

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL

(Class Action)
 SUPERIOR COURT

NO: 500-06-000552-113

G. HEDGES

Plaintiff / Class Representative

-vs.-

**MIDSTREAM MEDIA INTERNATIONAL
 N.V.**, legal person duly incorporated,
 having its principal place of business at
 300-7777 boulevard Decarie, City of
 Montreal, Province of Quebec, H4P 2H2

Defendant

**MOTION TO INSTITUTE PROCEEDINGS
 (Art. 110 and following C.C.P.)**

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

I. INTRODUCTION

1. On December 19th 2011, the Superior Court of Quebec authorized (certified) the Plaintiff / Class Representative to institute a class action against the Defendant on behalf of the group of “all residents in Canada who have visited the Respondent’s YOUPORN Websites”;
2. The Defendant owns and operates the websites www.youporn.com (ranked # 61 on the internet), www.youporngay.com (ranked # 4,266 on the internet), and www.youporncocks.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 Defendant 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;



4. In the judgement granting class action status on December 19th 2011, the Superior Court of Quebec identified 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?

II. THE DEFENDANT

- 5. The Defendant Midstream Media International N.V. is a Netherlands corporation;
- 6. On or about May 10th 2011, Manwin Licensing International s.à.r.l. (“Manwin”), a Luxembourg corporation purchased the YouPorn Websites, the whole as appears more fully from a copy of two (2) reporting articles, produced herein as **Exhibit P-1**;
- 7. The Defendant now uses the same Montreal based offices as Manwin as its principal place of business, the whole as appears more fully from a copy of the Defendant’s entry at the *Registre des entreprises* in Quebec, produced herein as **Exhibit P-2**;
- 8. 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;

III. THE SITUATION

9. The Defendant 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;
10. 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;
11. 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;
12. Essentially, the Defendant 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;
13. In this case, Class Members visited the Defendant's YouPorn Website. Once they did so, the Defendant 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 Defendant;
14. Particularly troubling, however, were the clear attempts on the Defendant's part to disguise its operation and hide what it was doing from its website visitors;

15. 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;
16. Mindful of this fact, the Defendant 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 Defendant's websites, all they would see were a long list of decipherable letters. This is because the Defendant 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;
17. Thus, the Defendant 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 Defendant 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;
18. 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."
19. Class Members were harmed by the Defendant'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 Defendant 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 Defendant, was valuable research data. The Defendant wrongfully benefited by taking this economically valuable information from Class Members;

20. This information was also personal and private to Class Members. Obtaining this information by invisible, encrypted code placed on the Defendant's website for the purpose of tricking Class Members' computers into giving up valuable information constitutes a violation of the Class Members' privacy rights;
21. 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 P-3**;

IV. THE EXAMPLE OF THE PLAINTIFF / CLASS REPRESENTATIVE

22. The Plaintiff / Class Representative has been frequenting the website www.youporn.com approximately three (3) to five (5) times a week for the last year;
23. The Plaintiff / Class Representative has, therefore, been a victim of the Defendant's use of "history sniffing" or "history hijacking" to access his personal information, specifically his browsing history, through the use of Java-Script enabling technology;
24. The Plaintiff / Class Representative did not, and would not have, given the Defendant permission to violate his privacy rights;
25. Plaintiff / Class Representative damages are a direct and proximate result of the Defendant's unlawful and intentional conduct;
26. In consequence of the foregoing, the Plaintiff / Class Representative is justified in claiming as damages:
 - a) \$100 in compensatory damages, and
 - b) \$250 in punitive damages;

V. THE DAMAGES

27. Every member of the class has visited one of more of the Defendant's YouPorn Websites;
28. Each member of the class has had their privacy rights violated due to the Defendant's unlawful and intentional actions;
29. All of the damages to the class members are a direct and proximate result of the Defendant's conduct;

30. In consequence of the foregoing, members of the class are justified in claiming as damages an estimated, *sauf à parfaire* when further information is available so as to better evaluate the number of Class Members in Canada:

- a) \$ 10,000,000 in compensatory damages, and
- b) \$ 25,000,000 in punitive damages;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the class action of the Plaintiff / Class Representative and each of the members of the class;

DECLARE the Defendant liable for the damages suffered by the Plaintiff / Class Representative 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 the Plaintiff / Class Representative the sum of \$100 in compensatory damages and \$250 in punitive damages;

CONDEMN the Defendant to pay to each member of the class a sum of \$10,000,000 in compensatory damages and \$25,000,000 in 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 January 28th 2011, 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;

Montreal, February 28, 2012

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Plaintiff / Class Representative