

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

DANIEL REID QUOTED IN VANCOUVER SUN ARTICLE RELATING TO BC SUPREME COURT ORDER TO ZOOCASA TO PAY \$32,000 TO REAL ESTATE AGENTS

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Gillian Shaw, Vancouver Sun

September 13, 2011 –Two Century 21 real estate agents have been awarded a total of \$32,000 in damages for copyright infringement after another company posted their listings online.

The B.C. Supreme Court ruled that real estate listings aggregator Zoocasa breached terms of use posted on Century 21's website by putting the company's listings on its site.

Zoocasa, a wholly-owned subsidiary of Rogers Communications, is a real estate search engine that lets home buyers search according to areas and options they are looking for in a home. The court said terms of use on a website are legally binding even if there is no opt-in provision for web surfers to indicate they agree to the conditions.

Two real estate agents whose listings were posted on Zoocasa were awarded \$250 in damages for each copyright infringement. Charles Bilash, who held copyright to 24 property descriptions and 99 photos posted by Zoocasa, is to receive \$30,750 in statutory damages. Michael James Walton will get \$1,250 for five property descriptions.

The court's finding that proof of agreement to terms of a website isn't required sets a precedent in Internet law in Canada. But lawyers say it is unlikely to open the floodgates to lawsuits from website owners.

Marko Vesely, a lawyer with Lawson Lundell and counsel for the plaintiffs in the case, said the decision is the first in Canada to uphold the validity of what is known in industry terms as "browse wrap."

Browse wrap refers to the online terms of use on websites. However, unlike online contracts that require the user to signal acceptance by clicking on something like a 'yes' or 'agree' button (known as 'clickwrap'), there is no provision for proof that the web surfer has seen and agreed to the terms of use.

"What is novel about this case is that it upheld the validity of those terms of use as being a valid contract between this particular user of the website and the owner of the website," said Vesely.

He said there will be future issues arising out of this ruling for courts to consider, such as whether ordinary Internet users should be held to the same standard as corporate users and whether people can argue there wasn't sufficient notice of the terms.

“The court was able to reach this conclusion because the defendant was a large, sophisticated company that operates an Internet business, it has its own terms of use and treats them as binding,” said Vesely. “They agreed Century 21’s terms of use were reasonable.

“On those facts, the courts said we can enforce those terms.”

Daniel Reid, a lawyer with Harper Grey, whose practice includes defamation, privacy and media law, said the decision is another step forward to the courts beginning to apply existing concepts of law to the Internet.

“In many ways it is a smart judgment and one that moves the law forward in terms of understanding how the Internet is regulated,” he said.

“It’s a unique case and it clarifies the importance of the terms of use,” he said. “...But in terms of opening the floodgates I think the facts of this case are so unique it is not really going to change the way people use the Internet or the way companies use the Internet.”