



February 27, 2013

SENT BY EMAIL

The Secretary
Canadian Transportation Agency
15 Eddy Street
Gatineau, QC J8X 4B3

Dear Madame Secretary:

RE: Lukács's complaint regarding United Air Lines' onboard privacy policy, dated February 24, 2013

We are counsel for United Air Lines (“**United**”) in this matter.

This letter is in response to the seven directed questions posed in Dr. Lukács's complaint regarding United's onboard privacy policy, dated February 24, 2013. United submits that the questions posed by Dr. Lukács fall outside the purpose of section 19 of the *Canadian Transportation Agency General Rules* (the “**CTA Rules**”) and requests that the Canadian Transportation Agency issue a decision to this effect. United also submits that the Agency should reject Dr. Lukács's request for a copy of the Hemispheres Magazine pursuant to section 16(1) of the CTA Rules because the necessary condition precedent for the production of documents—that they relate to a matter in dispute—is not present and there is a reasonable basis to conclude that Dr. Lukács already has a copy of the document he is requesting.

Purpose of section 19 of the CTA Rules

Section 19 of the CTA Rules provides a procedure for one party to direct questions to another party. It is United's position that section 19 is intended to provide for the exchange of facts known to one party but unknown and unavailable to another party. The purpose is not to provide a means for one party to “fish” for another party's position on an issue currently before the Agency nor is the rule intended to force an opposing party to provide speculative answers relating to an issue currently before the Agency. It is United's position that directed questions seeking information other than facts known to one party and not the other are outside the purview of section 19 and that the CTA should reject all such questions.



The Agency has discretion to reject direct questions

Section 19 of the CTA Rules requires a party issuing directed questions to provide reasons for the questions and an explanation as to the questions' relevance to the proceeding. United submits that section 19, in combination with sections 4 and 20, provides the CTA with discretion to determine whether or not the reasons for the questions and their relevancy to the proceeding are sufficient to justify a response. This position is supported by section 20(3), which provides the Agency with the discretion to compel or not compel an answer to a question that an opposing party submits is irrelevant. While section 20(3) lists several conditions precedent to such a determination, section 20(3) read in conjunction with section 4 provides the CTA with discretion to rejected directed questions at any point in time. Further, the CTA's discretion to reject questions is implicitly supported by the requirement that reasons and explanations accompany directed questions and that responses to directed questions only follow the CTA issuing a timeframe for a response.

In summary, the CTA has the jurisdiction to determine whether the directed questions posed by Dr. Lukács are proper question under section 19 of the CTA Rules and the discretion to reject directed questions that are improper, irrelevant or unreasonable.

Six of the seven questions posed by the complainant fall outside the purview of section 19

United submits that six of the seven questions posed by Dr. Lukács fall outside the purview of section 19 and that United is not compelled to answer them.

Q1. What is the rationale for the prohibition against photography and audio or video recording on board United Airlines aircrafts?

This question does not request a particular fact; rather, it is a request for United's position on a particular issue. United submits that a request to take a position is outside the purview of section 19 and that United is not required to answer this question.

Q2. When was the prohibition against photography and audio or video recording on board United Airlines aircrafts introduced?

United submits that the onboard photography and recording privacy policy that appears in its Hemispheres Magazine is accurately reflected in Dr. Lukács's complaint. United submits that the date on which the onboard privacy policy came into effect is not relevant to the Agency's determination as to whether or not it is a "term or condition" and if so, whether or not it is reasonable.

That said, United confirms that the policy was implemented in 2010.



Q3. Is there any regulation of the Federal Aviation Administration that addresses the use of cameras and/or audio recording devices on board aircrafts? If so, please elaborate.

Dr. Lukács requests that United, an opposing party in a Canadian proceeding, provide him with legal advice on United States law. United is under no obligation to provide Lukács's with legal advice. Moreover, US law is not relevant to this proceeding. Consequently, United takes the position that this question is outside the purview of section 19.

Q4. Does the photography or audio or video recording of aircraft equipment or procedures affect the safety of the flight in any way? If so, please elaborate.

United submits that Dr. Lukács is not asking United to disclose a fact; rather he is asking United to take a position. United is free to choose the positions it takes before the Agency and should not be compelled by an opposing party through a directed questions procedure to take a position on a question framed by that opposing party.

Moreover, the question posed by Dr. Lukács asks United to speculate on whether or not any circumstance could arise where the photography or audio or video recording of aircraft equipment or procedures could affect the safety of a flight. United submits that rule 19 does not require a party provide speculative answers, responses to hypothetical questions or positions relevant to the proceeding.

Q5. Does the photography or audio or video recording of airline personnel affect the safety of the flight in any way? If so, please elaborate.

United submits that Dr. Lukács is not asking United to disclose a fact; rather he is again asking United to take a position. As submitted above, United is free to choose the positions it takes before the Agency and should not be compelled by an opposing party through a directed questions procedure to take a position on a question framed by that opposing party.

Dr. Lukács is also requesting that United speculate whether or not there is any circumstance where the photography or audio or video recording of airline personnel could affect the safety of a flight. As discussed above, it is United's position that rule 19 does not require a party provide speculative answers, responses to hypothetical questions or positions relevant to the proceeding.

Q6. Does the photography or audio or video recording of other passengers affect the safety of the flight in any way? If so, please elaborate.

United submits that Dr. Lukács is not asking United to disclose a fact; rather he is again asking United to take a position. As submitted above, United is free to choose the positions it takes



before the Agency and should not be compelled by an opposing party through a directed questions procedure to take a position on a question framed by that opposing party.

Dr. Lukács is requesting that United speculate whether or not there is any circumstance where the photography or audio or video recording of airline personnel could affect the safety of a flight. As discussed above, it is United's position that rule 19 does not require a party provide speculative answers, responses to hypothetical questions or positions relevant to the proceeding.

Q7. What is the meaning of "personal events" in the context of the prohibition against photography found in the Hemisphere magazine?

United submits that Dr. Lukács is not asking United to disclose a fact; rather he is again asking United to take a position on the meaning of "personal events". As submitted above, United is free to choose the positions it takes before the Agency and should not be compelled by an opposing party through a directed questions procedure to take a position on a question framed by that opposing party. As such, United submits that section 19 does not compel it to respond to this question.

Dr. Lukács's rationale for the questions is inconsistent with purpose section 19 of the CTA Rules

United submits that the purpose of section 19 of the CTA Rules is to provide a mechanism for parties to a proceeding before the Agency to exchange relevant facts that are known to one party but not the other. It also submits that it is incumbent upon the party directing a question to establish that the requested facts are relevant to the proceeding and that the disclosure of the requested facts is reasonable and related to the purpose of section.

Dr. Lukács states that the intended purpose of his seven questions is "to test whether the prohibition...is related in any way to United Airlines' ability to meet its statutory, commercial, and operational obligations". Thus, the purpose of Dr. Lukács questions is not to learn facts relevant to the proceeding. Instead, Dr. Lukács's purpose is to set out what factors he believes are relevant to the Agency's determination and compel United to address these factors.

United submits that it is the exclusive purview of the Agency to determine what factors are relevant to this proceeding and "test" the evidence and positions of the parties against these factors. Conversely, it is the purview of the parties to decide how to frame their respective positions and to make their case. It is not the purview of parties to dictate how other parties must make their case.

United submits that the purpose and rationale for Dr. Lukács's directed questions—to test whether United's privacy policy "is related in any way to United Airlines' ability to meet its statutory,



commercial, and operational obligations”—are inconsistent with section 19 of the CTA Rules and as such the Agency should reject all seven questions.

There is no matter in dispute justifying the production of documents

Pursuant to section 16(1) of the CTA Rules, Dr. Lukács requests that United produce a copy of the Hemispheres Magazine that includes United’s onboard photography and recording privacy policy. Section 16(1) of the CTA Rules provides a procedure for requesting a document “that relates to any matter in dispute [...]”. United submits that the purpose of section 16(1) of the CTA Rules is for the production of a document relevant to a matter in dispute and that is in the possession of one party but not the other. Thus, section 16(1) does not apply to documents that relate to a matter not in dispute or to documents that both parties already possess. This second point is supported by section 16(2) which provides for the filing of secondary evidence of the contents of the requested document if the opposing party refuses production.

United submits that the excerpt of United’s onboard photography and recording privacy policy that appears in Dr. Lukács’s complaint is accurate and that it is an image of the text appearing in Hemispheres Magazine . Consequently, there is no dispute relating to the content of the statement that appears in Hemisphere Magazine and therefore no condition precedent giving rise to the application of section 16(1) of CTA Rules. Further, the image of the policy that appears in Dr. Lukács’s complaint suggests he already has a copy of the document he is requesting. Consequently, United submits that the circumstances do not warrant Dr. Lukács’s invocation of section 16(1) of the CTA Rules and that the Agency should issue a decision to this effect.

Notwithstanding United’s objection to Dr. Lukács’s document production request, the page on which the United’s onboard photography and recording privacy policy appears may provide the Agency with helpful context in this proceeding. As such, Appendix A to this letter includes a copy of the relevant page from the August 2012 Hemispheres Magazine.

Yours truly,

Drew Tyler

cc: Dr. Gábor Lukács’s
