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Letter

Ottawa, 24 August 2006

File No.: [8622-P49-200610510](#)

Mr. J. Edward Antecol
PAPAZIAN HEISEY MYERS
510 – 121 King St. West
P.O. Box 105
Toronto, ON
M5H 3T9

Dear Mr. Antecol:

This letter constitutes the Commission's decision with respect to the application dated 22 August 2006 filed on behalf of Richard Warman seeking, among other things, interim Commission approval under section 36 of the *Telecommunications Act* (the Act) to allow Canadian carriers to block the following two websites: <http://www.overthrow.com> and <http://dossiernoir.blogspot.com/> (the Application).

The Applicant submitted that the web sites in question constitute offences of communicating hate and of advocating genocide, under the *Criminal Code*. The Applicant provided excerpts of the web sites and an affidavit by Bernie Farber, a court qualified expert on hate crimes, in support of his view that the web sites in question violate the *Criminal Code*.

The Applicant further submitted the web sites in question, in posting his home address along with repeated exhortations that he (and all Jews) be killed, have caused him to fear for his personal safety. The Applicant further argued that the sites are a gross invasion of his privacy and are defamatory in the extreme in that they impute false beliefs to him about the seriousness of sexual assault.

The Applicant stated that due to the need to prevent the ever increasing possibility of personal harm to himself and the community at large as the result of the web sites in question, the relief has been requested in two parts: *ex parte* interim approval to permit carriers that are willing and able to do so to block the sites, followed by a broader public proceeding to grant final approval. The Applicant stated that there is a likelihood that one or more larger ISPs are willing to block access to these sites once Commission consent is obtained.

Commission determinations

Section 36 of the Act states as follows:

Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public.

The Commission considers that the Application raises an extremely serious issue and has examined the Application very carefully. The Commission notes, however, that it is a creature of statute and can only exercise the powers granted to it by Parliament. The Commission notes that section 36 of the Act would not allow it to require Canadian carriers to block the web sites; rather, under section 36 of the Act, the Commission has the power to permit Canadian carriers to control the content or influence the meaning or purpose of telecommunications it carries for the public. The scope of this power has yet to be explored.

The Commission notes the unprecedented use of section 36 of the Act proposed by the relief sought in the Application, namely permitting Canadian carriers to block access to specific web sites. The Commission further notes that the Application was filed on an *ex parte* basis – without specific notice to Canadian carriers and other interested parties and without affording an opportunity for all such persons to be heard.

The Commission considers that the type of interim relief sought in the Application raises serious and fundamental issues of law and policy relating to the mandate and powers of the Commission pursuant to the Act. The Commission therefore considers that all interested parties should be afforded an opportunity to provide their views on these important issues.

In addition, the Commission notes that it would normally expect that an application seeking approval for a Canadian carrier to block certain websites pursuant to section 36 of the Act would be filed by the carrier(s) in question. The Commission considers that Canadian carriers should at least be provided notice that an application has been filed by another person for approval pursuant to section 36 of the Act and an opportunity to be heard.

In the Commission's view, given the unprecedented nature of the relief sought in the Application and the serious and fundamental issues it raises, as well as the fact that the specific approval is being sought in favour of Canadian carriers without notice to such carriers, it would be inappropriate to consider granting the interim relief sought in the Application on an *ex parte* basis, and in particular without affording Canadian carriers and all other interested parties the opportunity to comment. Such a public process would allow for consideration of the broader policy and legal issues regarding the scope, and appropriate use, of the Commission's powers pursuant to section 36 of the Act.

Finally, the Commission notes that since the second aspect of the relief sought in this Application – final approval under section 36 of the Act – hinges on interim approval being granted on an *ex parte* basis, this aspect of the Application cannot properly be severed from the rest of the application.

Accordingly, the Commission denies the Application.

Sincerely,

Diane Rhéaume
Secretary General

Date Modified: 2006-08-24

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