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## Ariz. judges favor some privacy for nameless e-mails

**By Howard Fischer**

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PHOENIX — The state Court of Appeals on Tuesday spelled out new privacy protections for those who use the Internet to send anonymous messages.

In the first ruling of its kind in Arizona, the judges said those who believe they have been harmed by anonymous Internet postings or e-mail cannot use Arizona courts to discover the identity of the senders unless they can prove their interests outweigh the privacy of those who originated the messages.

The divided court set up a three-step test for judges to use when confronted with lawsuits by individuals or companies that contend someone whose identity they don't know damaged them.

The process includes what Judge Ann Scott Timmer called "a balancing of the parties' competing interests," which she said "provides an additional safeguard that comports with Arizona's broad protection given to free speech and individual privacy."

"This is actually a great ruling for privacy," said Corynne McSherry, an attorney with the Electronic Frontier Foundation, which lobbies and intervenes in cases involving Internet privacy.

The 2-1 ruling requires evidence that the person whose identity is being sought "has been given adequate notice and a reasonable opportunity to respond." That notice, usually provided through the Internet service provider, gives the person a chance to hire an attorney and fight the request.

Potentially more important, the person filing suit has to show a judge there is a real case.

Attorney Charles Mudd Jr., who represents both the Internet provider and the anonymous e-mailer in the case, said that combats the practice, particularly by businesses, to go on a "fishing expedition."

"The court system should not be used merely as a means of identifying X employee and then using that information to terminate them," he said.

McSherry agreed.

"Folks would trump up really bogus claims and use them as an excuse to find out someone's identity who is maybe just saying something they didn't like," she said, whether to fire the person if the poster is an employee or simply to harass him or her. "But the First Amendment doesn't allow that," she said.

Finally, even if a judge concludes there is a legitimate claim, such as evidence that someone hacked into a company's computer, that doesn't end the matter. Tuesday's ruling says a judge can order an Internet provider to surrender the name of the poster only if that balancing test favors disclosure.

The case involves Mobilisa Inc., a company based in the state of Washington, which provides wireless and mobile communications to customers, including government and military entities. A company executive had used his e-mail to send a personal message to a woman with whom he was involved.

Several days later, some people, including Mobilisa employees, got an anonymous e-mail with that message and the comment: "Is this a company you want to work for?" The mail was from an address at

TheAnonymousEmail.com, which is owned by The Suggestion Box, an Arizona company.

Attorneys for Mobilisa persuaded an Arizona judge to force The Suggestion Box to disclose who sent the e-mail. But Tuesday's ruling sends the case back to the judge with directions to use the new three-pronged test to determine if the company can be forced to provide the name.

Speaking in opposition, Judge Daniel Barker said the requirement to weigh the privacy interests of the e-mailer with the needs of the person filing suit could result in situations where the plaintiff effectively is left without the ability to pursue the claim.

David Linehan, the attorney for Mobilisa, did not return a phone call seeking comment.

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