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Attorneys for Plaintiff WhenU.Com, Inc.

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

WHENU.COM, INC., a Delaware
corporation,

Plaintiff,

vs.

THE STATE OF UTAH, a body politic,
OLENE S. WALKER, in her official capacity
as Governor of Utah, and
MARK SHURTLEFF in his official capacity
as Utah Attorney General,

Defendants.

APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND MOTION
FOR PRELIMINARY INJUNCTION

Case No. _____

Honorable _____

Pursuant to the terms of Rule 65A, Utah Rules of Civil Procedure, Plaintiff WhenU.com, Inc. ("WhenU") hereby applies for a temporary restraining order and moves for preliminary injunction preventing the Utah Spyware Control Act (the "Act"), Utah Code Ann. § 10-39-101 et seq. (2004 Supp.), from taking effect during the pendency of this action. In support of this motion, WhenU respectfully submits:

1. WhenU will suffer irreparable harm unless an injunction issues to prevent the effectiveness of the Act, which will go into effect on May 2, 2004.

2. The threatened injury to WhenU if the Act goes into effect outweighs whatever injury the injunction sought by this motion will cause to the State of Utah and the other defendants.

3. The injunction sought in this motion will not be adverse to the public interest, but will serve the public interest.

4. There is a substantial likelihood that WhenU will prevail on the merits of the claim because:

- a. The Act violates the Commerce Clause in Article I, §8 of the United States Constitution;
- b. The Act violates WhenU's rights under the First and Fourteenth Amendments to the United States Constitution;
- c. The Act violates Article I §15 of the Utah Constitution;
- d. The Act violates Article I §24 of the Utah Constitution; and
- e. The Act violates the Federal Copyright Act.

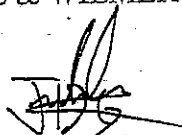
In the alternative, this Case presents serious issues on the merits which should be the subject of further litigation.

5. WhenU should not be required to post any security because the State of Utah and the other defendants will suffer no injury whatsoever in the event of an injunction.

In further support, WhenU respectfully submits its Memorandum in Support of Application for Temporary Restraining Order and Motion for Preliminary Injunction, together with the Affidavits of Avi Naider, Arnold G. Reinhold and Marisa L. Megur, which are filed and served herewith.

Dated this 12th day of April, 2004

SNELL & WILMER L.L.P.



Alan L. Sullivan
James D. Gardner

Attorneys for Plaintiff WhenU.Com, Inc.