

CANADA  
 PROVINCE OF QUEBEC  
 DISTRICT OF MONTREAL

(Class Action)  
 SUPERIOR COURT

---

NO: 500-06-000552-113

**G. HEDGES**

*Petitioner*

-vs.-

**MIDSTREAM MEDIA INTERNATIONAL  
 N.V.**, legal person duly incorporated,  
 having its head office at E-Commerce  
 Park Unit # 18-Q-1 E-Zone, Vredenberg,  
 Netherlands Antilles

*Respondent*

---



---

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
 &  
 TO ASCRIBE THE STATUS OF REPRESENTATIVE  
 (Art. 1002 C.C.P. and following)**

---

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,  
 SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER  
 STATES AS FOLLOWS:

**I. GENERAL PRESENTATION**

**A) THE ACTION**

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- all residents in Canada who have visited the Respondent's YOUPORN Websites, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have visited the Respondent's YOUPORN Websites, or any other group to be determined by the Court;

2. Respondent owns and operates the websites [www.youporn.com](http://www.youporn.com) (ranked # 61 on the internet), [www.youporn.com](http://www.youporn.com) (ranked # 4,266 on the internet), and [www.youporn.com](http://www.youporn.com) (ranked number # 49,549 on the internet) [hereinafter referred to as the “YouPorn Websites”];
3. The present action rest on the use by the Respondent of “history sniffing” or “history hijacking” techniques to intentionally and knowingly capture personal information from unsuspecting users of its websites without their knowledge or consent and in violation of their legal rights;

## **B) THE RESPONDENT**

4. Respondent Midstream Media International N.V. is a Netherlands corporation;
5. The YouPorn Websites promote themselves as vehicles to obtain and share free pornographic media and make content generated by third-parties available to their viewers. The YouPorn Websites are a resource for people who want to view and share, among other things, visual depictions of adult content, including sexually explicit images;

## **C) THE SITUATION**

6. The Respondent accomplished its illicit activities through the use of its JavaScript-enabled websites. JavaScript is a language standard that enables the performance of dynamic websites. Due to exploitable vulnerabilities in how most web browsers respond to JavaScript, however, JavaScript can also be used to provide a host site with the opportunity to peek in on the Class Members’ internet visitation history;
7. In most browsers, application domains share access to a single visited-page history, file cache and Domain Name Server (“DNS”) cache. This leads to the possibility of “history sniffing attacks”, enabling the YouPorn Websites to learn whether a user has visited a specific Uniform Resource Locator (“URL”). By embedding JavaScript code on its website designed to present Class Members’ web browsers with a list of URL’s, Defendant was able to ascertain from their web history files whether Class Members had visited a variety of different websites or not;
8. This “history sniffing” manipulates the fact that browsers display links differently depending on whether or not their target has been visited. Specifically in JavaScript, the attacker can create a link to the target URL in a hidden part of the page, and then use the browser’s Document Object Model (“DOM”) interface to inspect how the link is displayed. If the link is displayed as a visited link, the target URL is in the user’s history;

9. Essentially, the Respondent inserts invisible links into the web page and has JavaScript verify the color field for the link. Because most browsers display a link in a different color if the user has visited that website before, Defendant is thereby able to determine whether the user has visited a particular URL;
10. In this case, Class Members visited the Respondent's YouPorn Website. Once they did so, the Respondent was able to implement the above-described procedure on Class Members' computers, essentially tricking their browsers into providing information from Class Members' web history files. Without the deploying the above-described JavaScript code on its website, Plaintiffs' browsers would not ordinarily give out this information to the Respondent;
11. Particularly troubling, however, were the clear attempts on the Respondent's part to disguise its operation and hide what it was doing from its website visitors;
12. JavaScript is generally invisible to web users. That fact alone is not unusual, as much of the legitimate programming for a website is not seen by the website visitor. There are tools, however, that will allow a website visitor to read the JavaScript on a particular website;
13. Mindful of this fact, the Respondent employed a particularly devious scheme to misdirect users who might use such tools from detecting its tracking activities -- cryptography. When a website visitor uses a tool to view the JavaScript on the Respondent's websites, all they would see were a long list of decipherable letters. This is because the Respondent changes each letter in the list of URL's it is checking for by one letter. Thus, "qpsoivc/dpn", for example, becomes "pornhub.com." It is only at the last minute that this encoded URL is translated to the correct URL to be compared to Class Member's browsing history;
14. Thus, the respondent essentially wrote a code on its websites which, when examined by Class Members' web browsers, caused that web browser to disclose information from Class Members' web history files saved on their computers. To make matters worse, the Respondent took active steps to hide this fact from its customers by encoding its JavaScript to deceive anyone who might try to ascertain what the JavaScript does;
15. The YouPorn Websites do not mention this process at all in their terms and conditions. In fact, the YouPorn Websites' privacy policies are not available to users and are only briefly mentioned in the sites' terms and conditions. These terms and conditions state that "[a]s a condition to using the Website, you agree to the terms of the YouPorn Privacy Policy as it may be updated from time to time. You acknowledge and agree that the technical processing and transmission of the Website, including your User Submissions, may



involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. You further acknowledge and agree that other data collected and maintained by YouPorn with regard to its users may be disclosed in accordance with YouPorn Privacy Policy.”

16. Class Members were harmed by the Respondent’s action in that their personal, private information was obtained without their knowledge or consent. Class Members were harmed in that their personal property -- their computers -- were effectively hijacked by the Respondent and coerced into giving them information from Class Members’ web browsing history files. This information, which was wrongfully and impermissibly, obtained from files accessed by the Respondent, was valuable research data. The Respondent wrongfully benefited by taking this economically valuable information from Class Members;
17. This information was also personal and private to Class Members. Obtaining this information by invisible, encrypted code placed on the Respondent’s website for the purpose of tricking Class Members’ computers into giving up valuable information constitutes a violation of the Class Members’ privacy rights;
18. This scheme was exposed in October 2010 through a report published by the University of California, San Diego (“UCSD”), Department of Computer Science and Engineering, entitled “An Empirical Study of Privacy-Violating Information Flows in JavaScript Web Applications”, the whole as appears more fully from a copy of said report, produced herein as **Exhibit R-1**;

#### **D) THE FOREIGN PROCEDURES**

19. A class actions has been instituted in the United States based on the Respondent’s conduct, the whole as appears more fully from a copy of said Complaint, produced herein **Exhibit R-2**;

#### **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

20. Petitioner has been frequenting the website [www.youporn.com](http://www.youporn.com) approximately three (3) to five (5) times a week for the last year;
21. Petitioner has just recently learned, through his internet research, that this website has been using the technique of “history sniffing” or “history hijacking” to access his personal information, specifically his browsing history, through the use of Java-Script enabling technology;

22. Petitioner has come across and read both the report called “An Empirical Study of Privacy-Violating Information Flows in JavaScript Web Applications” (R-1) and the California Class Action Complaint filed on December 3<sup>rd</sup> 2010 (R-2);
23. Petitioner did not, and would not have, given the Respondent permission to violate his privacy rights;
24. Petitioner’s damages are a direct and proximate result of the Respondent’s conduct;
25. In consequence of the foregoing, Petitioner is justified in claiming damages;

### **III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

26. Every member of the class has visited one of more of the Respondent’s YouPorn Websites
27. Each member of the class has had their privacy rights violated due to the Respondent’s unlawful actions;
28. All of the damages to the class members are a direct and proximate result of the Respondent’s conduct;
29. In consequence of the foregoing, members of the class are justified in claiming damages;

### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
30. Petitioner is unaware of the specific number of persons who have visited the Respondent’s YouPorn Websites, however, given that the site [www.youporn.com](http://www.youporn.com) is ranked number 61 in popularity on the internet, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
31. Class members are numerous and are scattered across the entire province and country;
32. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondent. Even if the class members themselves could afford such

individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondent would increase delay and expense to all parties and to the court system;

33. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
  34. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
  35. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondent and that which the Petitioner wishes to have adjudicated upon by this class action
36. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
  37. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondent's misconduct;
  38. The recourses of the members raise identical, similar or related questions of fact or law, namely:
    - a) Did the Respondent engage in "history sniffing" or "history hijacking" on Class Members' computers?
    - b) Did the Respondent fail to disclose material terms regarding "history sniffing" or "history hijacking" on Class Members' computers?
    - c) What use was made of such "history sniffing" or "history hijacking", including whether they were used for purposes of tracking individuals web surfing and whether personal information was obtained regarding Class Members?
    - d) Did the Respondent employ techniques to thwart Class Members' attempts to not be tracked?
    - e) Did the Respondent violate the privacy of Class Members?

- f) Were Class Members prejudiced by the Respondent's conduct, and, if so, what is the appropriate measure of these damages?
  - g) Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
  - h) Is the Respondent liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?
- b. The interests of justice favour that this motion be granted in accordance with its conclusions;

## **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

39. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages;
40. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendant liable for the damages suffered by the Petitioner and each of the members of the class;

ORDER the Defendant to permanently cease from using "history sniffing" or "history hijacking" to collect and/or disseminate Class Members' personal information;

CONDEMN the Defendant to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendant to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

41. Petitioner is a member of the class;

42. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

43. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

44. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

45. Petitioner, with the assistance of his attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

46. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;

47. Petitioner understands the nature of the action;

48. Petitioner's interests are not antagonistic to those of other members of the class;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

49. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

50. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

51. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada who have visited the Respondent's YOUPORN Websites, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have visited the Respondent's YOUPORN Websites, or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondent engage in "history sniffing" or "history hijacking" on Class Members' computers?
- b) Did the Respondent fail to disclose material terms regarding "history sniffing" or "history hijacking" on Class Members' computers?
- c) What use was made of such "history sniffing" or "history hijacking", including whether they were used for purposes of tracking individuals web surfing and whether personal information was obtained regarding Class Members?
- d) Did the Respondent employ techniques to thwart Class Members' attempts to not be tracked?
- e) Did the Respondent violate the privacy of Class Members?

- f) Were Class Members prejudiced by the Respondent's conduct, and, if so, what is the appropriate measure of these damages?
- g) Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
- h) Is the Respondent liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendant liable for the damages suffered by the Petitioner and each of the members of the class;

ORDER the Defendant to permanently cease from using "history sniffing" or "history hijacking" to collect and/or disseminate Class Members' personal information;

CONDEMN the Defendant to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendant to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the class in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

**ORDER** that said notice be available on the various Respondent's websites with a link stating "Notice to YouPorn users";

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs including publications fees.

Montreal, January 11, 2011

(s) Jeff Orenstein

---

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner