broad swath of Internet users and technology companies, who are  
25 deeply concerned about the Canadian Order and its likely ramifications. We seek to call the  
26

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27 <sup>3</sup> A list of CCIA members is available at <https://www.ccianet.org/members>. Google is a CCIA  
28 member, but took no part in the preparation of this brief.

1 Court’s attention to the important public interests at stake in this litigation, particularly for  
2 Internet users who are not parties to the case but will nonetheless be affected by the precedent it  
3 sets. Although this case concerns a private trade secret dispute, the precedent it sets will affect  
4 the general public by determining whether Internet users in the United States can access  
5 information that is protected by both the First Amendment and federal law. The Canadian court’s  
6 order (“the Canadian Order”) sets a dangerous and unbounded precedent that will have  
7 applications in countless other contexts. If one foreign court can impose its speech-restrictive  
8 rules on the entire Internet—despite the conflict between its rules and those of a foreign  
9 jurisdiction—the norms of expectations of all Internet users are at risk.

11 As Google explains in its brief, the global de-listing order at issue in this case impedes  
12 Google’s right to share accurate information. However, it also restricts Internet users’ ability to  
13 *receive* such information.

15 Courts have repeatedly recognized First Amendment protections for platforms that  
16 provide search results. *See, e.g., Search King, Inc. v. Google Technology, Inc.*, 2003 WL  
17 21464568 (W.D. Okla. 2003); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 629–30 (D. Del.  
18 2007); *Zhang v. Baidu.com, Inc.*, 2014 WL 1282730 (S.D.N.Y. 2014); *see also* Eugene Volokh  
19 & Donald M. Falk, *Google First Amendment Protection for Search Engine Search Results*, 8 J.L.  
20 Econ. & Pol’y 883 (2012).

22 Users of web search engines have a corollary right to receive search engine results.  
23 Moreover, this right to access information via search results is not diminished because  
24 information about products allegedly derived from misappropriated trade secrets under Canadian  
25 law may be included. Prohibiting access to protected speech as a means to deny access to  
26 unprotected speech “turns the First Amendment upside down,” *Ashcroft v. Free Speech*  
27 *Coalition*, 535 U.S. 234, 255 (2002), essentially “burning the house to roast the pig.” *Sable*  
28

1 *Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 127 (1989).

2 In addition, the Canadian Order runs directly contrary to the protections of 47 U.S.C. §  
3 230 (“Section 230”), which have been crucial to the development of robust online platforms for  
4 speech, to the benefit of users and intermediaries alike.<sup>4</sup> Section 230’s broad platform immunity  
5 reflects Congress’ intentional policy decision that individuals harmed by speech online must seek  
6 relief from the speakers themselves, rather than the platforms those speakers used or the search  
7 results that may lead third parties to that speech. *See Zeran v. AOL*, 129 F.3d 327, 330–31 (4th  
8 Cir. 1997). By limiting liability in this way, Congress decided that creating a forum for  
9 unrestrained and robust communication was of utmost importance. And although Congress  
10 certainly did not intend to promote speech that violates foreign trade secret law, Congress *did*  
11 decide that promoting platforms that would allow robust online dialogue was more important  
12 than ridding the Internet of all harmful speech.  
13  
14

15 As Amici further explain, the injunction sought by Google serves the public interest by  
16 ameliorating these conflicts and ensuring that Internet users in the United States, at least,  
17 continue to enjoy access to information that is protected by the First Amendment. The injunction  
18 also vindicates the careful policy judgment Section 230 embodies.

19 Amici respectfully request that the Court grant the motion and accept the attached brief.  
20

21 Respectfully submitted,

22 DATED: August 7, 2017

23 By /s/ Corynne McSherry  
Corynne McSherry  
24  
25

26 <sup>4</sup> The statute was passed as Section 509 of the Communications Decency Act, part of the  
27 Telecommunications Act of 1996, Pub. L. 104-104. It is sometimes colloquially referred to as  
28 “CDA 230” or “Section 230 of the Communications Decency Act.” Amici refer to it as Section  
230.

