

Bank drops lawsuit against Wikileaks

Ed Hightower
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On March 5, Swiss bank Julius Baer (BJB) quietly dropped its lawsuit against Wikileaks.org, a website that publishes leaked documents revealing corporate and government misconduct. The decision means that the US address of Wikileaks will return to full functionality.

A San Francisco, California court was reviewing a case brought by BJB after Wikileaks posted internal documents allegedly revealing fraudulent activities. The bank was contending that the documents were stolen by an ex-employee, that they are false, and that Wikileaks violated California law by making them available to the public.

The move comes a week after United States district judge Jeffrey White dissolved a previous order he issued against Wikileaks and its domain registrar in the United States, Dyandot Corporation.

The initial order, issued February 15, required Wikileaks to remove any documents related to BJB from its website and required Dynadot to effectively shut down Wikileaks.org in the US. Dyandot agreed to halt access to the web address Wikileaks.org in exchange for being dropped from the lawsuit.

Mirror sites in other countries remained operational, and the case drew international attention to the website.

Since it began posting in December 2006, Wikileaks has been the source of a number of important documents, including the US military's rules of engagement for Iraq and the operating procedures for detainee treatment at Camp Delta in Guantánamo Bay.

On February 29, Wikileaks published a written statement from the ex-employee, Rudolf Elmer, former chief operating officer of the Cayman Island subsidiary of BJB. Elmer charges that "tax evasion as well as massive aiding hereunto are part of the repertoire" of BJB. He alleges that BJB systematically transfers otherwise taxable funds to the Cayman Islands branch and other tax havens to illegally avoid tax payments.

In the two weeks following the initial order, a multitude of free speech organizations and media groups—among them the American Civil Liberties Union, American Society of Newspaper Editors, Associated Press, *Los Angeles Times*, Hearst Corporation and the Society of Professional Journalists—filed *amicus* briefs questioning the legality of the order.

The various *amicus* briefs raised a number of glaring flaws in BJB's suit in and the February 15 order.

The basic question was that of "prior restraint" on free speech. The prior restraint doctrine makes it presumptively unconstitutional to prevent a person or entity from conducting a speech activity such as publishing a newspaper or a website.

Case after case has held that even speech activities that seriously harm someone, such as publication of private or classified information, or illegally obtained information, should not be subject to prior restraint absent extraordinary circumstances.

In the case of Wikileaks and Dynadot, BJB argued that their privacy and financial interests justified blocking the publication of leaked documents on the Wikileaks site, a claim that flew in the face of every case that speaks to the issue. In *CBS, Inc. v. Davis*, to cite just one example, the Supreme Court ruled that CBS could not be barred from airing a video showing unsanitary conditions in a meatpacking plant even though the company faced the possibility of significant economic harm.

The groups' *amicus* briefs appear to have weighed heavily on White. In his February 29 order, he echoed the arguments put forth in the briefs and dissolved the temporary restraining order against Wikileaks. In doing so, White said that the *amicus* briefs raised "issues regarding possible infringement of protections afforded to the public by the First Amendment to the United States Constitution."

He also followed the line set out in the *amicus* concerning the need for a temporary restraining order to be “narrowly tailored” to grant the relief sought by the plaintiffs. In shutting down the entire Wikileaks.org domain name, the judge wrote, he obstructed public access to over a million other documents that were not at issue in the suit brought by BJB.

One of the reasons behind the judge’s reversal—and the decision by BJB to drop the case—was no doubt the simple fact that the attempt to muzzle Wikileaks was completely ineffective. Indeed, from the standpoint of BJB, it was counterproductive, since the documents remained on mirror sites and the lawsuit only served to call attention to them.

Nevertheless, the Wikileaks case highlights the growing conflict that exists between the corporate and government interests and the Internet as a medium of communication and information dissemination. The outcome of this particular stage in the case will certainly not end corporate and government attempts to control Internet information.



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