

# Rise of the Super Injunctions - actions taken against Twitter and Google

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The New South Wales Supreme Court has recently ordered a [worldwide injunction against Twitter to prevent the publication of confidential financial information](#).

Whilst the granting of an injunction to prevent disclosure of confidential information is common, the scope of the injunction (that it apply globally) is a growing phenomenon within common law countries such as Australia, Canada, Hong Kong and the United Kingdom. Generally, an injunction will only apply within the jurisdiction of the Court. However, global (or super) injunctions are becoming more common, especially in media and/or defamation cases.

In the proceedings, an anonymous plaintiff (known only as Plaintiff X) obtained a global injunction against Twitter following the consistent posting of confidential financial information by an unidentified author in a series of tweets over a three month period. This was despite Twitter being on notice of the confidential nature of that information.

As Twitter was used as the publication platform for confidential information and, after the first tweets, was put on notice of the confidential information being disclosed, Plaintiff X had a direct cause of action against Twitter and did not require Twitter to be in Australia for the Court to hear the injunctive action.

Twitter did not present any formal appearance in the proceedings and did not take any role in the proceedings other than to provide the Court with an email containing information, submissions and objections in relation to the proceedings. The email included the submission from Twitter that it is *"not feasible to proactively monitor user content for offending material"*. As Twitter did not present any evidence as to its processes or to explain the factual basis for that contention, the Court accepted the Plaintiff's submission that there must be a mechanism to filter information on Twitter.

Whilst the orders made by the Court remain confidential, the judgment discusses the need to make injunctive orders not only for the removal of any confidential financial information of the Plaintiff that had been previously published, but also for the prevention of the publication of any such material in the future. If an order to such effect was made (and the judgment suggests one was), it may place a significant onus on Twitter to monitor the tweets of its 300 million plus active users to ensure that no confidential financial material of the Plaintiff is disclosed in the future.

In a separate decision in Canada last year, the Canadian Supreme Court affirmed a decision to grant a global injunction against Google, despite Google being only a third party to the underlying infringement action. In those proceedings, Google had voluntarily removed certain webpages from its 'Google.ca' search results; but had refused to remove those webpages from their worldwide search results. The Canadian Supreme Court upheld the injunction, which required Google to remove the offending webpages from its worldwide search results.

The action taken by the Court in each of the above decisions is contrary to their usual position. Courts are reluctant to grant an injunction which requires the constant supervision of the Court to enforce. Google is currently challenging the order of the Canadian Supreme Court in the Federal District Court of California.

It will be interesting to see if the granting of global injunctions by jurisdictions such as Canada, and now Australia, results in other common law jurisdictions following suit, especially against social media platforms. In the circumstances that such 'super injunctions' become more common, digital search engines and social media platforms may be subject to orders in countries in which they have no physical or registered (incorporated) presence and be required to undertake significantly greater monitoring of the content on their platforms.

It will also be of interest to see whether such Court orders impact any action taken by the Australian Competition and Consumer Commission once it has completed its inquiry into Google, Facebook, other digital search engines, digital content aggregation platforms and social media platforms.

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