

# Canadian Court Asserts Jurisdiction over Craigslist Based on Cloud-Based Virtual Presence in Canada

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A Canadian appellate court ruled that a lower court had jurisdictional authority to issue a production order to Craigslist based upon its virtual (but not physical) presence in British Columbia. The production order requested that Craigslist produce to Canadian officials documents relating to a user post in connection with a criminal investigation. ([British Columbia \(Attorney General\) v. Brecknell](#), 2018 BCCA 5 (Jan. 9, 2018)).

This decision highlights another situation where a court blurred the distinction between a physical and virtual presence of a corporation that engages in global e-commerce. Indeed, we had written about an [important Canadian decision last year](#) that involved an American company objecting to an order to delist certain search results globally. With U.S. companies already concerned about the [territorial scope of the EU's GDPR](#), they also have to address legal risks associated with jurisdiction by a virtual presence north of the border (and possibly other jurisdictions).

In this dispute, Canadian officials, in connection with a probe into criminal offenses that occurred in British Columbia (BC), sought production of records from Craigslist relating to a certain user posting made in the province (e.g., user name/email, IP address, phone number, posting details). Craigslist has a website for Vancouver, BC and other surrounding communities, but has no physical office in Canada. The court acknowledged that there was no evidence presented about where the data at issue was located. Two lower courts found the Canadian courts lacked jurisdiction to grant the order because Craigslist is an American company with only a virtual presence in BC and such an order would have impermissible extraterritorial effect. (There is no suggestion in the opinion that the court considered Section 230 of the Communications Decency Act in this case, even though it likely would have been relevant if U.S. law were applied to this dispute.)

However, a BC appellate court found there was a “real and substantial connection between craigslist and British Columbia arising from craigslist’s virtual presence in British Columbia to conduct business,” sufficient to provide a jurisdictional foundation for the issuance of a production order. In recognizing the “realities of modern day electronic commerce,” the court stated that craigslist’s virtual presence is closely connected to the circumstances of the alleged offense, because “at least some elements of the alleged offense were facilitated by relying on the services Craigslist provides virtually.” Interestingly, the court pointed to the ongoing debate currently before the Supreme Court over subpoenas issued by the U.S. government to disclose electronic documents in the United States, although retrieved from another country. The court concluded its reasoning with its viewpoint on the intersection of law enforcement and modern commerce:

“I do not think that a principled and effective system of legitimate investigation based on international norms should be contingent on business decisions taken by service providers in their own private interest. It is notorious that service providers move customer information around the world frequently, no doubt for entirely legitimate commercial reasons, and it seems frequently break up data storing it in a variety of different places. The result may be the effective, if unintended, frustration of investigation into serious criminal conduct.”

With this decision, cloud-based e-commerce platforms must now be cognizant that, to the extent they have an aspect of their business focused on Canadian customers, they (and their users) may be subject to certain Canadian investigative demands or other court orders.

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