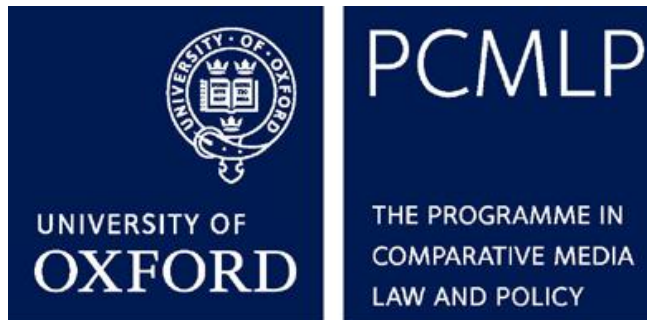


PRICE MEDIA LAW MOOT COURT COMPETITION CASE

2013/2014 COMPETITION YEAR



*Official Case of the 2014 International Rounds and
the 2013/2014 Regional Rounds in South Asia,
China, South East Europe, East Africa, the Americas
and the Middle East*

1. The Republic of Mhugan is a country consisting of one continental landmass, plus a collection of 60 major and minor islands, and it has a population of approximately 20 million. Its economy has grown rapidly since the late twentieth century, fueled by a combination of information technology industries, manufacturing, and financial services. A former British colony, Mhugan obtained independence in 1959, and since then, it has had a parliamentary form of government.
2. Bansit Sangnont, better known by his stage name Rho, is a pop music singer-songwriter in Mhugan. Rho was only moderately successful until he rose to national and international fame in 2011, when the music video for his song “Poké Poké” went viral on YouTube. Since that time, Rho has performed not only in Mhugan, but all over the world, and now millions, if not billions, of people are familiar with the song and its signature dance move, a combination of poking two fingers in the air and moving one’s hands together like a swimming fish. “Poké Poké” has also brought a measure of renown to Mhugan itself.
3. In early 2013, rumors began to surface that Rho has been physically and/or emotionally abusive to his wife, an allegation that Rho has vehemently denied. (Under Mhuganian law, there are no separately defined crimes with respect to spousal abuse, but laws of general applicability, such as battery, apply equally with respect to crimes against spouses as with crimes against other persons.)
4. Centiplex Corporation, based in Mhugan, is the leading Internet services company in Mhugan. It runs an Internet search engine, a social networking service, a blogging platform, a news portal, and email, video hosting, web hosting, and cloud storage services. Through a combination of tightly integrated services, early entry into the Mhuganian market, savvy marketing, and a bit of luck, Centiplex has a virtual monopoly in Mhugan for the services that it provides. More than 80% of all search queries in Mhugan, for example, are conducted through Centiplex, with most of the remaining being conducted through Google. Similarly, more than 95% of all Mhuganian residents have a Centiplex account and social networking profile, although about 30% also have and use a Facebook account in addition to their Centiplex account.
5. Dexian is a global information services company, based in the United States, whose core business is collecting, aggregating, analyzing, and disseminating information relating to individuals. Dexian claims to have records for almost 500 million people, although those records vary widely in their scope, completeness, and correctness. Dexian deals in everything from contact information, to criminal records, to consumer transaction data, as well as data about online activities. The particular methods that Dexian uses to combine sources and build individual records are not publicly known, and Dexian claims such information to be a trade secret.

6. Centiplex is a Dexian client and both buys and sells data to Dexian. Among the other data that Centiplex has provided to Dexian as part of the companies' commercial relationship are lists of search queries, indexed by the IP address of the computer that originated the query, as well as the date and time of the query. Centiplex's main search website, centiplex.mh, contains a link to Terms of Service; those terms are silent with respect to Centiplex's use or disclosure of any data that it collects from its search engine. The Terms of Service for other Centiplex services are equally silent at least with respect to Centiplex's use and disclosure of search queries. (There are separate terms that do, for example, state how Centiplex will use the contents of email messages that it processes, and describe the limited circumstances under which Centiplex will disclose such emails.) Prior to the 2013 Search Privacy Act, described below, no law or regulation in Mhugan restricted a search engine's ability to collect, disclose, or use information.
7. Thon Sang is a programmer at a small software development company in Mhugan. Sang maintains an active blog on the Centiplex platform, mhcelebs.centiblog.mh. The centiblog.mh platform is advertising-supported, with the ad revenue going to Centiplex; none of the ad revenue is shared with the bloggers themselves.
8. In his blogger profile, Sang describes himself as "celebrity-obsessed." His blog is dedicated to news and commentary about Mhuganian celebrities, mostly singers and actors/actresses, although Sang also blogs about the Mhuganian water polo team, which won a bronze medal in the 2012 Olympic Games. Most of Sang's content is based on information he finds elsewhere on the Internet, together with his own commentary. Sang has occasionally developed original content himself, for example by hanging out once a month near restaurants known to be favored by celebrities and snapping pictures of prominent people going in or out. Sang has blogged about the rumors of Rho abusing his wife, writing that "if true, people should boycott Rho's music in protest." Sang posts about one or two times a day to his blog. While relatively unknown at first, Sang's blog has been gaining in popularity and now regularly receives more than 100,000 hits a day. It has become the "go-to" place for Mhuganian celebrity gossip on the Internet.
9. On May 1, 2013, Sang posted what he claimed to be a recording of a voicemail that Rho left for a friend of Rho's, Taur Aklamit. In the voicemail, someone identifying himself as "Bansit" said that he was "furious with my wife for not being more obedient," and that "I need to give her a good smacking to show her who's in charge." Sang wrote in his post that he got this recording from "someone I know who managed to infiltrate Aklamit's voicemail." Sang also wrote, "So the rumors appear to be true. Boycott Rho and don't even think about dancing the Poké Poké!"

10. The next day, Sang posted again: “More evidence, this time from Rho’s web searches, which include ‘how to control your wife’ and ‘whipping techniques.’” Sang indicated that he acquired this information by “buying Rho’s profile from Dexian. It cost almost 20,000 MHD, but there’s no price on getting the truth out to my readers.” (One MHD, or Mhuganian Dollar, is approximately 0.02 Euros.) By the following day, Sang’s blog was receiving almost one million hits per day.
11. On May 4, Rho held a press conference, with his wife at his side, at which he again vehemently denied ever abusing his wife. He admitted that the recorded voicemail was indeed one that he had left for Aklamit, but he stated that he “only needed to let off some steam to my good friend Taur,” and that he “would never dream of actually striking my beloved wife.” He questioned whether the web searches were actually his, and further stated that he recalled having “to look up at some point how to whip cream by hand.” He called Sang and whoever had recorded the voicemail, “vicious, unethical, and unprofessional rumor mongers,” who were “criminals who deserve to be punished.” Rho’s wife did not speak at the press conference.
12. On May 5, Sang posted a reply on his blog, stating that he was unconvinced by Rho’s explanations, and that he would leave the material up so that “readers can judge for themselves.”
13. Sang also clarified that the source of the voicemail had explained to him how he or she had come across the message. Sang said that this person had been trying to check his/her own mobile voicemail messages from his/her home computer. The source’s mobile phone service permits subscribers to check their voicemail messages by logging in on a particular webpage with their phone number and password. The source had entered Aklamit’s number by mistake. Aklamit and the source apparently shared the same password, because neither had ever changed it from the default password for the voicemail system, “123456.” Before the source had realized the mistake, he/she clicked on the first message and heard it. Suspecting that the “Bansit” on the message was in fact Rho, the source then realized both the potential meaning of the message and the fact that this mailbox was not his/hers. The source decided to download a copy of the message to his/her home computer. From the mailbox webpage, it was also possible to access the profile associated with this mailbox, from which the source determined that the mailbox belonged to Aklamit. Knowing that Sang blogged about celebrities, the source sent the recording to Sang, telling him that he could use the material on his blog, but asking Sang not to reveal his/her identity.

14. Mhuganian law makes it illegal under the Wiretap Act to “intentionally intercept or obtain unauthorized access to any telephone or electronic communications, whether in transit or in storage.” The Wiretap Act further makes it illegal for “any person to disseminate the contents of a telephone or electronic communications that the person knows to have been unlawfully intercepted or obtained under this Act.” The Wiretap Act provides for both civil and criminal penalties. Among the civil penalties are statutory damages up to 1,000,000 MHD. (Alternatively, the plaintiff in a civil suit can elect to receive compensatory damages, plus disgorgement of any profits.) The portion of the Wiretap Act described here contains an exception for anyone acting in an official government capacity; separate provisions govern the circumstances under which the government may access such communications.
15. The Wiretap Act also contains a section that provides for a special provisional remedy in a civil suit under the Act. Under this section, a plaintiff in such a civil suit may apply to the court in which the suit is pending for an order against any search engine over which the court has jurisdiction. If the court determines that the plaintiff is likely to succeed on his or her Wiretap Act claim, then the court can immediately issue an order requiring such a search engine to ensure that no web page on which the intercepted or illegally obtained material appears, or from which it can be “directly accessed,” appears on the first page of search results for any search. (The order does not apply to any search that produces only a single page of search results.)
 - a. The Act defines “directly accessed” to include both (1) a link that leads directly to the material, and (2) any link that from the surrounding context reasonably indicates that it will lead to the prohibited material, and does in fact lead to such material, regardless of how many links it takes to reach the prohibited material.
 - b. A search engine can meet its obligations under such an order by de-indexing the relevant web pages, but such de-indexing is not required so long as the relevant web pages do not appear on the first page of search results.
 - c. The order remains in force unless and until the court rules against the plaintiff on the Wiretap Act claim (or an appellate court rules against the plaintiff on this claim), or the case is otherwise dismissed. If the plaintiff prevails on the claim, and continues to prevail through any appeals, the order effectively becomes permanent.
 - d. The Act provides for both civil and criminal penalties for a violation of such a search engine order, with statutory damages of up to 10,000 MHD per day of violation for a negligent violation, and up to 1,000,000 MHD per day for an intentional violation. Criminal penalties are only available for an intentional violation.

16. On May 8, 2013, Rho sued Sang under the Wiretap Act for knowingly disseminating the contents of unlawfully obtained communications. Rho immediately applied for a search engine order under the Act against Centiplex, which the court granted. The court ultimately ruled that Sang had violated the Wiretap Act and awarded statutory damages to Rho of 400,000 MHD. In so ruling, the court found, under Mhuganian law, that while the source's initial hearing of the voicemail message may have been accidental, the subsequent downloading of the message to his/her computer was intentional and unauthorized under the Wiretap Act, and that furthermore, because Sang had recounted on his blog all of the relevant facts about the circumstances under which the source had acquired the voicemail message, Sang had the knowledge required to be liable under the Act.
17. Centiplex immediately began to comply with the order entered against it, as soon as it was given notice of the order. Centiplex made an appearance in Rho's case against Sang in order to challenge the validity of the search engine order, but the court upheld the order.
18. In the same lawsuit, Rho also sued the unknown source of the recorded voicemail message as a "John Doe." Rho subpoenaed Sang for the identity of that person. Sang filed a motion with the court to quash the subpoena, asserting a privilege to hide the identity of his source. The court denied the motion to quash, finding that while Mhuganian law does recognize a qualified privilege not to reveal sources, it is purely statutory and applies only to "professional journalists," defined to be those "who, for gain or livelihood, are regularly engaged in the gathering, writing, or editing of news intended for a newspaper, magazine, or other professional medium that regularly disseminates news to the public." However, the court did grant a stay of the subpoena to give Sang the opportunity to pursue any national or international appeals.
19. Meanwhile, several members of the Mhuganian Parliament expressed concern about the ease with which Sang was able to acquire information about Rho's search queries, and the absence of legal restrictions on the disclosure of search queries. On May 15, 2013, Mhugan enacted the Search Privacy Act, which makes it unlawful for a search engine to sell information about a person's search queries without that person's consent.
 - a. For purposes of this Act, a "sale" is defined to be a "transfer in exchange for anything of value."
 - b. Information is considered to be information "about a person's search queries" if individual search queries are associated with "any identifier, including, without limitation, a name, address, phone number, email address, government identification number, date of birth, or IP address."

- c. The Act does not apply to non-sale transfers of such information, nor does it apply to any subsequent transfers of the same information after an initial transfer by the search engine, whether or not those subsequent transfers are sales.
 - d. The Act contains explicit exceptions for disclosures to law enforcement agencies pursuant to a warrant, subpoena, or court order, and disclosures incident to the search engine's ordinary course of business.
 - e. The Act provides for compensatory or statutory damages, at the plaintiff's election, as well as punitive damages for a "willful violation."
 - f. The Act is scheduled to become effective on May 1, 2014.
20. On May 20, 2013, Centiplex sued in Mhugan to have the Search Privacy Act declared invalid under the laws and Constitution of Mhugan. The court held that the Search Privacy Act was valid and refused to enjoin its enforcement.
21. All of the rulings described above were appealed to the Mhugan Supreme Court, the highest appellate court in Mhugan, and the Mhugan Supreme Court dismissed all of the appeals.
22. Sang and Centiplex have challenged all of the following in the Universal Court of Human Rights:
- a. the damages imposed on Sang for disseminating the recorded voicemail;
 - b. the subpoena to Sang to disclose the source of the recorded voicemail;
 - c. the order against Centiplex requiring that webpages that link to the recorded voicemail, including Sang's blog posts, never appear on the first page of search results;
 - d. the validity of the 2013 Search Privacy Act.
23. No law, domestic or international, restricts either Sang's or Centiplex's standing to bring these challenges. Both Sang's and Centiplex's positions have been rejected on the merits in the domestic courts of Mhugan, and all appeals or other legal remedies within the Mhuganian court system have been exhausted.