

FEDERAL COURT

BETWEEN:

CANADA POST CORPORATION

Plaintiff

- and -

GEOLYTICA INC. c.o.b. GEOCODER.CA

Defendant

STATEMENT OF DEFENCE

1. The Defendant admits the allegations contained in paragraph 3 of the Statement of Claim.
2. The Defendant denies the allegations contained in paragraphs 4, 5, 6, 7, 9, 10-12 and 16-24 of the Statement of Claim.
3. The Defendant has no knowledge of the allegations contained in paragraphs 2, 8, 13, 14 and 15 of the Statement of Claim.

Background on Geolytica's Small Business

4. Geolytica is a small business operated by its founder, Ervin Ruci. The business started as a project of Mr. Ruci's when he was a graduate in the computer science department at Carleton University. He founded the website geocoder.ca in order to provide free address look-up services to non-profit organizations and fee-based services to commercial users.
5. This original geocoder.ca service allows Canadian websites, users and web applications to lookup latitudes and longitudes from individual street addresses.
6. Geolytica has since expanded its innovative business to include a variety of "geocoding" technologies, several different geographic datasets, specialized dataset development, and consulting services.

Geolytica's Database (The CPCG Dataset)

7. One of Geolytica's dataset offerings is its own Canadian Postal Code Geocoded Dataset (“CPCG Dataset”), a geographic database of postal code locations.
8. Geolytica pleads that it independently created the CPCG Dataset through considerable and sustained effort over the course of several years.
9. Geolytica created this database without ever accessing or copying any database of postal codes of the Canada Post Corporation.
10. Geolytica constructed the CPCG Dataset by collecting facts through “crowdsourcing” over several years. Geolytica collected its crowdsourced facts through user queries sent to its free street address lookup service at geocoder.ca, which it has been operating since August 2004.
11. The user queries to the free street address lookup service often contain factual addresses, such as: “1435 Prince of Wales, Ottawa, ON, K2C 1N5”.
12. Geolytica's custom-developed software separates each user query into components: for example, it parses the aforementioned query into a street address - “1435 Prince of Wales, Ottawa, ON” - and a postal code - “K2C 1N5”.
13. Geolytica's software finds a query's latitude and longitude on the basis of the street address portion alone, without using the postal code portion. Geolytica's software then associates the determined latitude and longitude geographic location to the postal code in order to help build and extend its CPCG Dataset.
14. After years of building up the CPCG Dataset, Geolytica's address lookup service is now also able to support geographic look-ups by postal codes alone. Contrary to the Plaintiff's claim at paragraph 19 of the Statement of Claim, this lookup service uses only Geolytica's own CPCG Dataset and does not, in any way, expose by way of trade an “infringing database”.
15. Geolytica only ever uses or licenses its own postal code database, the CPCG Dataset. Contrary to the Plaintiff's claim at paragraph 17 of the Statement of Claim, Geolytica never “appropriated” or made any

“unauthorised reproductions” of the CPC Database.

16. The postal code boundaries within Geolytica's database are not even the same as those in the CPC Database, as a result of Geolytica independently building the entire CPCG Dataset. Geolytica denies the Plaintiff's allegations at paragraph 18 of the Statement of Claim that it reproduces the CPC Database in whole or in substantial part.
17. Geolytica has never produced, distributed, exposed, exhibited in public, offered for sale or rental, nor otherwise made use of any substantial part of the CPC Database, nor has Geolytica ever authorized or caused any such activity. Geolytica denies the Plaintiff's allegations to the contrary at paragraphs 20 and 21 of the Statement of Claim.
18. Geolytica is a model entrepreneurial technology company. Through hard work and innovation, Mr. Ruci has built a successful business where Geolytica is able to provide a valuable free service to the public and at the same time produce a profit. The suggestion that the fruits of Mr Ruci's labour are anything but his own is entirely without merit.

The Geocoder.ca Website

19. Geolytica denies the Plaintiff's allegation at paragraph 16 of the Statement of Claim that frames Geocoder.ca as a “commercial website”. Geolytica's website, as well as its CPCG Dataset, are not its core products. They are courtesy services provided free for non-profit use. They demonstrate the power of Geolytica's proprietary geocoding software, which is its core product and not a part of its website.
20. Many public interest organizations depend upon Geolytica's courtesy address lookup service, including voting-rights groups, environmental monitoring groups, as well as federal government agencies. These organizations use the service to find longitudes and latitudes from street addresses.
21. Geolytica also denies the Plaintiff's allegations in paragraph 18 that “through the Defendant's website, customers may download the CPGC Dataset for a fee.” On the contrary, Geolytica provides both its geographic lookup service and the ability to download the CPCG Dataset for *free*. This has been the case for the last eight years.

22. For the small number of persons who wish to subsequently use an already-downloaded CPGC Database for commercial purposes, Geolytica then requires a commercial license.

Canada Post's Database (The CPC Database)

23. An address, including the postal code, is a fact and not an original work within the meaning of the *Copyright Act*. Geolytica denies that Canada Post Corporation owns any copyright in addresses, or in postal codes that form a part of addresses.
24. Canadians regularly and frequently write their postal codes on letters in order to indicate their factual locations. Canadians also frequently enter their full street address, including their postal codes, into online forms – all in a similar manner to the way users enter their full street address at geocoder.ca. These activities constitute no infringement of copyright.
25. If a postal code were not a fact, but were rather a copyrighted work, Canadians would regularly infringe Canada Post's alleged sole right to produce and reproduce “any part” of the CPC Database, as such right is alleged at paragraph 5 of the Plaintiff's Statement of Claim. Such a result is absurd. Quite rightly, the Plaintiff does not plead such absurdity in the Statement of Claim: there is no copyright in postal codes themselves.
26. Even though Geolytica did not copy the CPC Database, Canada Post also does not own copyright in the CPC Database as a compilation. Geolytica denies the Plaintiff's claim to the contrary at paragraph 5 of the Statement of Claim.
27. Geolytica pleads that the CPC Database is itself a fact. The CPC Database can only substantially take on one form, wherein this compilation of facts remains a non-copyrightable fact.
28. Further, the selection and arrangement of data into the CPC Database involves no skill and judgment. Although there may have been an exertion of labour to establish a postal code designation *system*, Canada Post Corporation did not, and does not, exert a non-trivial amount of skill and judgment to create and maintain the CPC Database. The CPC Database simply collects “all the postal codes”. This is a “collection”, not a “selection” or “arrangement”. Nor does the Canada Post Corporation exhibit

skill or judgement in collecting “all the postal codes”.

29. The Plaintiff's claim to copyright in the CPC Database would lead to absurd results. Individual Canadians and businesses regularly and frequently collect and use postal codes in address books, mailing lists, customer lists, supplier lists, and an infinite variety of lists. If the Plaintiff's assertion of copyright in the CPC Database were well founded, *all* of these collections of addresses and the postal codes therein would reproduce parts of the CPC Database and so would infringe copyright. The result would be copyright infringement on a massive, near-universal scale, since *none* of these uses are licensed. Entire fields of economic activity – directory publishers, database distributors, online lookup tools, even telephone directories such as the Yellow Pages – would overnight be relegated to the status of infringers.
30. Canada Post Corporation alleges at paragraph 7 of the Statement of Claim that the CPC Database constitutes a “tool”; however, a “tool” is not the proper subject matter of copyright.

In the Alternative – No Infringement of Copyright, if any, in the CPC Database

31. Moreover, even if copyright does subsist in the CPC Database – which subsistence the Defendant denies – Canada Post Corporation does not own such copyright. Canada Post Canada does not have a valid chain of title from the CPC Database that the Post Office Department developed under the direction of the federal Crown between 1971 and 1981. Contrary to to the Plaintiff's assertion at paragraph 11 of the Statement of Claim that "Her Majesty's copyright to the CPC Database was transferred to Canada Post" under section 63 of the Canada Post Corporation, no section 63 of the current *Canada Post Corporation Act* even exists. Neither does the Act that came into force in 1981 transfer such title.
32. Further, even if copyright subsists in the CPC Database – which subsistence the Defendant denies – the Defendant has not infringed any copyright because it has not produced, reproduced or copied the CPC Database, nor otherwise engaged in any act in respect of the CPC Database which only a copyright owner may do. Nor has the Defendant at any time accessed, or had access, to the CPCC Database. The

CPCG Dataset was independently created by the Defendant, as described in paragraphs 7 to 18 of this Statement of Defense, without reference to the CPC Database or any substantial part of it. The *Copyright Act* confers on copyright owners only limited rights in respect of particular works: it confers no monopoly on classes of works (only limited rights in respect of specific original works of authorship), nor any protection against independent creation. The Plaintiff improperly seeks to use the *Copyright Act* to craft patent-like rights against competition from independently created postal code databases.

33. In the further alternative, should the Plaintiff be found to own copyright in the CPC Database and the Defendant found to have copied a substantial part of the CPC Database, the Defendant pleads that the Defendant's action constitutes fair dealing for the purpose of private study or research under s. 29 of the *Copyright Act*.

The Public Interest

34. In the further alternative, Geolytica also pleads a defense of public interest. Canadians rightly consider postal codes as facts that are a part of their street addresses and so part of the public domain. We write them on letters, submit them in online forms, and regularly give them out to help others find our addresses using online mapping services. Businesses and non-profit organizations compile addresses with postal codes into databases of customers and members. To allow copyright to restrict the ability of Canadians to distribute, collect and aggregate their postal codes – which is all Geolytica has done – would have severely detrimental consequences for the public interest. Individual postal codes are facts; the *Copyright Act* cannot be wielded to inhibit the application to these facts to downstream industry, ingenuity and innovation. The harm to the public interest in fettering such industry, ingenuity and innovation, and depriving Canadians of their benefit, grossly out-balances any interest a copyright owner might forward in defense of such an assertion of rights.
35. Geolytica also pleads a defense of copyright misuse. Canada Post Corporation's over-broad copyright claims demonstrates its practice of anti-competitively asserting monopoly over Canada's postal code

system. As disclosed in paragraph 6 of the Statement of Claim, the Plaintiff relies upon the “sale of goods and services” – including the licensing of the CPC Database – to the public for operating revenues. These revenues will be enhanced if the Plaintiff is able to shutter services offering public access to independently created compilations of postal codes.

Limitation Periods

36. In respect of any of the Plaintiff's claims that relate to alleged infringement prior to March 9, 2009, Geolytica pleads that such claims are statute-barred by s. 41 of the *Copyright Act*, which places a three year limitation period on a remedy in relation to an infringement claim.
37. Since 2005, Geolytica has always made its CPCG Dataset publicly and freely available on its website. The Plaintiff knew, or could reasonably have been expected to know, of any alleged infringement since it was first made publicly available online.
38. In August, 2007, The *Technology Innovation Management Review* published an article about geocoder.ca. In the alternative that the Defendant did not know, or could not reasonably have been expected to know, of any alleged infringement since 2005, the Defendant did know or could reasonably have been expected to know since at least August 2007.

Ervin Ruci, “Adding Value to Information Systems Using Free Data” (2007) *Technology Innovation Management Review*, <<http://timreview.ca/article/87>>.

Allegations of Damages

39. Geolytica denies the Plaintiff's claim in paragraph 22 of the Statement of Claim that it has conducted any “wrongful activities”.
40. Geolytica denies the Plaintiff's broad and unsubstantiated allegations in paragraph 23 of the Statement of Claim that there are any “further infringing activities”.
41. Geolytica denies the Plaintiff's allegations at paragraph 24 of the Statement of Claim that the Plaintiff has suffered any loss, even as resulting from Geolytica's legitimate licensing of the CPCG Dataset.
42. In the alternative, should the Defendant be found to have committed any act of infringement, the

Defendant pleads (a) that at all times any such act was conducted in the utmost good faith, (b) that the Defendant was not aware and had no reasonable grounds to believe that the Defendant had infringed any copyright owned by the Plaintiff, and (c) that the Defendant was not aware and had no reasonable ground for suspecting that copyright subsisted in the CPC Database. Indeed, the Defendant continues to deny in the strongest of terms the subsistence of – or any infringement of – any copyright in the CPC Database. The Plaintiff pleads and relies upon sub-sections 38.1(2)-(5) and 39(1) of the *Copyright Act*.

Simplified Action

43. The Defendant objects to the action not proceeding as a Simplified Action on the grounds that the recovery sought amounts to a monetary claim not exceeding \$50 000.
44. The Defendant submits that the Plaintiff's claim be dismissed against it with costs.

DATED this 12th day of April, 2012.

David Fewer

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