

Federal Court



Cour fédérale

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File Number / Numéro de dossier :

T-2058-12

Comments / Remarques:

Order of the Court rendered February 13, 2013.

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FEDERAL COURT
Federal Court



Cour fédérale

Date: 20130213

Docket: T-2058-12

Ottawa, Ontario, February 13, 2013

PRESENT: Madam Prothonotary Mireille Tabib

BETWEEN:

VOLTAGE PICTURES LLC

Plaintiff

and

JOHN DOE AND JANE DOE

Defendants

ORDER

UPON the motion of the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“CIPPIC”), made in writing pursuant to Rule 369 of the *Federal Courts Rules* for an order granting it leave to intervene in this proceeding.

UPON considering the motion record of CIPPIC, the responding motion record of the Plaintiff, and the reply of the CIPPIC, and noting that the Respondent TekSavvy Solutions Inc. has not taken a position on this motion.

CONSIDERING that the Proposed Intervener must, on a motion to intervene, describe how it wishes to participate in the proceeding and how that participation will assist in the

determination of a factual or legal issues related to the proceeding (Rule 109 of the *Federal Courts Rules*).

CONSIDERING that the Court, through Justice Mandamin's Order dated January 18, 2013, has already identified several issues of fact and law on which the Court would benefit from further information or submissions.

CONSIDERING that, notwithstanding CIPPIC's failure to fully and specifically set out the type of evidence it might lead if it were given leave to introduce evidence, or the factual issues it would contest if it were granted leave to cross-examine on the Plaintiff's affidavit, it is clear from the record before me that only CIPPIC is in a position to assist the Court in understanding the deficiencies that may exist in the Plaintiff's evidence and fill any gaps in that evidence that may be necessary for the Court to determine the issues before it, and that only CIPPIC is willing to do so.

CONSIDERING that the order sought by the Plaintiff on its discovery motion could possibly affect thousands of defendants.

CONSIDERING that the issues raised on the Plaintiff's motion, if determined without opposition, will not likely be contested or revisited by the Court at the request of the newly identified and served Defendants, since, by then, their identity will have been communicated to the Plaintiff and the issue might be moot.

CONSIDERING, therefore, that Justice Mandamin's comment in the Order of January 18, 2013 to the effect that the Court is better served in coming to a proper decision having heard from different sides is fully applicable here and that I agree with it.

CONSIDERING that I am, however, not satisfied that the determination should be made on this motion as to whether CIPPIC should be made subject to any order for costs.

CONSIDERING that since the issue of whether CIPPIC should be the subject of an order for costs is deferred to the Judge who will be hearing the Plaintiff's motion, it is also appropriate that the issue of whether CIPPIC should be able to seek or benefit from an order for costs should also be deferred to the hearing Judge.

CONSIDERING that the record before me justifies the intervention of CIPPIC on the Plaintiff's discovery motion, but at this time, on no other aspect of the Plaintiff's action against the Defendants, subject to the right of CIPPIC to seek leave for further intervention as and when it may be justified or necessary.

THIS COURT ORDERS that:

1. CIPPIC is hereby granted leave to intervene in respect of the Plaintiff's motion for an order under Rule 238 of the *Federal Courts Rules* as against TekSavvy Solutions Inc. on the following terms:
 - a. CIPPIC shall be permitted to produce affidavit evidence and to cross-examine the Plaintiff's affiant.

- b. CIPPIC shall be permitted to make arguments on points of law.
- c. The rights of CIPPIC to seek or its liability to be made subject of any order for costs on the motion shall be determined by the Judge seized of the motion.
- d. CIPPIC shall be served with all materials filed and to be filed by other parties, non-party respondents and Interveners, if any.
- e. The schedule for proceeding on the Plaintiff's motion pursuant to Rule 238 of the *Federal Courts Rules* shall be as set out in sub-paragraph 3 of the Order of January 18, 2013.

"Mireille Tabib"

Prothonotary