

Federal Court



Cour fédérale

Date: 20190221

**Dockets: T-2177-16
T-463-17
T-480-17**

Citation: 2019 FC 214

Toronto, Ontario, February 21, 2019

PRESENT: The Honourable Mr. Justice Pentney

Docket: T-2177-16

BETWEEN:

ME2 PRODUCTIONS, INC.

Plaintiff

and

**DOE #1 ET AL. (SEE SCHEDULE 1 FOR LIST
OF DEFENDANTS)**

Defendants

and

**AMANAH TECH INC., BELL CANADA,
ROGERS COMMUNICATIONS INC.,
TEKSAVVY SOLUTIONS INC., PRIMUS
TELECOMMUNICATIONS CANADA**

**Non-Party Respondents
(Disclosure Motion Only)**

Docket: T-463-17

AND BETWEEN:

WWE STUDIOS FINANCE CORP.

Plaintiff

and

**DOE #1 ET AL. (SEE SCHEDULE 1 FOR LIST
OF DEFENDANTS)**

Defendants

and

**AMANAH TECH INC., BELL ALIANT
REGIONAL COMMUNICATIONS INC.,
BELL CANADA, CIK TELECOM INC.,
EASTLINK, DISTRIBUTEL
COMMUNICATIONS LTD., ROGERS
COMMUNICATIONS INC., TEKSAVVY
SOLUTIONS INC., VIANET, VMEDIA INC.**

**Non-Party Respondents
(Disclosure Motion Only)**

Docket: T-480-17

AND BETWEEN:

I.T. PRODUCTIONS, LLC

Plaintiff

and

**DOE #1 ET AL. (SEE SCHEDULE 1 FOR LIST
OF DEFENDANTS)**

Defendants

and

**AMANAH TECH INC., BELL ALIANT
REGIONAL COMMUNICATIONS INC.,
BELL CANADA, EASTLINK, DISTRIBUTEL
COMMUNICATIONS LTD., ROGERS
COMMUNICATIONS INC., TEKSAVVY
SOLUTIONS INC., VMEDIA INC., PRIMUS
TELECOMMUNICATIONS CANADA, START
COMMUNICATIONS, XPLORNET
COMMUNICATIONS INC.**

**Non-Party Respondents
(Disclosure Motion Only)**

ORDER AND REASONS

I. INTRODUCTION

[1] ME2 Productions, Inc. (ME2), WWE Studios Finance Corp., and I.T. Productions, LLC (the Plaintiffs), say they have evidence that some TekSavvy Solutions Inc. (TekSavvy) subscribers have illegally downloaded and shared movies over which the Plaintiffs have copyright. Under the “notice and notice” regime enacted by the *Copyright Modernization Act*, SC 2012, c 20, the Plaintiffs sent notice to TekSavvy of this activity, which in turn required TekSavvy to forward that notice to the subscribers.

[2] The Plaintiffs say they have evidence that even after receiving this notice, some of these subscribers continued to unlawfully download and share their movies. The Plaintiffs want the names and addresses of these subscribers in order to pursue action against them for breach of copyright. To obtain those names, the Plaintiffs sought a disclosure order from this Court (known as a *Norwich* order). They also claimed that TekSavvy had not complied with its obligations under the *Copyright Act*, RSC 1985, c C-42 [the *Act*], and they sought statutory damages for non-compliance.

[3] TekSavvy objected, arguing that the Plaintiffs had not been forthright with the Court about which customers had received the notices and had not provided the evidence needed to obtain a *Norwich* order. TekSavvy also argued the claim for damages must proceed separately, rather than as part of the disclosure motion. The Case Management Judge (CMJ) who heard the

matter, Prothonotary Kevin Aalto, granted the *Norwich* order and set out the procedure for dealing with the statutory damages question (the Prothonotary's Order).

[4] This is TekSavvy's appeal of that decision.

[5] Two questions lie at the core of this appeal:

- i. What is the proper evidence and procedure to be followed in obtaining a *Norwich* order in a case which relates to the notice and notice regime established by the *Copyright Modernization Act*?
- ii. Can a claim of statutory damages in relation to an alleged breach of these provisions be dealt with in the context of an application for a *Norwich* order, or does it have to proceed as a separate matter?

[6] As has been acknowledged by the CMJ and the parties, this is an emerging area of the law and the practices and procedures are still being developed. An overarching consideration in this case is the degree of "elbow room" that should be given to a CMJ in making orders under this relatively new legal regime.

[7] When the CMJ considered the matter, the governing authority was the decision of the Federal Court of Appeal (FCA) in *Voltage Pictures, LLC v John Doe*, 2017 FCA 97 [*Voltage Pictures*]. When this matter was argued before me, that case was on appeal to the Supreme Court of Canada (SCC); in the intervening period, the SCC has released its decision: *Rogers Communications Inc v Voltage Pictures, LLC*, 2018 SCC 38 [*Rogers Communications*]. I have

received further submissions from the parties on the relevance of that decision to this case, and it sets the framework for my analysis.

[8] Finally, on November 17, 2017, the Court granted an order governing a number of procedural matters during the period pending the appeal. The law firm representing the Plaintiffs was permitted to serve the statement of claim on eight TekSavvy subscribers but was otherwise prohibited from disclosing their names or addresses to anyone, including to the Plaintiffs. In addition, the order requires these subscribers to preserve any documents or records relevant to the claim for copyright infringement.

II. BACKGROUND

[9] This case is about allegations of illegal downloading and sharing of movies. The SCC provided a succinct description of how this works in *Rogers Communications*:

[1] Online infringement of copyright has become commonplace. Using peer to peer file sharing networks, Internet subscribers can download copyrighted content such as films and music, while simultaneously uploading that content for download by others who are thereby able to do the same. Through this concurrent downloading and uploading, peer to peer networks facilitate the rapid sharing of copyrighted content with multiple Internet subscribers simultaneously. And, due to the anonymity of the Internet, the identity of Internet subscribers who participate in this illegal sharing of copyrighted content is concealed from copyright owners.

[10] The Plaintiffs are movie production companies that own copyright in several films. They are concerned about illegal distribution of their films, so they hired a company called Maverickeye UG (Maverickeye) to monitor the Internet for illegal sharing of their films. The

Plaintiffs received a report from Maverickeye about suspected illegal downloads which included the date and time of the activity together with the Internet Protocol (IP) addresses associated with the downloads. These IP addresses were correlated to numbers that were held by several different Internet Service Providers (ISPs). The IP addresses at issue here had been allocated to TekSavvy – each ISP is allocated a bank of IP addresses, and these are available for search, so it was possible for Maverickeye to link a particular IP address with a specific ISP.

[11] It was not possible, however, for Maverickeye to link the particular IP address with the name of the individual customer. That information is held by the ISP and is not otherwise available for search by other parties. Pursuant to the notice and notice regime established by the *Copyright Modernization Act* (described more fully below), the Plaintiffs sent notices to TekSavvy alleging that its customers infringed their copyright and providing the relevant information as to the date and time of the alleged illegal activity, as well as the associated IP address. Under the regime, TekSavvy had to forward such notices to its subscribers, and to retain certain information about the subscribers and their activity.

[12] The Plaintiffs then initiated copyright infringement actions against the unnamed individual defendants associated with the IP addresses in Maverickeye's report. In support of these actions, the Plaintiffs brought motions naming TekSavvy and other ISPs as non-party respondents, seeking *Norwich* orders – orders directing third parties to proceedings to disclose information in their possession, named after the case which recognized them in modern law: *Norwich Pharmacal Co v Customs & Excise Commissioners* (1973), [1974] AC 133 (UK HL).

Such orders are provided for in Rule 238 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*] (see also Rule 233 regarding disclosure from third parties).

[13] The motions sought to compel TekSavvy and the other ISPs to disclose the names and addresses of individual customers associated with various IP addresses at particular times. The Plaintiffs alleged that these individuals, identified as numbered “John Doe” defendants, engaged in illegal file sharing of their movies, thereby infringing their copyright. The materials filed by the Plaintiffs identified hundreds of IP addresses, and were served on several ISPs. Eighteen of these IP addresses were associated with TekSavvy.

[14] The motions were supported by affidavits sworn by law clerks employed by counsel for the Plaintiffs. Attached to these affidavits were Solemn Declarations by Daniel Arheidt (the Arheidt Declaration), a consultant who works in Maverickeye’s technical department. He described how the Maverickeye software monitors peer-to-peer networks to identify acts of distribution of certain materials, in this case several movies subject to copyright. Mr. Arheidt describes how the proprietary software used by Maverickeye operates both to verify that the file sharing of the copyright material is being done, and to link that activity to a particular IP address. This address is then linked to an ISP using publicly available data.

[15] The Arheidt Declaration includes background information on how peer-to-peer file sharing works, with a particular emphasis on the BitTorrent protocol, a popular peer-to-peer “file sharing” protocol that enables the decentralized distribution of computer files over the Internet. The Arheidt Declaration also includes a table showing the IP address for each numbered John

Doe Defendant, as well as the dates and times of the first and second notices of alleged infringement that were sent to various ISPs.

[16] The law clerks' affidavits state that they "repeat and rely on [Daniel Arheidt's]... declaration" and "believe it to be true." They indicate that, pursuant to the notice and notice regime, it is the policy of the Plaintiffs to send a "first notice" to the subscriber which gives a one-week timeline for the individual to remove the copy of the copyrighted material from their computer. The first notice provides that no action will be taken against the individual if the material is removed.

[17] In accordance with the Plaintiffs' practice, if the material has not been removed by the subscriber after at least a week, a second notice is sent. This notice declares that the Plaintiffs reserve their right to bring a copyright infringement proceeding against the subscriber, including a request to compel the ISP to disclose their identity. The affidavits state that first and second notices were sent to the individual defendants, or that they "should have had the notices forwarded to them" by their ISP, in accordance with the *Act*. In response to the motions brought by the Plaintiffs for disclosure, TekSavvy filed material opposing the motions. The Plaintiffs also filed written material, and the matter was argued before the CMJ.

[18] TekSavvy argued that the affidavits and attached Arheidt Declarations filed by the Plaintiffs were not sufficient to warrant the granting of a *Norwich* order. TekSavvy also argued that the Plaintiffs had failed to make full and frank disclosure regarding their knowledge that many of TekSavvy's subscribers had not received the first and second notices, contrary to the

statements in their affidavits. It further argued that the Plaintiffs had failed to comply with their obligations to TekSavvy's subscribers, because the Plaintiffs had not followed their one week "grace period" policy. Finally, TekSavvy submitted that the amended motion seeking statutory damages for alleged breaches of its obligations under the *Act* should be dealt with in a separate proceeding, where it was a proper party before the Court, rather than – as here – a non-party respondent. It also argued that a claim for damages could not proceed by way of a motion.

[19] The Plaintiffs contended that their evidence was sufficient to support the granting of the *Norwich* order, and that similar evidence had been accepted in prior cases. They pointed out that TekSavvy was mistaken about certain of the alleged errors in disclosure – the material was, in fact, included in the motion material, but TekSavvy had missed it. Any remaining errors related to background or supporting information and were innocent mistakes which had been corrected by the time of the hearing. The Plaintiffs stated these omissions were not intended to mislead the Court. Finally, they argued that the claim for statutory damages should be dealt with in this proceeding, because the alleged breaches of statutory obligations arose in the context of this matter and TekSavvy was an active participant in the proceeding before the Court.

[20] The CMJ rejected TekSavvy's arguments. He noted that the FCA set out comprehensive guidance on the objectives of the notice and notice regime in *Voltage Pictures*. The Court in *Voltage Pictures* found that the purpose of the regime was to impose obligations on ISPs that require them to assist copyright owners who seek to vindicate their rights in the face of the type of anonymous infringement that the Internet has enabled. In particular, the regime seeks to ensure that copyright owners can identify alleged infringers quickly and efficiently.

[21] In light of this guidance, the CMJ found that the evidence was sufficient to warrant the granting of the *Norwich* order. The evidence submitted by the Plaintiffs was similar to the type of evidence that had been accepted in many other similar cases, and it was sufficient for the purposes of the disclosure order. Regarding the failure to make full and frank disclosure, the CMJ acknowledged that a few mistakes had been made. However, he noted that the Plaintiffs had responded in a forthright manner and had corrected the record by the time the matter was argued before him. He also noted that TekSavvy had experienced some practical and technical challenges in providing the notices to its customers, and that it had apparently deleted some of the information in relation to some of its subscribers.

[22] In the end, the CMJ found that almost all of the TekSavvy subscribers had received notice, and that TekSavvy itself had contributed to some of the confusion and delay in providing the notices. He further found that the Plaintiffs had admitted certain errors in their materials, but these were “errors of inadvertence” which were promptly corrected, rather than any effort to mislead the Court. These errors related to backup documents that supported the main claim of copyright infringement and were not fatal to the claim. This was all part of the “learning curve” associated with implementing the new notice and notice regime. The CMJ ordered that TekSavvy disclose the requested information to the Plaintiffs.

[23] Concerning the Plaintiffs’ claim for statutory damages against TekSavvy for alleged breaches of its obligations under the *Act*, the CMJ again drew inspiration from the guidance provided by *Voltage Pictures* that the process is meant to be quick and efficient. He rejected TekSavvy’s argument that the claim must proceed by way of a new application or action to

which it was a full party. He found that requiring a separate process, “with the full panoply of litigation steps including pleadings, production and discovery” would defeat the purpose of the *Act* and was not necessary to ensure procedural fairness to TekSavvy. He noted that “[t]he alleged violation[s] occurred in this proceeding and thus should be determined in this proceeding.”

[24] The CMJ found that “[c]ommon sense and efficiency requires a more truncated procedure. That can be accomplished by following, at least in this case, the type of procedure involved in contempt/show cause proceedings.” He therefore directed the Plaintiffs to serve on TekSavvy all of the evidence they intended to rely upon in support of the alleged violations. This evidence was to be set out by way of affidavit. At the hearing, TekSavvy would be permitted to cross-examine the affiants, and to lead its own *viva voce* evidence which would be subject to cross-examination. This would permit the Court to have a full evidentiary record, and for TekSavvy to raise any and all defences it wished to assert against the claim for damages.

III. ISSUES

[25] There are four issues in this appeal:

1. Did the CMJ err in dealing with the issue of full and frank disclosure?
2. Did the CMJ err in finding that the evidence satisfied the requirements for a *Norwich* order?
3. Did the CMJ err in respect of the procedure for pursuing statutory damages for an ISP’s alleged breach of its obligations under the *Act*?

4. Did the CMJ err in making findings indicating a pre-judgment of the merits of the damages claim against TekSavvy?

[26] The Plaintiffs submit that there are two preliminary or “threshold” issues that must be determined prior to dealing with the main issues:

- i. Does TekSavvy have standing to advance issues 1 and 2 above?
- ii. Is the appeal premature in respect of issues 3 and 4 above?

[27] I will address these in relation to the issues to which they relate, rather than as separate threshold questions.

IV. ANALYSIS

[28] This part will begin with a brief review of the appropriate standard of review, followed by an overview of the notice and notice regime and *Norwich* orders, before turning to the issues raised in the case.

A. *Standard of Review*

[29] The FCA ruled in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*] that the standard of review of a discretionary decision of a Prothonotary is the usual appellate standard from *Housen v Nikolaisen*, 2002 SCC 33. Under this

standard, absent an error on a question of law or an extricable legal principle, intervention is warranted only in cases of palpable and overriding error.

[30] The FCA elaborated upon the meaning of “palpable and overriding error” in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157, explaining that it is a “highly deferential standard of review” and that when “arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall” (see also *Benhaim v St-Germain*, 2016 SCC 48 at para 38). The FCA went on to explain that an error must be both obvious, and of sufficient importance that it affects the outcome of the case. It may be a single error, or the cumulative impact of a series of errors.

[31] That is the standard that I will apply in this case. I am also guided by the admonition in *Hospira* (at para 103) that:

[T]he case managing prothonotary is very familiar with the particular circumstances and issues of a case, and that, as a result, intervention should not come lightly. This does not mean, however, that errors, factual or legal, should go undetected. In the end, “elbow room” is simply a term signaling that deference, absent a reviewable error, is owed, or appropriate, to a case managing prothonotary – no more, no less.

B. *The Notice and Notice Regime*

[32] In recent years, copyright protections in Canada, as with many areas of the law, were straining to keep up with developments in technology – a legal framework designed for another age was in need of reform. One aspect of this challenge was the online, anonymous sharing of

copyright material facilitated by the rise of the Internet, described in the passage from *Rogers Communications* quoted earlier.

[33] To address this challenge, Parliament adopted the *Copyright Modernization Act*, which established the notice and notice regime through amendments to the *Act*. The *Act* now provides that a copyright owner may send a notice of claimed infringement to an ISP, and sets out the basic requirements for such a notice:

Form and content of notice

41.25 (2) A notice of claimed infringement shall be in writing in the form, if any, prescribed by regulation and shall

- (a)** state the claimant's name and address and any other particulars prescribed by regulation that enable communication with the claimant;
- (b)** identify the work or other subject-matter to which the claimed infringement relates;
- (c)** state the claimant's interest or right with respect to the copyright in the work or other subject-matter;
- (d)** specify the location data for the electronic location to which the claimed infringement relates;
- (e)** specify the infringement that is claimed;
- (f)** specify the date and time of the commission of the claimed infringement; and
- (g)** contain any other information that may be

Forme de l'avis

41.25 (2) L'avis de prétendue violation est établi par écrit, en la forme éventuellement prévue par règlement, et, en outre :

- a)** précise les nom et adresse du demandeur et contient tout autre renseignement prévu par règlement qui permet la communication avec lui;
- b)** identifie l'œuvre ou l'autre objet du droit d'auteur auquel la prétendue violation se rapporte;
- c)** déclare les intérêts ou droits du demandeur à l'égard de l'œuvre ou de l'autre objet visé;
- d)** précise les données de localisation de l'emplacement électronique qui fait l'objet de la prétendue violation;
- e)** précise la prétendue violation;
- f)** précise la date et l'heure de la commission de la prétendue violation;
- g)** contient, le cas échéant, tout autre renseignement prévu par

prescribed by regulation.

règlement.

[34] The *Act* then sets out the obligations on the ISP upon receipt of such a notice:

Obligations related to notice

41.26 (1) A person described in paragraph 41.25(1)(a) or (b) who receives a notice of claimed infringement that complies with subsection 41.25(2) shall, on being paid any fee that the person has lawfully charged for doing so,

(a) as soon as feasible forward the notice electronically to the person to whom the electronic location identified by the location data specified in the notice belongs and inform the claimant of its forwarding or, if applicable, of the reason why it was not possible to forward it; and

(b) retain records that will allow the identity of the person to whom the electronic location belongs to be determined, and do so for six months beginning on the day on which the notice of claimed infringement is received or, if the claimant commences proceedings relating to the claimed infringement and so notifies the person before the end of those six months, for one year after the day on which the person receives the notice of claimed infringement.

Obligations

41.26 (1) La personne visée aux alinéas 41.25(1)a) ou b) qui reçoit un avis conforme au paragraphe 41.25(2) a l'obligation d'accomplir les actes ci-après, moyennant paiement des droits qu'elle peut exiger :

a) transmettre dès que possible par voie électronique une copie de l'avis à la personne à qui appartient l'emplacement électronique identifié par les données de localisation qui sont précisées dans l'avis et informer dès que possible le demandeur de cette transmission ou, le cas échéant, des raisons pour lesquelles elle n'a pas pu l'effectuer;

b) conserver, pour une période de six mois à compter de la date de réception de l'avis de prétendue violation, un registre permettant d'identifier la personne à qui appartient l'emplacement électronique et, dans le cas où, avant la fin de cette période, une procédure est engagée par le titulaire du droit d'auteur à l'égard de la prétendue violation et qu'elle en a reçu avis, conserver le registre pour une période d'un an suivant la date de la réception de l'avis de prétendue violation.

[35] Finally, the *Act* provides at subsection 41.26(3) that “[a] claimant’s only remedy against a person who fails to perform his or her obligations under subsection (1) is statutory damages in an amount that the court considers just, but not less than \$5,000 and not more than \$10,000.”

[36] The notice and notice regime enables a copyright owner who has reason to believe that an ISP’s customers are breaching its copyright to send a notice to the ISP, and this in turn obligates the ISP to forward that notice to its customer(s), and to maintain certain records regarding the matter. The notice is meant to serve as a warning, to allow the customer to take steps to cease the allegedly infringing activity (*Rogers Communications* at para 23). The notice can also serve as a precursor to the launch of a claim for copyright infringement. In this regime, the ISP is viewed as merely a conduit between the copyright owner and the subscriber – it is not, itself, liable for the infringement. However, an ISP that fails to fulfil its obligations under the *Act* may be subject to statutory damages.

[37] The objectives of the statutory reform are discussed at length in *Rogers Communications*, which finds that the notice and notice regime serves “two complementary purposes: (1) to deter online copyright infringement; and (2) to balance the rights of interested parties” (at para 22).

[38] The SCC found that “by requiring notice of a claimed infringement to be forwarded to the person who was associated with the IP address that is alleged to have infringed copyright, the regime is aimed at deterring that person, or others who are using the IP address, from continuing to infringe copyright (see Canada, Office of Consumer Affairs, *Notice and Notice Regime* (online))” (*Rogers Communications* at para 23).

[39] In relation to the second objective, the SCC finds that the regime sought to balance “not only... the rights of copyright owners and Internet users who may infringe those rights, but also the interests of Internet intermediaries such as ISPs...” (*Rogers Communications* at para 25).

[40] The decision finds that Parliament intended the notice and notice regime to serve as a deterrent, with the backstop of the Courts and the opportunity for copyright owners to pursue their rights by seeking to obtain a *Norwich* order, if the notice to the subscriber did not halt the allegedly unlawful activity:

[24] The notice and notice regime was not, however, intended to embody a comprehensive framework by which instances of online copyright infringement could be eliminated altogether. As a representative of Rogers explained before the House of Commons committee considering what would become the *Copyright Modernization Act*, “notice and notice is not a silver bullet; it’s just the first step in a process by which rights holders can go after those they allege are infringing. . . . Then the rights holder can use that when they decide to take that alleged infringer to court” (House of Commons, Legislative Committee on Bill C-32, *Evidence*, No. 19, 3rd Sess., 40th Parl., March 22, 2011, at p. 10). This is why, as I have explained, a copyright owner who wishes to sue a person alleged to have infringed copyright online must obtain a *Norwich* order to compel the ISP to disclose that person’s identity. The statutory notice and notice regime has not displaced this requirement, but operates in tandem with it. This is affirmed by s. 41.26(1)(b), which contemplates that a copyright owner may sue a person who receives notice under the regime, and fixes the ISP’s obligation to retain records which allow that person’s identity to be determined for a period of time after such notice is received.

[41] In view of the SCC’s finding that the notice and notice regime did not displace the requirement to obtain a *Norwich* order to compel disclosure, “but operates in tandem with it” (*Rogers Communications* at para 24), it is necessary to set out a brief summary of the prior jurisprudence on *Norwich* orders, which will set the stage for my analysis of the issues.

C. *The Law on Norwich Orders*

[42] A *Norwich* order is extraordinary equitable relief; it is derived from the equitable bill of discovery and is a means of obtaining necessary information from a third party. Cases are generally brought *ex parte*, and so the applicant is under a duty to make full and frank disclosure of all relevant information (*United States of America v Friedland*, [1996] OJ No 4399 (QL) (ON Ct J (Gen Div)) [*Friedland*]; *Canada (National Revenue) v Cormark Securities Inc*, 2011 FC 1472).

[43] This type of order has been employed in cases involving alleged online copyright infringement prior to the enactment of the notice and notice regime. The test to obtain such an order in this Court was set out in *BMG Canada Inc v Doe*, 2005 FCA 193 [*BMG*]:

- The applicant must establish a *bona fide* claim against the unknown wrongdoer;
- The person against whom the disclosure order is sought must be in some way involved in the matter under dispute – they must be more than a mere witness;
- The person must be the only practical source of the information;
- The person must be compensated for reasonable expenses incurred in complying with the order; and
- The public interest in favour of disclosure must outweigh the legitimate privacy interests.

[44] The test has been stated by other courts, with minor differences: see, for example: *Leahy v B (A)*, 113 NSR (2d) 417, 1992 CanLII 2798 (SC (TD)); *GEA Group AG v Ventra Group Co*

(2009), 96 OR (3d) 481 (CA) [*GEA Group*]; *1654776 Ontario Limited v Stewart*, 2013 ONCA 184, leave to appeal to SCC denied (case no 35394). The *BMG* test was cited with approval in *Rogers Communications*.

[45] The *BMG* decision confirms that this remedy is available in the Federal Court, pursuant to subsection 238(1) of the *Rules*, which governs examination of non-parties (see also Rule 233 regarding production of documents from non-parties, discussed in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology [sic]*, 2018 FC 992 at paras 17-20). *BMG* involved a case similar to this one – a copyright owner claimed to have evidence of unlawful downloading of its songs, but it could not identify the individual offending subscribers. So, it went to court to seek a *Norwich* order forcing the ISPs to turn over the names.

[46] The FCA confirmed that a *Norwich* order is available but found that the evidence provided by the copyright owner was not sufficient to merit the granting of the order. The Court found that the unnamed subscribers had important privacy interests that had to be respected. This is discussed in more detail below.

[47] *Norwich* orders have been granted in a wide variety of circumstances and courts have emphasized the importance of maintaining the flexibility inherent in equitable relief, while guarding against potential abuse. The point is expressed in the following way in *GEA Group* at para 85: “The important point is that a *Norwich* order is an equitable, discretionary and flexible remedy. It is also an intrusive and extraordinary remedy that must be exercised with caution.”

[48] An illustration of the potential for misuse of *Norwich* orders in this type of case – namely, the rise of the “copyright troll” – has been described in some detail in another decision by Prothonotary Aalto, *Voltage Pictures LLC v John Doe*, 2014 FC 161 [*Voltage Pictures (2015)*]. This has been a particular concern in the United Kingdom and the United States. The phenomenon is described in the following passage:

[103] As in the UK, Courts in the U.S. appear to accept that identifying alleged infringers for purposes of pursuing copyright infringement claims is merited, but the Courts have expressed concern with the use of the courts’ subpoena powers to “troll” for quick and easy settlements.

[104] U.S. courts have not shied away from using strong language to admonish the “low-cost, low-risk revenue model” tactics of copyright owners, and in particular adult film companies: “It has become clear in many cases that the companies have no intention of pursuing litigation, but rather initiate a lawsuit to hold a proverbial guillotine over the accused downloaders’ heads to extract settlement because of the fear of embarrassment over being accused of downloading pornography” (see, for example, *Patrick Collins, Inc., v John Doe 1*, 2012 US Dist LEXIS 71122 (ED NY, 2013) at p. 5).

[49] In *Voltage Pictures (2015)*, Prothonotary Aalto established a non-exhaustive list of considerations for the granting of a *Norwich* order in order to prevent any such abuse. These included putting safeguards in place to avoid intimidation of the recipient of the order, limiting the information that would be provided pursuant to the order, and requiring court approval of any proposed demand letter prior to the correspondence being sent.

[50] These considerations are meant to ensure that valid efforts to enforce copyright are not stymied, but also that the integrity of the court process is not impaired by abusive conduct, and

most importantly, that individuals are not subject to inappropriate pressures. I should note here that there is no allegation of inappropriate behaviour by the Plaintiffs in the case before me.

[51] As the SCC noted in *Rogers Communications* at para 45: “Parliament knew that the regime was only a first step in deterring online copyright infringement, and that a copyright owner who wished to sue an alleged infringer would still be required to obtain a *Norwich* order to identify that person.” It is therefore necessary to consider whether the rules established by *Norwich* order jurisprudence which pre-date the *Copyright Modernization Act* amendments need to be amended or refined to take into account the new legislative framework. That will be done in the following sections.

D. *The Four Issues*

(1) Did the CMJ err in dealing with the issue of full and frank disclosure?

[52] Did the CMJ err in issuing the order, despite the finding that there had been mistakes and omissions in the material originally filed in support of the motion for the *Norwich* order?

[53] I will deal first with the Plaintiffs’ argument that TekSavvy does not have standing to advance this argument before considering the merits. To understand the issue, it is necessary to provide more detail regarding the alleged failure to make full disclosure.

[54] In their affidavits in support of the *Norwich* order, the Plaintiffs asserted that “[t]he Defendants in this action were all sent first and second notices, as set out herein at Exhibit “C”

for each unknown Defendant.” The affidavits also state: “[i]t is my understanding that each of these Defendants [the numbered, unnamed “John Doe” defendants] have [*sic*] had these first and second notices sent to them by their ISP at or about the date of the sending of these notices.” In a subsequent affidavit, this was modified to state that the Defendants “had, or should have had” the notices sent to them. The affidavits further state: “[a]ttached hereto... are all the communications from the Non-Party Respondents [the ISPs] indicating that the notices were forwarded.”

[55] TekSavvy points to e-mail exchanges with the law firm representing the Plaintiffs that pre-date the swearing of these affidavits. These exchanges make clear that due to a variety of technical and practical issues, some of TekSavvy’s subscribers received the second notice before they were sent the first notice, while a few had not been sent notices at all because their IP addresses could not be correlated to the information provided by the Plaintiffs or that information was no longer available. The CMJ found that in regard to four subscribers, the Plaintiffs had not received confirmation from TekSavvy that it had sent any notice. TekSavvy claims that this information contradicted the categorical statements in the sworn affidavits and that this information was in the possession of the Plaintiffs but not disclosed to the Court. It further states that some of its e-mail correspondence was not included, which contradicted the statements in the affidavits.

[56] The Plaintiffs replied that some of the information was, in fact, disclosed to TekSavvy and the Court, but admitted that some of the background information regarding its exchanges with TekSavvy had not been included in the original material. They filed supplementary material

prior to the hearing before the CMJ, which included clarification of the record as well as further information about the timing of the notices and its exchanges with TekSavvy.

[57] In essence, the Plaintiffs argued that some of the difficulties regarding the timing of the notices were due to TekSavvy's failings, and that the errors were simply due to inadvertence in dealing with a large volume of information about hundreds of subscribers and several ISPs. There was no intention to mislead the Court, and with the filing of the supplementary material the CMJ was not, in fact, lacking any relevant information at the time of the hearing. The Plaintiffs also contended that the missing documents were simply background material, which did not affect the substance of their claim.

(a) *Does TekSavvy have standing to advance this argument?*

[58] The Plaintiffs argued that TekSavvy's allegations relating to the failure to make full and frank disclosure rest on an estoppel argument. They say that the alleged disclosure failure related to "background information" regarding the e-mail exchanges between TekSavvy and the law firm for the Plaintiffs about the delays and difficulties in forwarding the notices to subscribers. Since TekSavvy cannot claim that it relied to its detriment on the Plaintiffs' policy of a one-week grace period, it does not have an interest in the matter, and it therefore lacks standing to advance this argument.

[59] TekSavvy denies that it is relying on an estoppel argument. It takes no position as to the merits of the underlying copyright infringement action. It does assert, however, that it has a role

in reviewing the evidence put forward in support of the *Norwich* motion to assist the Court in determining whether the criteria have been met, and thereby ensuring the proper balance between its subscribers' important privacy interests and the interests of copyright owners in pursuing infringement claims.

[60] I reject the Plaintiffs' argument that TekSavvy lacks standing to advance this claim. The duty to make full and frank disclosure is owed to the Court, not to any party (see the discussion of the issue by Justice Sharpe in *Friedland* at paras 26-29). In the circumstances of this case, TekSavvy is in possession of information which is relevant to whether the Plaintiffs met their obligation to the Court. Nothing more is required.

(b) *Did the Plaintiffs fail to make full and frank disclosure?*

[61] As noted earlier, the CMJ found that the Plaintiffs had no intention to mislead the Court, and any lapses in their disclosure related to background information which was not provided due to inadvertence. He attributed it more to "growing pains" associated with adjusting to the requirements of the notice and notice regime.

[62] The duty of full and frank disclosure has been found to apply to *Norwich* order motions, since such proceedings are generally conducted on an *ex parte* basis. The rationale for the obligation rests largely upon the idea that in an *ex parte* proceeding the party before the Court has to disclose all relevant information – whether in favour or against its position – in order to

enable the judge hearing the matter to act properly and judicially: *Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at para 31; *Friedland* at paras 26-27.

[63] The failure to meet this duty does not require any intention to mislead the Court, although the intentional withholding of relevant information – and, in particular, information which would tend to be adverse to the applicant’s position – is of particular concern to the Court: see, for example *MacLachlan v Nadeau*, 2017 BCCA 326 [*MacLachlan*].

[64] However, the cases make clear that the judge hearing the matter has discretion in the face of a non-disclosure – it does not automatically result in a dismissal of the *ex parte* proceeding. Among the relevant considerations in exercise of this discretion, courts have found that the nature of the failure and the degree and extent of the applicant’s culpability, are highly material factors: see *MacLachlan* at para 37; *Marciano (Séquestre de)*, 2012 QCCA 1881 at para 56, leave to appeal to SCC denied (case no 35142).

[65] In this case, TekSavvy argues that the Plaintiffs made material misstatements regarding the notices that its subscribers had received, and in relation to whether all of the relevant e-mail correspondence regarding these notices had been included in the evidence. The Plaintiffs reply that some of the information was, in fact, included in their materials, and that other background information was omitted due to an innocent error. They point out that they corrected this error with a supplementary affidavit prior to the hearing of the matter before the CMJ. They also state that certain difficulties in organizing and presenting the material related to a failure by TekSavvy

to fulfil its obligations under the notice and notice regime to forward the notices “as soon as feasible.”

[66] I find that the CMJ did not commit a palpable and overriding error in his treatment of this issue. He found that the Plaintiffs addressed the disclosure mistakes in a forthright manner and that the lapses related to the correspondence between the parties and background information regarding whether and when notices were sent. None of the misstatements related to the core underlying issue of whether there had been a copyright infringement. The CMJ noted that the Plaintiffs admitted their mistakes and took prompt steps to correct the record. All of these findings are amply supported by the record.

[67] TekSavvy argues that the CMJ made an error in law when he stated that “the issues to be determined are whether the Plaintiff has failed to provide full and frank disclosure and thereby misled the Court.” They submit that this is incorrect as a matter of law – there is no requirement of any intention to “mislead the Court.”

[68] The statement of the issue by the CMJ is not a legal error. He understood and applied the correct legal test, but he also expressed the underlying rationale for that test – namely, to avoid misleading the Court, so that it can act judicially in considering the matter before it, with a full understanding of the surrounding circumstances and the strengths and weaknesses of the moving parties’ case. There is simply no indication in the decision that the CMJ treated the “intention to mislead the Court” as a separate element of the test.

[69] Full and frank disclosure is vital in *ex parte* proceedings, for the reasons outlined previously. However, it should be noted that under the notice and notice regime, an application for a *Norwich* order may not always be truly *ex parte*, in the sense that there is no other party with notice of the matter. It is *ex parte* in relation to the individual subscribers whose privacy interests are at stake. However, in the normal course the copyright owner seeking the order will have complied with the notice and notice regime, and so it will have provided a notice to the ISP which specifies the details of the alleged infringement, including the date, time and IP address associated with the activity. The ISP would presumably first confirm that this IP address relates to one of its subscribers and would then forward the notice to that subscriber.

[70] Only after that is done would the application for the *Norwich* order be sought, and it should normally be served – as was done here – on the ISP. If an error has occurred in identifying the correct IP address or in relation to the download, the ISP and the subscriber would have had an opportunity to communicate this to the copyright owner. The ISP would also have the opportunity to raise any of these issues before the Court on the motion for disclosure, as TekSavvy has done here.

[71] I make no comment on the situation that may arise where a copyright owner seeking a *Norwich* order does not comply with the notice and notice regime prior to seeking the order. I leave the question of whether any such order could ever be granted for another day.

[72] In this way, the usual steps in obtaining a *Norwich* order may be modified by the notice and notice regime. Although the individual subscriber would not generally be given notice of the

Norwich order application, the matter would normally be brought only after the ISP has been given notice of the alleged infringing activity, and in turn the ISP will have sent that notice to the subscriber. In addition, the ISP should be provided with notice of the application for the *Norwich* order. And so, the standards that are normally applied for truly *ex parte* proceedings should be adapted to reflect this reality.

[73] I will say more on this issue later, but at this stage I would simply note that it is incumbent on an applicant seeking a *Norwich* order to ensure that it has disclosed all relevant information to the Court, and that its material is organized in a manner which can be easily understood and verified. While I accept Prothonotary Aalto's finding that the errors here reflect the growing pains associated with implementing a new regime, I note that all of the parties have now had several years to adjust. Materials from copyright owners seeking *Norwich* orders should now be organized and complete. The Court, the subscribers whose privacy interests are affected by such extraordinary orders, and the ISPs to whom the order will be directed, deserve no less.

- (2) Did the CMJ err in finding that the evidence satisfied the requirements for a *Norwich* order?

[74] The issue here is whether the evidence submitted by the Plaintiffs in support of their motion was sufficient to obtain a *Norwich* order. TekSavvy advances three arguments: (i) the evidence is improper hearsay that does not comply with the *Rules* or the binding jurisprudence; (ii) the affidavits do not comply with the requirements of Rule 81(2) because they do not set out

the basis for the deponents' belief in their truth; and (iii), the Arheidt Declaration is expert evidence which was also not in compliance with the requirements set out in the *Rules*.

[75] The Plaintiffs dispute this characterization of the evidence and argue that similar evidence has been accepted in previous motions for similar orders under the notice and notice regime. They say their approach to the evidence is consistent with the direction of the FCA in the *Voltage Pictures* decision, confirmed by the SCC in *Rogers Communications*, that these proceedings are to be quick and efficient, and based on standardized materials.

[76] As noted previously, the evidence in support of the motions for *Norwich* orders consisted of affidavits of law clerks who worked for the law firm that represents the Plaintiffs. These affidavits provide some background information on the claims and the process followed regarding the giving of notice.

[77] The substance of the evidence required for the *Norwich* order – namely the evidence that downloading has occurred, the date and time of such activity, the IP address connected to it, and the details regarding the notices sent to the ISP – are all contained in an exhibit attached to the affidavit, *i.e.* the Arheidt Declaration. That declaration contains the substantive information as well as the explanation of how the computer monitoring is done and the steps taken to verify that the downloading activity is linked to the particular IP address. The affiants simply state: “I repeat and rely on this declaration, and I believe it to be true.” They also indicate that the Arheidt Declaration “contains the technical details in respect of this action.”

[78] Once again, I will address the standing issue before considering the merits of the argument.

(a) *Does TekSavvy have standing to advance this argument?*

[79] The Plaintiffs submit that the CMJ ruled that TekSavvy did not have standing to advance this argument, and since it has not appealed that aspect of the ruling, it should not be allowed to advance these arguments on appeal. They link the arguments about the evidence and the full and frank disclosure, and say both rest on a foundation of estoppel. The Plaintiffs describe the estoppel argument as follows: they submit that TekSavvy is essentially asserting that since the Plaintiffs did not follow their policy of sending two notices to the subscriber with a one week “grace period” in between, it would be unfair and inequitable to allow them to obtain a *Norwich* order.

[80] Regarding the sufficiency of evidence argument, the Plaintiffs argue that while this may be an argument which the individuals alleged to have infringed copyright can raise at the copyright infringement hearing, it is not available to TekSavvy at this stage, since TekSavvy is merely a conduit for the information and it is insulated from any liability for copyright infringement. The Plaintiffs also point out that TekSavvy did not take any steps to test or challenge the evidence; it failed to cross-examine on the affidavits and therefore, it cannot now raise concerns about the nature and sufficiency of the evidence.

[81] This argument rests on the following passage from the Prothonotary’s Order (p 16):

... Arguments relating to the inadmissibility of the evidence of the technician via a clerk's affidavit are also not persuasive. TekSavvy is not prejudiced by the evidence and the Court has accepted this evidence in support as have other ISP's who have provided the names and addresses of alleged infringers. The purposive approach to the legislation is required as noted by Justice Stratas in *Voltage*. I find that the arguments of the Plaintiff [ME2] in the circumstances of this case to be persuasive on the issues of standing, issue estoppel and admissibility. The evidence is sufficient to support a *Norwich* type order.

[82] The decision does not contain an analysis of the law on standing. The CMJ appears to have reached this conclusion on the basis that TekSavvy is not in a position to raise these issues, because they do not concern its interests. The CMJ stated that "TekSavvy is not prejudiced by the evidence" and that the "alleged infringers will have a full opportunity to defend themselves."

[83] The law on standing simply requires that the party before the Court have some sort of direct and meaningful interest in the matter: see the discussion in *Sauvé v Canada (Attorney General)*, 2016 FC 401 at paras 93-97. The "public interest" aspect of the law on standing does not arise on these facts and it is not necessary to say more on that branch of the test.

[84] Here, TekSavvy is before the Court as a non-party respondent. It takes no position on the merits of the application but asserts that it has a role to test the evidence and ensure that proper procedures are followed.

[85] In analyzing this question, I begin by recalling that the Plaintiffs have come to the Court to seek a *Norwich* order, which is an exercise of an extraordinary equitable jurisdiction.

TekSavvy is before the Court as the third-party holder of the relevant information, to whom the order will be directed.

[86] In light of the jurisprudence, I find that TekSavvy has standing to raise this issue. In *BMG* the FCA considered similar issues which were raised by ISPs in response to a request for a *Norwich* order. The substance of the decision will be discussed below; at this stage it is sufficient to note that the FCA accepted the arguments advanced by the ISPs, on behalf of their subscribers. A major focus of that decision is how to balance the interests of copyright owners with the privacy interests of individual subscribers, but these individuals had not yet been identified. The Court ruled on the question based on the submissions of the ISPs as well as those of the intervener, the Canadian Internet Policy and Public Interest Clinic.

[87] In *Rogers Communications* the SCC goes further, noting that one of the main purposes of the notice and notice regime is to balance the interests of all stakeholders in the copyright regime, including copyright owners, Internet users, and intermediaries such as ISPs. The Court finds that the notice and notice regime was designed, in part, to account for the interests of Internet subscribers “by maintaining the presumption of innocence and allowing them to monitor their own behaviour (and, more specifically, to avoid continued copyright infringement)” (para 26). It also finds that the deterrence objective of the regime is advanced by giving the subscriber the opportunity to cease the infringing activity, and thereby possibly avoid a claim for copyright infringement.

[88] If these two regimes are to operate “in tandem,” it only makes sense that a court must consider the privacy rights of individual subscribers in deciding whether to grant a *Norwich* order. While it is true that such individuals will have every right to defend their interests if their identities are disclosed and they are subject to a claim of copyright infringement, I find that their interests are not limited to that stage of the proceeding. This is the teaching of *BMG*, and it is consistent with the objectives of the notice and notice regime as found by the SCC in *Rogers Communications*.

[89] I find that TekSavvy has both legal and commercial interests that warrant granting it standing in this matter. TekSavvy is in possession of the personal information of its customers. It has a legal obligation to protect such information and an obvious commercial interest in doing so. It is anything but a “busybody” or idle bystander seeking to initiate or prolong litigation. TekSavvy’s participation in this matter reflects its legal and commercial interests. It is also in possession of practical information relevant to the consideration of the issues in this case, information which can be of assistance to the Court. While it is entirely the choice of an ISP whether or not to participate in such applications, consistent with *BMG* and *Rogers Communications*, I find that where the ISP chooses to become an active participant, it should not be barred at the courthouse door.

[90] For these reasons, I find that TekSavvy has an interest, and therefore has standing to advance these arguments. This relates to a central issue before the Court in this case and the Court will benefit from the submissions of the ISP, as well as any other intervener or party that may be granted a role in a future case.

[91] This leads to the substance of the argument on this question.

- (b) *Did the CMJ err in finding that the evidence satisfied the requirements of a Norwich order?*

[92] TekSavvy argues that the evidence is inadmissible for three reasons: (i) the key evidence from Mr. Arheidt linking the alleged downloading to individual IP addresses and providing details about the notices sent to the ISPs is inadmissible hearsay; (ii) there is no information as to the basis for the deponents' belief that this information is accurate, and so the affidavits do not comply with Rule 81(2); and (iii) the Arheidt Declaration is "expert opinion evidence" which does not comply with Rule 51.2 regarding expert evidence.

[93] The Plaintiffs reply that this evidence should be sufficient despite the fact that it isn't commissioned because the Arheidt Declaration is signed and solemnly declared by Mr. Arheidt. They say it is equivalent to an un-commissioned sworn statement. Furthermore, they note that TekSavvy did not seek to cross-examine on the affidavits, and so should not be permitted to challenge the evidence. Finally, they argue that this type of evidence has been accepted as sufficient by a large number of other ISPs, and this Court, in a number of other cases.

[94] I would observe that the same counsel at the law firm representing the Plaintiffs here acted for the other copyright owners in these other cases, and the evidence was essentially identical to that in evidence here – it appears that the only thing changed was the names of the parties, and the dates and times of the alleged infringements. The essence of the affidavits, to

which the Arheidt Declaration is attached as an exhibit, appears to be identical in these other cases. I would further observe that, as TekSavvy has pointed out, it appears that Mr. Arheidt has sworn an affidavit in an earlier case: see *Voltage Pictures LLC v Jane Doe*, 2011 FC 1024 at paras 7 and 9.

[95] At the outset, it is worth remembering that the initial threshold for an applicant to obtain a *Norwich* order is not a high bar. All that is required is to demonstrate that there is a *bona fide* case. Here, if the evidence of Mr. Arheidt is accepted the Plaintiffs would meet this test since they have produced evidence linking the downloading and sharing of movies in which they have copyright to a number of IP addresses for subscribers of TekSavvy. The evidence also shows that the ISP received two notices about this, in accordance with the Plaintiffs' policy and practice. As the CMJ noted in his decision, TekSavvy has not taken issue with the substance of much of this evidence. Rather, their attack is on more technical grounds.

[96] The basic rules governing affidavit evidence in this Court are set out in Rule 81:

Content of affidavits

81 (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.

Affidavits on belief

(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a

Contenu

81 (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

Poids de l'affidavit

(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas

party to provide evidence of persons having personal knowledge of material facts.

offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

[97] The Court has rejected efforts to file affidavits which attach as exhibits substantive evidence from another person, largely on the basis that this would shield that evidence from cross-examination: see *Parshottam v Canada (Citizenship and Immigration)*, 2008 FC 51, aff'd 2008 FCA 355. In a case where a party filed an affidavit as an exhibit to another affidavit, the Court ruled that the attachment would have very little weight where the deponent of the first affidavit was not produced for cross-examination: *594872 Ontario Inc v Canada* (1992), 55 FTR 215, [1992] FCJ No 253 (QL) (TD) at para 14.

[98] Furthermore, there is ample jurisprudence from this Court stating that, while there is no absolute rule against members of a law firm acting for one of the parties swearing an affidavit, this is not a good practice (see, for example, *Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada*, 2006 FCA 133). This is particularly the case where the affidavits refer to contentious issues going to the substance of the dispute: *Bell Helicopter Textron Canada Limitée v Eurocopter*, 2013 FCA 261.

[99] Prior to the enactment of the notice and notice regime, the leading authority on the evidentiary standards to be applied in this sort of case is the decision of the FCA in *BMG*. The FCA described the evidence filed by the copyright owners seeking the *Norwich* order in the following manner:

[11] On the motion, the plaintiffs filed affidavits of Gary Millin, President of MediaSentry Inc. (MediaSentry), a company that

provides online anti-piracy protection by specializing in automated detection of the unauthorized distribution of copyrighted materials on the Internet. The plaintiffs had retained MediaSentry to investigate file-sharing of the Songs.

[12] The affidavits explained that the plaintiffs provided a list of the Songs to MediaSentry. MediaSentry through its computer program then searched the Internet and identified 29 IP addresses as addresses from which large numbers of sound recordings, including the Songs, were being offered for copying. Screenshots were saved showing the numerous files being offered at these IP addresses. Copies of the files were then requested and received from these IP addresses. MediaSentry's program also matched each of the 29 IP addresses to the specific ISP who administered each IP address at the relevant time. MediaSentry provided the files it received to a representative of the plaintiffs who confirmed that the contents of these files corresponded with the Songs.

[100] The Motions judge rejected this evidence because it failed to comply with Rule 81. The FCA upheld the Motions judge on this finding:

[21] Much of the crucial evidence submitted by the plaintiffs was hearsay and no grounds are provided for accepting that hearsay evidence. In particular, the evidence purporting to connect the pseudonyms with the IP addresses was hearsay thus creating the risk that innocent persons might have their privacy invaded and also be named as defendants where it is not warranted. Without this evidence there is no basis upon which the motion can be granted and for this reason alone the appeal should be dismissed.

[Emphasis added.]

[101] The FCA went on to consider other aspects of the *Rules* governing the granting of *Norwich* orders in these types of cases because the reasons of the Motions judge went beyond the hearsay evidence issue. In its decision, the Court repeatedly emphasized the need to consider the privacy interests of the subscribers. It agreed with the Motions judge that "the public interest in disclosure must outweigh the legitimate privacy concerns of the person sought to be identified if

a disclosure order is made” (para 36) but added the following important caution, at paragraphs 39-42:

[39] The delicate balance between privacy interests and public interest has always been a concern of the court where confidential information is sought to be revealed...

[40] ... Copyright law provides incentives for innovators - artists, musicians, inventors, writers, performers and marketers - to create. It is designed to ensure that ideas are expressed and developed instead of remaining dormant. Individuals need to be encouraged to develop their own talents and personal expression of artistic ideas, including music. If they are robbed of the fruits of their efforts, their incentive to express their ideas in tangible form is diminished.

[41] Modern technology such as the Internet has provided extraordinary benefits for society, which include faster and more efficient means of communication to wider audiences. This technology must not be allowed to obliterate those personal property rights which society has deemed important. Although privacy concerns must also be considered, it seems to me that they must yield to public concerns for the protection of intellectual property rights in situations where infringement threatens to erode those rights.

[42] Thus, in my view, in cases where plaintiffs show that they have a *bona fide* claim that unknown persons are infringing their copyright, they have a right to have the identity revealed for the purpose of bringing action. However, caution must be exercised by the courts in ordering such disclosure, to make sure that privacy rights are invaded in the most minimal way.

[102] The Plaintiffs contend that this is precisely what they were doing – following a standardized approach to proof at this stage of the process, an approach which they have used in many other cases where the Court granted similar orders. In order to achieve the deterrence effect that Parliament sought, the type of evidence submitted in this case should be accepted. The Plaintiffs submit that the amendments to the *Act*, as interpreted in *Rogers Communications*, have overtaken the strict approach to the evidentiary basis set out in *BMG*.

[103] This is a case of first impression: there is no binding authority directly on point nor any decisions of this Court, so I must step back and assess it from first principles, guided by the decision in *Rogers Communications*.

[104] The starting point for my analysis is that the notice and notice regime did not displace the requirement to obtain a *Norwich* order. As the SCC declared, the two must now operate “in tandem.” Disclosure of the names and other information of subscribers who are alleged to have infringed copyright is under the control of the courts through the granting – or refusal – of *Norwich* orders. So what does this mean in relation to the type of evidence that should be required?

[105] As I have noted earlier, the initial threshold to obtain a *Norwich* order is not generally a high bar – all that is required is to demonstrate that the applicant has a *bona fide* case (*BMG*; *Rogers Communications*). On the other hand, it has long been recognized that a *Norwich* order is extraordinary equitable relief and courts must exercise a degree of caution in granting such orders (*GEA Group*).

[106] In a case such as this, consistent with the decision in *Rogers Communications*, this must involve a consideration of the interests of copyright owners in quick and effective enforcement of their rights. It must also involve a consideration of the privacy interests of individual subscribers whose names are subject to disclosure – and who may thereby be exposed to the challenges, costs and inconvenience of defending a claim of copyright infringement, together with the potential public exposure and embarrassment such an action may bring.

[107] In this regard it is worth remembering that the SCC contrasted the notice and notice regime – which it found maintained the “presumption of innocence” of Internet subscribers – with the “notice and takedown” regime adopted in the United States. Under the U.S. approach, the ISP is required to remove or block allegedly infringing materials upon receipt of notice from the copyright owner. This approach has been “criticized as undermining the presumption of innocence and unnecessarily limiting free expression...” (*Rogers Communications* at para 26). Under the notice and takedown regime, the allegedly infringing material would be removed before the subscriber received any notice of the claimed copyright breach. This approach was rejected by Parliament in favour of a regime that provided an initial opportunity for the subscriber to know of the claim prior to a court action being launched against them.

[108] A further relevant consideration is that Parliament chose to limit the liability of ISPs under the regime – they are insulated from liability for the copyright infringement of their subscribers and are only liable to statutory damages if they fail to comply with their specific statutory obligations under the *Copyright Modernization Act* (*Rogers Communications* at para 27).

[109] In this case, TekSavvy says that the evidence is inadequate: the key evidence that is found in the Arheidt Declaration is hearsay which cannot be subject to cross-examination since it is simply an exhibit to the affidavits. This is exactly the type of evidence which was rejected in *BMG*, which remains good law. Further, it contends that the affidavits provide no basis to explain why the law clerks adopt the Arheidt Declaration or believe it to be true and that it is opinion evidence which is not properly submitted in accordance with the *Rules* or jurisprudence.

TekSavvy argues that before the Court can grant extraordinary relief such as a *Norwich* order, it must demand better evidence from copyright owners.

[110] The Plaintiffs respond that these are all technical complaints and that TekSavvy's arguments should not be accepted because they do not go to the merits of the evidence about alleged copyright infringement – evidence which TekSavvy did not challenge. They note that TekSavvy did not seek to cross-examine on any of the affidavits and so the substance of the evidence is not in question. They also submit that TekSavvy contributed to the problems because it did not live up to its statutory obligation to forward the notices “as soon as feasible.” The Plaintiffs say they were simply trying to enforce their rights in a manner consistent with the direction in *Rogers Communications*, that the notice and notice regime was meant “to allow copyright owners to protect and vindicate their rights as quickly, easily and efficiently as possible while ensuring fair treatment of all” (para 46).

[111] I find that the CMJ made a palpable and overriding error in finding that the evidence submitted by the Plaintiffs was sufficient to support the granting of a *Norwich* order. The CMJ rejected the arguments on the sufficiency of evidence in the following terms: “TekSavvy is not prejudiced by the evidence and the Court has accepted this evidence in support as have other ISPs who have provided the names and addresses of alleged infringers. The purposive approach to the legislation is required as noted by Justice Stratas in *Voltage*” (p 16).

[112] I find this is in error in several respects. First, the question of whether TekSavvy is prejudiced by this evidence may be pertinent, but it is far from determinative of the essential

question. As is made clear in *BMG*, and resoundingly affirmed in *Rogers Communications*, the Court must consider the interests of the copyright owner, but it must also be concerned to protect the interest of the individual subscribers whose names are subject to disclosure.

[113] Second, while a “purposive” interpretation of the *Act* is undoubtedly important, that legislation does not govern the granting of a *Norwich* order. The two regimes must operate “in tandem,” but the ultimate protection against wrongful disclosure of subscribers’ names, and the breach of privacy and public exposure that may be associated with it, rests with the Court. This is reflected in the final element of the test in *BMG*: “... the public interest in favour of disclosure must outweigh the legitimate privacy concerns of the person sought to be identified if a disclosure order is made” (para 36).

[114] These are weighty matters and the Court is entitled to demand the best available evidence to be filed in support of a motion seeking the extraordinary equitable relief of a *Norwich* order.

[115] I am reinforced in this belief by the finding of the SCC in *Rogers Communications* that ISPs have important responsibilities to verify the information contained in the notice submitted by the copyright owner before sending it to their subscriber. This is because the Court finds that the purposes of the legislative regime can only be fulfilled if the ISP takes steps to ensure the accuracy of the notices it is forwarding (paras 31-34).

[116] In *Rogers Communications* the focus was on the obligation of the ISP to ensure that it had accurately correlated the IP address identified in the notice with the e-mail address of the

subscriber connected to that IP address. I find that the same holds true in respect of the more fundamental question of whether the copyright owner has provided an accurate notice to the ISP, for example whether the notice relates to an IP address which is associated with any of its subscribers at all. In the matter before me it appears that the Arheidt Declaration shows that one of the IP addresses included in the materials sent to TekSavvy was actually associated with a customer of another ISP. It is not clear how or why this IP address was included in the motion materials associated with the order sought against TekSavvy, but it does confirm the importance of seeking the best available evidence.

[117] Other mistakes in this case underline the importance of ensuring that the copyright owner bringing the motion takes sufficient steps to organize and present its best case. For example, it appears that ME2 sought a *Norwich* order in respect of up to four TekSavvy subscribers who had not, in fact, ever received any notice of possible copyright infringement.

[118] While I have no basis to question the finding of the CMJ that this was an inadvertent error and that it was all part of the “growing pains” associated with the transition to the new notice and notice regime, the fact remains that the Court could have issued a *Norwich* order that would have revealed the names of up to four subscribers who had never received the notice they should have received under the *Copyright Modernization Act*. Furthermore, the Court would have issued this order without knowing that the notice requirements had not been met.

[119] This underlines the importance of accuracy – starting with the copyright owner in bringing forward the best available evidence as to the basis for its belief that unlawful

downloading and sharing has occurred, that it is linked to a particular IP address, that this address is within the bank of IP addresses allocated to the ISP, and that the required notice has been provided to the ISP.

[120] I find that there are two inter-related problems with the evidence filed by the Plaintiffs which both demonstrate why their affidavits are not the “best available evidence.”

[121] First, the affidavits of the law clerks do not meet the requirements of Rule 81. To put it bluntly, there is absolutely no indication of the basis for the statement that the law clerks swearing the affidavits adopt the Arheidt Declaration or believe it to be true. Nor is there any explanation as to why the best evidence is not available. The fact that they work in the “copyright enforcement group” of the law firm representing the Plaintiffs may be relevant, in that they may have gained knowledge and expertise about how Maverickeye and its software function and why their reports should be viewed as accurate, but this is not explained. Nor is there any explanation as to why Mr. Arheidt did not swear an affidavit in these matters.

[122] Second, the key evidence in support of the granting of the *Norwich* order is set out in the Arheidt Declaration, but it is simply an exhibit to an affidavit. It is therefore beyond the reach of cross-examination.

[123] This evidence is simply not good enough. I find that before granting a *Norwich* order better evidence must be filed. I have noted earlier the obligation on the copyright owner to provide as accurate information as is possible in the circumstances. To this I would add that the

key evidence of alleged copyright infringements must normally be set out in an affidavit, sworn either by a person with direct personal knowledge of how the evidence was gathered, or by someone who can explain why such evidence is not available and why they have reason to believe the truth of the material they are submitting.

[124] These types of cases will normally involve high volumes of claims and a need for prompt action to prevent further copyright infringement: see, for example, the volume of requests received by Rogers in *Rogers Communications* at para 40. The Plaintiffs say they have adopted a practice of filing standardized materials, precisely because of these factors. This is consistent with the case before me where many notices were provided to several ISPs, and the Plaintiffs also point to numerous other similar cases where this type of evidence was accepted.

[125] The need to deal with high volume claims and to do so quickly is undoubtedly a relevant consideration. However, this does not explain why a standardized affidavit could not be produced from an affiant with direct personal knowledge of how the Maverickeye system works, why its reports should be accepted as reliable, and any steps which may have been taken in the normal course to verify the accuracy of the operation of the system. I observe that some of the language in *BMG* – and some of the arguments made by TekSavvy here – would seem to relate to concerns that the testimony of the individual who did the actual searches is not in evidence. This could perhaps be explained because the system does not depend on individuals conducting searches. Rather, it appears that the “searching” is done by programming the software to look for sharing of copyrighted material. This software then scans the Internet on a continuous basis. This

is precisely the type of information that should be provided to the Court in support of an application seeking such extraordinary relief.

[126] This case illustrates why it is so important for the Court to have the best available evidence. Mistakes were made which could have easily resulted in the disclosure of several individuals' names, in a context where that disclosure would almost certainly have resulted in these people receiving letters indicating that they were being sued for copyright infringement and that they needed to seek legal advice. One can easily imagine the reaction of such individuals when this is the first notice they would have received of the matter. This is precisely what Parliament was seeking to avoid when it adopted the notice and notice regime in the *Act*. This is also precisely what was of concern to the FCA in *BMG* (at para 21).

[127] This did not happen here because TekSavvy opposed the motion and the errors were discovered. If the proceeding had been *ex parte* the mistake may have been prevented by the Court's efforts – in questioning the Plaintiffs and poring over the records. What is clear is that it would never have come to light through cross-examination since the person in possession of the key information, Mr. Arheidt, was beyond the reach of that.

[128] Parliament intended that the notice and notice system operate in tandem with the process for disclosure through a *Norwich* order. The *Act* did not modify the law governing disclosure, although it did make provisions that will ensure that the copyright owner will be able to get access to the information it needs if it obtains such an order – since the ISP is required by paragraph 41.26(1)(b) to retain certain key information upon receipt of a notice of alleged

copyright infringement. In this way the law enables copyright owners to better protect their rights.

[129] However, in leaving the *Norwich* order as the ultimate backstop for this regime, Parliament also left it to the courts to ensure that the stringent requirements for such extraordinary relief are satisfied. This is necessary to ensure that the privacy rights of individual subscribers are adequately protected. This remains an important function of the Court in assessing whether to grant a *Norwich* order in a particular case.

[130] I therefore find that the CMJ made a palpable and overriding error in finding that this evidence was admissible and sufficient to support the granting of a *Norwich* order. In making this finding I underline that the CMJ did not have the benefit of the SCC's guidance in *Rogers Communications*.

[131] Based on my findings above, it is not necessary to deal with the question of whether this was "expert evidence" within the meaning of the *Rules*. I would simply emphasize that nothing in my reasons should be interpreted as indicating that expert evidence would be required in all cases. That is a question for another day.

- (3) Did the CMJ err in respect of the procedure for pursuing statutory damages for an ISP's alleged breach of its obligations under the *Act*?

[132] When the Plaintiffs learned about how TekSavvy had acted upon receipt of the notices of alleged infringement they filed an amended motion seeking statutory damages pursuant to subsection 41.26(3) of the *Act*, in addition to the *Norwich* order. TekSavvy argued that such a claim could not proceed by way of motion, but rather a separate action or application was required.

[133] The CMJ found that a separate proceeding did not have to be commenced since the alleged breaches had occurred in the context of this matter and TekSavvy was already a participant before the Court. Instead, he ruled that a procedure akin to that used for contempt of court proceedings should be used. He ordered the Plaintiffs to serve affidavits on TekSavvy setting out all of the evidence they intended to rely on in support of the claim for statutory damages. TekSavvy was permitted to cross-examine on these affidavits at the hearing for the damages claim; in addition it could introduce any evidence it wished to put before the Court. In this way, the matter would proceed quickly and efficiently and TekSavvy would be treated fairly.

[134] TekSavvy argues that nothing in the *Act* or the notice and notice provisions provides for a different process for statutory damages than any other claim for damages. When Parliament provided for a claim of statutory damages pursuant to subsection 41.26(3), it did not otherwise amend the *Act* to provide for a special procedure. Therefore, the pre-existing rules must be followed. Subsection 34(5) states that the "rules of practice and procedure, in civil matters, of the

court in which proceedings are commenced by way of application apply to those proceedings....” Here, the Plaintiffs commenced their claim in Federal Court and therefore the *Federal Courts Rules* must govern the proceeding. Under the *Rules*, a claim for damages must be sought by way of action, unless another procedure is set out.

[135] TekSavvy argues that the jurisprudence confirms that the CMJ erred in creating a new procedure, pointing in particular to the decision in *BBM Canada v Research in Motion Limited*, 2011 FC 960. In that case the Court found that a damages claim under the *Trade-marks Act*, RSC 1985, c T-13, could be brought by application in order to ensure that access to the courts would be “as expeditious and proportionate as possible.” This did not, however, mean that a claim for damages could proceed by way of a motion.

[136] The Plaintiffs submit that this question must be viewed in the context of the overall aim of the notice and notice regime, which is to allow copyright owners to enforce and protect their rights, as well as to deter copyright infringement. The statutory damages element is a key component of this since it serves as an incentive for ISPs to live up to their obligations under the *Act*. Parties engage with the notice and notice regime through motions. Where obligation failures by an ISP emerge in the context of a motion for disclosure, it only makes sense to deal with the damages claim for such breaches within the framework of the same proceeding. Any other approach would add needless expense, delay, and uncertainty, thus tending to defeat the purpose of the statutory damages provisions.

[137] The Plaintiffs contend that the flexible approach adopted by the CMJ is also consistent with the overall scheme of the *Act*. Subsection 34(4) provides that proceedings for copyright infringement may be pursued by either action or application and that the proceeding shall be “heard and determined without delay in a summary way.” Subsection 34(7) defines “application” as any proceeding not commenced by writ or statement of claim. Hence, the claim for statutory damages here fits within the definition of “application” under subsection 34(7). This is also consistent with the *Rules*, which allow CMJs to “give any directions or make any orders that are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits” (Rule 385; see also Rule 3).

[138] The Plaintiffs argue that this is precisely what the CMJ did here – rather than frustrating the purpose of the *Act*, he adopted a procedure consistent with the flexibilities inherent in the *Act* and the direction in the *Rules* to seek a just, expeditious, and inexpensive procedure to deal with the matter.

[139] I am not persuaded that the CMJ committed a palpable and overriding error in making this ruling. The information regarding the alleged breach emerged in the context of a motion for a *Norwich* order, brought in support of an action for copyright infringement. The CMJ found that the statutory damages claim could be addressed as part of the same proceeding. This is a matter fully within the discretion of the CMJ and, in view of the standard of review and the “elbow room” that ought to be accorded to a CMJ in managing such procedural questions, I do not find any reversible error in the particular circumstances of this case.

[140] Parliament chose to insulate ISPs from any liability for copyright infringement by their subscribers and instead it imposed a regime of statutory damages in order to ensure compliance with the notice and notice regime. This is consistent with the deterrence and balancing of interests objectives identified by the SCC in *Rogers Communications*. The amendments do not prescribe any particular procedure for such claims. The CMJ in this case adopted a sensible and practical approach, drawing on the analogous situation of a contempt of court proceeding.

[141] TekSavvy says they are prejudiced because they are not a full party to the proceeding. As the CMJ noted, however, TekSavvy chose to fully participate in the hearing of the motion, and they have brought this appeal. In addition, it is relevant that a contempt proceeding may involve a witness who is not a party to the proceeding – and so the analogy is apt.

[142] What is most important, however, is that in the particular circumstances of this case, the procedure adopted by the CMJ will ensure that TekSavvy fully knows the case it has to meet and it will have every opportunity both to test the evidence put forward by the Plaintiffs and to introduce its own evidence. It will be treated fairly, but in addition the procedure will be proportionate to the interests of all parties and the nature of the matter, consistent with Rule 3 and the SCC's guidance in *Hryniak v Mauldin*, 2014 SCC 7 (see also the FCA decision in *BBM Canada v Research in Motion*, 2011 FCA 151).

[143] As the Plaintiffs rightly note, requiring them to launch an entirely separate proceeding in order to pursue the claim for statutory damages would create a practical and financial disincentive, in view of the limits on such damages awards that are set by the statute. This would

be inconsistent with the scheme of the *Act* and the objectives Parliament sought to achieve in adopting the notice and notice regime (*Rogers Communications*).

[144] For these reasons, I do not find that the CMJ committed a reversible error in regard to this question, in the particular circumstances of this case.

(4) Did the CMJ pre-judge the issue of whether TekSavvy breached the *Act*?

[145] In view of my previous findings, it is not necessary for me to address this issue.

v. REMEDIES

[146] For the reasons set out above, I am quashing the decision to grant the *Norwich* order in relation to TekSavvy, without prejudice to the Plaintiffs' right to seek to bring a new application for disclosure, taking into account these reasons.

[147] The Plaintiffs' claim for statutory damages based on the alleged breach by TekSavvy of its obligations under the *Act* is remitted back to the CMJ.

V. CONCLUSION

[148] For the foregoing reasons I am allowing the appeal, in part. To summarize my findings:

- i. There was no error in the exercise of discretion on the issue of full and frank disclosure. However, copyright owners in the future must ensure that they meet their obligations to make full and frank disclosure of all relevant information and that their motion records are accurate and organized in a manner to permit the Court to fulfil its responsibilities;
- ii. The evidence which was filed in support of this motion does not meet the standard required by the jurisprudence or the *Rules*, and so the *Norwich* order cannot stand. In future cases the core evidence in support of the motion – setting out the details of the alleged copyright infringement, the connection to a particular IP address and its association with an ISP, as well as the details regarding the notice which was sent pursuant to the notice and notice regime – should all be contained in affidavit(s) that can be subject to cross-examination. If this cannot be done, an affidavit explaining why, and setting out the best available evidence, should be provided;
- iii. The CMJ did not err in setting out the procedure for dealing with the claim of statutory damages in the circumstances of this case. The approach is consistent with the scheme and objectives of the *Act* and will ensure that TekSavvy is treated fairly.

[149] The granting of a *Norwich* order forcing an ISP to disclose the names and addresses of subscribers is available under the *Rules* and binding jurisprudence. This is consistent with the intent of Parliament in adopting the notice and notice regime – indeed, it is an essential backstop to that regime, as the SCC has found in *Rogers Communications*. Giving practical effect to that

backstop, by ensuring that copyright owners can take effective steps to enforce their rights in the face of widespread unlawful downloading on the Internet, is an important responsibility which Parliament has left to the Courts to fulfil.

[150] It is equally important, however, to remember that “a *Norwich* order is an equitable, discretionary and flexible remedy. It is also an intrusive and extraordinary remedy that must be exercised with caution” (*GEA Group* at para 85). When Parliament adopted the notice and notice regime, it sought to balance the interests of copyright owners, individual subscribers, and Internet intermediaries such as ISPs. Achieving that balance requires copyright owners to act with diligence in preparing their material and meeting the normal standards of evidence by way of affidavit. It also requires ISPs to deliver the notice to their subscriber and to maintain associated records, or to face a claim of statutory damages for breach of these obligations. Finally, it requires courts to play their role in granting – or refusing – *Norwich* orders, and then dealing with claims of copyright infringement.

[151] In considering this appeal, I have been conscious of the need to seek to fulfil the intention of Parliament, keeping in mind the practical realities associated with these types of cases and giving due weight to the various interests of all the parties affected. This requires a degree of flexibility in the implementation of this new regime; it also requires setting minimum expectations on copyright owners, and ISPs, in fulfilling their respective obligations – under both the notice and notice regime and the law governing *Norwich* orders.

[152] In view of the outcome, and in exercise of my discretion under Rule 400, I would award partial costs to TekSavvy. In regard to these costs, I would observe that TekSavvy was successful in only one of the four issues it advanced, but the issue is a significant one and it was a main area of focus for TekSavvy in its submissions on this appeal. If the parties cannot agree on costs they may make submissions of not more than five (5) pages within 30 days from the date of this order.

ORDER in T-2177-16, T-463-17 and T-480-17

THIS COURT ORDERS that:

1. The appeal is allowed in part. The *Norwich* order in relation to TekSavvy is quashed, without prejudice to the Plaintiffs' right to bring a new application based on evidence in accordance with these reasons.
2. The claim for statutory damages is remitted back to the CMJ.
3. The Plaintiffs shall pay to TekSavvy a part of its costs. If the parties cannot agree on costs, they may make submissions of not more than five (5) pages within thirty (30) days from the issuance of this order.
4. A copy of this order will be placed in each of the files in this matter.

“William F. Pentney”

Judge

SCHEDULE 1

List of Defendants and Specific Information Regarding Infringements of such Defendants in Court File No. T-2177-16

Name & Address	IP Address	1st Notice Date	1st Notice Time (UTC) of Infringement	2nd Notice Date	2nd Notice Time (UTC) of Infringement
DOE #1, address unknown	184.75.213.123	2016-11-24	15:57:50	2016-12-10	23:27:34
DOE #2, address unknown	184.75.213.125	2016-11-24	17:38:53	2016-12-09	15:20:53
DOE #3, address unknown	184.75.208.218	2016-11-25	07:21:56	2016-12-11	06:20:30
DOE #4, address unknown	184.75.214.34	2016-11-24	03:05:39	2016-12-15	08:14:58
DOE #5, address unknown	173.206.206.26	2016-11-24	22:11:48	2016-12-12	16:15:10
DOE #6, address unknown	99.227.163.88	2016-11-23	12:44:58	2016-12-09	04:05:50
DOE #7, address unknown	99.224.149.34	2016-11-23	13:04:17	2016-12-08	00:37:27
DOE #8, address unknown	99.237.2.145	2016-11-23	13:29:13	2016-12-11	12:02:51
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DOE #94, address unknown	99.255.104.211	28/01/2017	04:16:10	14/02/2017	02:20:15
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DOE #96, address unknown	192.171.51.96	03/02/2017	15:51:13	13/02/2017	03:09:13
DOE #97, address unknown	99.233.111.194	20/01/2017	04:21:34	01/02/2017	03:55:11

DOE #98, address unknown	99.232.225.226	21/01/2017	23:58:51	01/02/2017	02:48:26
DOE #99, address unknown	99.248.200.140	18/01/2017	02:54:40	01/02/2017	02:09:01
DOE #100, address unknown	99.249.40.100	23/01/2017	23:21:40	01/02/2017	00:35:47
DOE #101, address unknown	99.241.2.33	19/01/2017	16:49:37	01/02/2017	15:20:13
DOE #102, address unknown	99.246.77.56	16/01/2017	03:00:57	02/02/2017	02:59:11
DOE #103, address unknown	173.35.242.201	24/01/2017	01:40:50	01/02/2017	21:05:51
DOE #104, address unknown	99.234.19.68	24/01/2017	06:49:39	03/02/2017	06:36:41
DOE #105, address unknown	72.141.174.78	14/01/2017	15:40:26	03/02/2017	04:23:37
DOE #106, address unknown	99.235.41.140	16/01/2017	03:00:18	03/02/2017	23:13:18
DOE #107, address unknown	174.115.167.75	10/01/2017	06:03:43	04/02/2017	07:23:20
DOE #108, address unknown	99.233.50.220	10/01/2017	05:34:03	04/02/2017	07:07:44
DOE #109, address unknown	72.141.253.220	09/01/2017	11:45:54	04/02/2017	07:06:07
DOE #110, address unknown	174.116.242.234	30/12/2016	03:40:51	04/02/2017	07:02:01
DOE #111, address unknown	173.32.161.67	09/01/2017	15:49:02	04/02/2017	06:50:06
DOE #112, address unknown	99.238.208.238	22/01/2017	21:18:11	04/02/2017	06:31:04
DOE #113, address unknown	72.143.255.25	03/01/2017	00:49:13	04/02/2017	06:30:00
DOE #114, address unknown	99.230.17.119	14/01/2017	06:56:18	04/02/2017	06:15:06
DOE #115, address unknown	174.117.42.193	15/01/2017	19:41:03	04/02/2017	05:52:49
DOE #116, address unknown	99.254.219.35	11/01/2017	05:16:40	04/02/2017	05:36:37
DOE #117, address unknown	99.235.124.172	03/01/2017	22:24:50	04/02/2017	05:19:49
DOE #118, address unknown	99.242.161.167	02/01/2017	04:31:40	04/02/2017	05:19:23
DOE #119, address unknown	174.119.235.109	10/01/2017	03:23:08	04/02/2017	04:57:33
DOE #120, address unknown	99.230.240.147	10/01/2017	01:12:27	04/02/2017	04:35:58
DOE #121, address unknown	99.225.169.95	22/01/2017	18:41:24	04/02/2017	03:30:57
DOE #122, address unknown	99.237.83.105	09/01/2017	04:16:50	04/02/2017	03:30:23
DOE #123, address unknown	174.115.12.199	31/12/2016	15:05:55	04/02/2017	01:23:47
DOE #124, address unknown	99.250.109.152	06/01/2017	01:09:02	04/02/2017	00:20:58
DOE #125, address unknown	99.228.3.143	08/01/2017	17:52:41	04/02/2017	15:07:11
DOE #126, address unknown	99.228.75.58	13/01/2017	02:33:57	04/02/2017	14:59:45
DOE #127, address unknown	99.242.141.206	01/01/2017	23:26:33	04/02/2017	14:54:08
DOE #128, address unknown	99.225.203.244	26/01/2017	3:50:11	04/02/2017	14:53:08
DOE #129, address unknown	99.242.148.90	10/01/2017	01:23:15	04/02/2017	14:43:12
DOE #130, address unknown	69.58.102.156	30/12/2016	02:30:46	04/02/2017	13:26:06
DOE #131, address unknown	174.116.83.224	31/12/2016	23:52:37	04/02/2017	23:01:18
DOE #132, address unknown	99.233.81.34	10/01/2017	05:51:39	04/02/2017	22:35:54
DOE #133, address unknown	174.118.23.61	05/01/2017	10:44:02	04/02/2017	22:30:14
DOE #134, address unknown	99.237.5.138	06/01/2017	09:46:10	04/02/2017	22:26:25
DOE #135, address unknown	99.242.113.28	10/01/2017	01:05:10	04/02/2017	21:49:09
DOE #136, address unknown	174.116.188.84	21/01/2017	16:39:52	04/02/2017	19:59:26
DOE #137, address unknown	99.237.19.8	08/01/2017	03:29:24	04/02/2017	19:33:21
DOE #138, address unknown	174.112.134.86	19/01/2017	05:53:21	04/02/2017	18:54:53
DOE #139, address unknown	99.233.171.158	07/01/2017	09:22:02	04/02/2017	16:55:56
DOE #140, address unknown	99.235.129.21	30/12/2016	00:37:49	04/02/2017	15:38:43
DOE #141, address unknown	72.143.96.78	19/01/2017	07:49:42	05/02/2017	06:12:53
DOE #142, address unknown	174.112.184.203	09/01/2017	22:22:43	05/02/2017	05:57:46
DOE #143, address unknown	99.248.0.111	06/01/2017	01:36:13	05/02/2017	04:49:20
DOE #144, address unknown	174.119.180.16	01/01/2017	04:36:52	05/02/2017	03:32:45
DOE #145, address unknown	99.251.41.29	21/01/2017	22:58:54	05/02/2017	03:08:16
DOE #146, address unknown	99.252.24.114	12/01/2017	03:50:57	05/02/2017	02:32:34
DOE #147, address unknown	174.115.212.51	10/01/2017	06:02:55	05/02/2017	02:20:39
DOE #148, address unknown	99.251.86.68	09/01/2017	16:58:49	05/02/2017	02:04:14
DOE #149, address unknown	173.35.235.45	13/01/2017	01:15:52	05/02/2017	15:13:17
DOE #150, address unknown	174.118.250.16	31/12/2016	14:55:07	05/02/2017	23:14:17

DOE #151, address unknown	99.235.74.226	03/01/2017	16:37:04	05/02/2017	22:34:56
DOE #152, address unknown	173.34.161.156	04/01/2017	21:47:16	05/02/2017	22:14:53
DOE #153, address unknown	99.239.224.129	08/01/2017	19:58:03	05/02/2017	18:46:55
DOE #154, address unknown	99.227.180.26	25/01/2017	06:01:54	06/02/2017	05:43:00
DOE #155, address unknown	72.141.178.109	10/01/2017	05:03:57	06/02/2017	04:57:03
DOE #156, address unknown	99.226.16.23	27/01/2017	03:52:52	06/02/2017	03:28:09
DOE #157, address unknown	99.255.133.94	13/01/2017	05:30:54	06/02/2017	02:54:07
DOE #158, address unknown	99.243.149.160	10/01/2017	04:38:19	06/02/2017	01:59:13
DOE #159, address unknown	99.238.178.98	09/01/2017	18:46:10	06/02/2017	15:47:28
DOE #160, address unknown	99.240.101.227	10/01/2017	00:29:38	06/02/2017	14:52:36
DOE #161, address unknown	208.124.186.42	30/12/2016	18:42:14	06/02/2017	23:29:37
DOE #162, address unknown	174.112.168.125	10/01/2017	01:42:20	06/02/2017	17:03:18
DOE #163, address unknown	99.231.218.34	29/01/2017	22:24:05	07/02/2017	03:21:37
DOE #164, address unknown	174.117.225.145	29/01/2017	23:58:52	07/02/2017	02:19:09
DOE #165, address unknown	99.234.136.162	01/01/2017	02:00:51	07/02/2017	01:21:51
DOE #166, address unknown	99.254.31.132	07/01/2017	17:02:21	07/02/2017	01:09:09
DOE #167, address unknown	99.226.165.140	18/01/2017	16:24:12	07/02/2017	06:10:22
DOE #168, address unknown	99.245.0.23	03/01/2017	03:27:43	07/02/2017	04:51:06
DOE #169, address unknown	99.224.24.182	14/01/2017	14:30:47	07/02/2017	04:48:44
DOE #170, address unknown	174.116.251.89	16/01/2017	17:48:22	07/02/2017	03:54:22
DOE #171, address unknown	99.227.1.93	04/01/2017	04:38:14	07/02/2017	18:22:15
DOE #172, address unknown	99.232.82.208	18/01/2017	02:46:10	07/02/2017	17:39:30
DOE #173, address unknown	99.249.101.219	25/01/2017	12:47:03	07/02/2017	16:17:23
DOE #174, address unknown	174.119.193.30	04/01/2017	23:48:25	08/02/2017	06:08:06
DOE #175, address unknown	174.113.78.194	03/01/2017	02:58:27	08/02/2017	05:35:13
DOE #176, address unknown	99.239.122.49	09/01/2017	02:53:27	08/02/2017	00:26:58
DOE #177, address unknown	72.141.108.211	30/01/2017	16:26:30	08/02/2017	14:00:44
DOE #178, address unknown	99.255.209.92	04/01/2017	11:28:15	08/02/2017	11:19:00
DOE #179, address unknown	99.235.121.67	30/12/2016	21:23:47	08/02/2017	23:44:35
DOE #180, address unknown	99.226.243.11	05/01/2017	01:33:56	08/02/2017	23:31:24
DOE #181, address unknown	99.238.222.99	09/01/2017	23:10:08	08/02/2017	22:51:05
DOE #182, address unknown	174.115.199.150	10/01/2017	04:18:34	08/02/2017	22:06:32
DOE #183, address unknown	72.141.109.202	26/01/2017	20:25:23	08/02/2017	22:00:35
DOE #184, address unknown	99.253.195.27	31/01/2017	09:14:44	09/02/2017	09:03:31
DOE #185, address unknown	99.245.97.140	10/01/2017	05:26:13	09/02/2017	04:46:35
DOE #186, address unknown	173.35.171.193	14/01/2017	22:31:03	09/02/2017	04:11:59
DOE #187, address unknown	99.226.26.195	27/01/2017	18:49:24	09/02/2017	01:53:39
DOE #188, address unknown	99.250.80.154	08/01/2017	07:45:46	09/02/2017	01:34:52
DOE #189, address unknown	99.227.48.253	02/01/2017	23:04:19	09/02/2017	00:27:07
DOE #190, address unknown	99.243.50.219	16/01/2017	05:19:03	10/02/2017	02:39:45
DOE #191, address unknown	72.141.172.54	10/01/2017	04:52:34	10/02/2017	02:31:14
DOE #192, address unknown	174.113.82.89	30/01/2017	03:45:48	10/02/2017	02:17:49
DOE #193, address unknown	72.141.204.171	07/01/2017	03:24:36	10/02/2017	01:13:26
DOE #194, address unknown	99.245.241.205	29/01/2017	02:37:06	10/02/2017	00:59:15
DOE #195, address unknown	99.232.137.237	16/01/2017	04:15:59	10/02/2017	07:48:48
DOE #196, address unknown	99.226.124.40	24/01/2017	00:44:00	10/02/2017	18:50:01
DOE #197, address unknown	72.143.110.234	24/01/2017	21:57:26	10/02/2017	14:40:10
DOE #198, address unknown	99.240.96.15	28/01/2017	22:10:30	11/02/2017	06:19:42
DOE #199, address unknown	99.254.22.138	23/01/2017	15:54:09	11/02/2017	15:26:14
DOE #200, address unknown	99.250.111.93	10/01/2017	05:28:26	12/02/2017	02:03:41
DOE #201, address unknown	99.237.13.26	30/01/2017	11:33:11	12/02/2017	01:40:34
DOE #202, address unknown	99.228.18.153	01/02/2017	00:54:21	12/02/2017	01:26:32
DOE #203, address unknown	99.248.104.170	04/01/2017	04:05:53	12/02/2017	01:17:36

DOE #204, address unknown	99.234.249.151	27/01/2017	05:09:41	11/02/2017	20:09:51
DOE #205, address unknown	99.233.20.118	15/01/2017	02:07:09	12/02/2017	05:15:18
DOE #206, address unknown	99.236.208.215	13/01/2017	01:32:41	12/02/2017	03:42:54
DOE #207, address unknown	99.235.154.127	29/12/2016	23:29:25	12/02/2017	03:32:46
DOE #208, address unknown	99.236.29.58	02/01/2017	05:49:46	12/02/2017	03:20:37
DOE #209, address unknown	99.242.250.206	26/01/2017	02:25:46	14/02/2017	15:21:28
DOE #210, address unknown	174.112.193.180	19/01/2017	03:10:49	15/02/2017	01:32:34
DOE #211, address unknown	99.235.110.78	06/02/2017	06:48:19	15/02/2017	00:28:30
DOE #212, address unknown	174.113.203.250	31/01/2017	22:32:06	14/02/2017	22:56:27
DOE #213, address unknown	99.236.120.70	05/02/2017	06:33:09	14/02/2017	22:47:30
DOE #214, address unknown	99.243.27.223	13/01/2017	21:20:48	14/02/2017	22:07:01
DOE #215, address unknown	174.118.25.80	03/01/2017	13:43:33	14/02/2017	20:38:27
DOE #216, address unknown	99.238.18.5	10/01/2017	05:57:03	15/02/2017	04:37:04
DOE #217, address unknown	99.255.50.86	31/01/2017	03:31:39	15/02/2017	04:00:08
DOE #218, address unknown	99.249.99.199	06/01/2017	07:23:27	15/02/2017	23:30:24
DOE #219, address unknown	174.113.72.45	01/02/2017	06:52:14	15/02/2017	23:01:38
DOE #220, address unknown	99.255.167.142	10/01/2017	17:11:53	15/02/2017	22:02:58
DOE #221, address unknown	173.34.198.183	06/02/2017	19:50:15	15/02/2017	19:48:10
DOE #222, address unknown	174.114.239.82	07/01/2017	16:55:53	15/02/2017	18:44:04
DOE #223, address unknown	99.255.158.135	02/01/2017	17:33:29	15/02/2017	15:47:16
DOE #224, address unknown	99.225.187.178	09/01/2017	03:07:40	16/02/2017	04:53:04
DOE #225, address unknown	99.245.215.83	26/01/2017	15:18:26	16/02/2017	10:07:43
DOE #226, address unknown	99.235.80.144	03/02/2017	10:55:58	17/02/2017	04:38:57
DOE #227, address unknown	99.238.65.21	29/01/2017	23:53:28	16/02/2017	20:24:13
DOE #228, address unknown	72.142.66.22	10/01/2017	18:37:51	17/02/2017	16:29:55
DOE #229, address unknown	99.228.144.218	28/01/2017	4:53:48	17/02/2017	16:19:33
DOE #230, address unknown	99.248.120.87	03/02/2017	23:43:35	18/02/2017	01:41:49
DOE #231, address unknown	99.240.171.106	08/02/2017	19:21:12	18/02/2017	01:41:03
DOE #232, address unknown	99.239.148.98	27/01/2017	23:16:21	17/02/2017	23:57:45
DOE #233, address unknown	72.141.16.54	29/01/2017	02:05:38	18/02/2017	04:05:29
DOE #234, address unknown	99.240.91.52	04/02/2017	19:22:23	18/02/2017	17:00:21
DOE #235, address unknown	99.238.27.220	09/02/2017	01:30:59	18/02/2017	12:58:37
DOE #236, address unknown	173.35.40.208	09/02/2017	09:38:10	19/02/2017	04:27:46
DOE #237, address unknown	99.228.113.241	10/02/2017	03:36:43	19/02/2017	04:23:41
DOE #238, address unknown	99.242.148.21	10/01/2017	04:42:15	20/02/2017	08:02:07
DOE #239, address unknown	99.240.114.87	15/01/2017	01:30:46	20/02/2017	07:57:16
DOE #240, address unknown	99.232.34.248	01/01/2017	21:07:19	20/02/2017	05:13:33
DOE #241, address unknown	99.239.9.12	15/01/2017	00:09:42	20/02/2017	04:44:36
DOE #242, address unknown	99.236.112.225	10/01/2017	05:04:08	20/02/2017	04:02:06
DOE #243, address unknown	99.247.62.160	10/02/2017	02:00:54	20/02/2017	03:58:30
DOE #244, address unknown	99.247.33.100	15/01/2017	03:12:58	20/02/2017	02:32:08
DOE #245, address unknown	99.254.202.72	30/01/2017	13:45:37	20/02/2017	17:29:07
DOE #246, address unknown	99.233.218.178	09/02/2017	13:15:11	20/02/2017	13:47:53
DOE #247, address unknown	99.224.225.234	02/01/2017	03:14:57	21/02/2017	03:14:09
DOE #248, address unknown	99.254.33.16	07/02/2017	02:01:51	21/02/2017	01:34:49
DOE #249, address unknown	174.114.169.96	27/01/2017	02:50:48	21/02/2017	01:09:57
DOE #250, address unknown	99.254.40.220	05/02/2017	00:14:57	21/02/2017	01:02:41
DOE #251, address unknown	99.242.148.169	01/01/2017	14:19:44	21/02/2017	00:36:05
DOE #252, address unknown	174.112.141.171	05/02/2017	22:58:43	20/02/2017	22:03:09
DOE #253, address unknown	174.112.12.131	08/01/2017	09:43:04	20/02/2017	21:50:37
DOE #254, address unknown	99.239.140.16	08/01/2017	10:38:58	20/02/2017	21:21:20
DOE #255, address unknown	99.248.98.50	09/01/2017	00:41:55	20/02/2017	20:21:24
DOE #256, address unknown	198.84.239.240	16/01/2017	13:54:57	01/02/2017	03:58:38

DOE #257, address unknown	184.175.46.28	19/01/2017	08:17:43	01/02/2017	08:55:19
DOE #258, address unknown	192.0.133.149	20/01/2017	13:13:31	02/02/2017	03:45:47
DOE #259, address unknown	24.246.16.109	24/01/2017	00:16:47	02/02/2017	03:03:09
DOE #260, address unknown	192.0.203.115	28/01/2017	05:19:36	05/02/2017	05:59:04
DOE #261, address unknown	174.93.23.62	12/04/2017	09:40:19	24/04/2017	03:46:27
DOE #262, address unknown	67.71.88.142	02/04/2017	02:17:57	23/04/2017	01:59:19
DOE #263, address unknown	76.64.97.215	14/03/2017	00:39:07	22/04/2017	22:52:00
DOE #264, address unknown	50.101.92.62	13/04/2017	00:31:48	26/04/2017	00:41:34
DOE #265, address unknown	184.144.68.56	18/03/2017	22:57:27	28/04/2017	02:23:43
DOE #266, address unknown	70.26.101.246	17/04/2017	03:51:29	01/05/2017	04:19:50
DOE #267, address unknown	74.12.3.191	19/04/2017	21:09:50	01/05/2017	04:12:44
DOE #268 address unknown	74.14.77.116	24/04/2017	06:36:41	02/05/2017	01:35:56
DOE #269, address unknown	67.70.92.229	26/04/2017	05:17:23	04/05/2017	05:32:03
DOE #270, address unknown	70.48.234.180	16/04/2017	06:54:59	06/05/2017	02:20:50
DOE #271, address unknown	70.24.56.29	21/04/2017	01:28:16	06/05/2017	01:08:08
DOE #272, address unknown	67.71.141.202	16/04/2017	02:59:36	07/05/2017	02:27:55
DOE #273, address unknown	76.71.80.110	29/04/2017	02:51:13	07/05/2017	02:23:07
DOE #274, address unknown	70.24.67.226	20/04/2017	02:59:22	07/05/2017	02:34:40
DOE #275, address unknown	216.209.247.194	02/04/2017	10:02:01	07/05/2017	21:58:13
DOE #276, address unknown	65.94.236.213	19/04/2017	00:19:59	08/05/2017	01:16:08
DOE #277, address unknown	70.55.10.149	02/05/2017	03:59:19	10/05/2017	01:10:38
DOE #278, address unknown	64.231.56.151	24/04/2017	00:38:33	13/05/2017	05:50:36
DOE #279, address unknown	50.100.186.207	03/05/2017	02:19:32	13/05/2017	04:04:50
DOE #280, address unknown	70.49.164.215	19/04/2017	23:16:07	15/05/2017	01:14:39
DOE #281, address unknown	50.101.151.68	06/05/2017	08:31:13	15/05/2017	20:51:05
DOE #282, address unknown	50.101.46.42	03/05/2017	06:29:50	16/05/2017	02:46:49
DOE #283, address unknown	74.14.10.141	07/05/2017	18:18:18	16/05/2017	13:58:58
DOE #284, address unknown	64.229.221.96	09/05/2017	22:26:53	20/05/2017	06:58:01
DOE #285, address unknown	74.12.3.11	14/05/2017	23:06:37	23/05/2017	06:42:33
DOE #286, address unknown	99.227.14.124	29/03/2017	08:31:07	24/04/2017	04:00:35
DOE #287, address unknown	99.227.1.55	24/03/2017	00:20:36	23/04/2017	22:14:34
DOE #288, address unknown	174.117.77.151	14/04/2017	14:10:45	26/04/2017	19:33:48
DOE #289, address unknown	99.240.61.92	16/04/2017	01:50:37	30/04/2017	00:08:57
DOE #290, address unknown	99.227.56.112	25/04/2017	22:19:29	04/05/2017	00:45:27
DOE #291, address unknown	99.230.26.170	27/03/2017	02:56:00	04/05/2017	00:43:22
DOE #292, address unknown	99.229.200.197	24/03/2017	18:47:19	05/05/2017	04:03:32
DOE #293, address unknown	99.248.126.221	27/04/2017	12:17:48	06/05/2017	17:28:38
DOE #294, address unknown	174.116.116.76	17/04/2017	06:24:30	09/05/2017	04:15:27
DOE #295, address unknown	99.229.148.139	30/04/2017	18:29:53	11/05/2017	06:04:06
DOE #296, address unknown	174.118.54.40	06/05/2017	06:23:15	14/05/2017	05:17:16
DOE #297, address unknown	99.243.151.49	05/05/2017	04:44:35	13/05/2017	23:57:10
DOE #298, address unknown	99.238.146.84	09/04/2017	23:21:40	13/05/2017	19:27:04
DOE #299, address unknown	24.114.70.80	05/05/2017	19:06:03	14/05/2017	15:23:06
DOE #300, address unknown	174.114.227.71	01/05/2017	05:32:55	15/05/2017	15:17:58
DOE #301, address unknown	174.115.180.89	06/05/2017	04:32:48	15/05/2017	05:42:39
DOE #302, address unknown	99.250.144.3	28/04/2017	16:27:05	15/05/2017	23:51:11
DOE #303, address unknown	174.115.155.72	07/05/2017	18:54:09	16/05/2017	16:57:50
DOE #304, address unknown	99.235.9.230	09/05/2017	23:42:34	18/05/2017	22:14:41
DOE #305, address unknown	174.119.97.147	02/04/2017	22:50:05	22/05/2017	08:18:47

List of Defendants and Specific Information Regarding Infringements of such Defendants in Court File No. T-463-17

Name & Address	IP Address	1st Notice Date	1st Notice Time (UTC) of Infringement	2nd Notice Date	2nd Notice Time (UTC) of Infringement
DOE #1, address unknown	104.254.90.58	12/02/2017	18:36:23	01/03/2017	11:08:05
DOE #2, address unknown	184.75.213.36	22/01/2017	21:13:54	03/03/2017	19:41:06
DOE #3, address unknown	184.75.212.14	25/01/2017	17:35:09	04/03/2017	21:25:56
DOE #4, address unknown	47.55.22.0	20/01/2017	01:21:43	06/02/2017	15:56:31
DOE #5, address unknown	47.55.29.148	22/02/2017	02:55:05	02/03/2017	01:49:45
DOE #6, address unknown	204.101.140.24	19/01/2017	21:23:56	04/02/2017	12:11:34
DOE #7, address unknown	76.64.52.95	24/01/2017	21:35:42	04/02/2017	23:00:07
DOE #8, address unknown	70.49.152.161	23/01/2017	03:12:14	06/02/2017	02:15:37
DOE #9, address unknown	174.89.28.61	22/01/2017	07:26:16	06/02/2017	16:29:49
DOE #10, address unknown	50.101.89.207	26/01/2017	14:23:17	06/02/2017	21:43:53
DOE #11, address unknown	50.101.126.47	28/01/2017	09:58:00	08/02/2017	02:10:23
DOE #12, address unknown	65.95.91.44	25/01/2017	16:20:47	10/02/2017	04:01:23
DOE #13, address unknown	70.49.163.85	07/02/2017	20:20:17	17/02/2017	00:35:58
DOE #14, address unknown	67.70.57.65	17/02/2017	15:49:07	26/02/2017	01:09:26
DOE #15, address unknown	65.94.201.67	13/02/2017	22:04:46	26/02/2017	03:43:52
DOE #16, address unknown	70.24.66.49	25/02/2017	15:32:09	06/03/2017	14:55:06
DOE #17, address unknown	65.92.202.194	27/02/2017	15:10:00	08/03/2017	17:22:54
DOE #18, address unknown	135.0.35.92	24/01/2017	01:32:22	18/02/2017	12:28:21
DOE #19, address unknown	66.11.178.186	19/01/2017	23:40:20	18/02/2017	00:58:09
DOE #20, address unknown	198.91.222.66	20/01/2017	12:11:28	28/02/2017	05:51:02
DOE #21, address unknown	63.135.8.66	23/01/2017	04:12:49	23/02/2017	03:13:22
DOE #22, address unknown	24.138.152.43	20/01/2017	05:51:23	25/02/2017	06:38:52
DOE #23, address unknown	216.167.233.15	04/02/2017	02:55:04	25/02/2017	03:58:30
DOE #24, address unknown	67.204.229.248	17/02/2017	00:49:17	04/03/2017	05:17:47
DOE #25, address unknown	67.204.246.21	21/02/2017	03:51:40	04/03/2017	04:48:37
DOE #26, address unknown	67.204.226.73	24/01/2017	20:41:22	06/03/2017	17:56:28
DOE #27, address unknown	174.112.50.89	19/01/2017	23:39:59	04/02/2017	00:13:20
DOE #28, address unknown	99.251.93.59	20/01/2017	05:03:44	04/02/2017	00:01:29
DOE #29, address unknown	99.232.34.218	22/01/2017	01:42:46	04/02/2017	07:13:31
DOE #30, address unknown	99.253.28.249	24/01/2017	20:04:40	04/02/2017	04:33:25
DOE #31, address unknown	99.237.83.105	22/01/2017	07:34:39	04/02/2017	03:06:24
DOE #32, address unknown	99.230.6.136	20/01/2017	02:48:57	04/02/2017	01:29:10
DOE #33, address unknown	99.255.22.97	23/01/2017	03:47:13	06/02/2017	06:58:37
DOE #34, address unknown	174.118.172.80	28/01/2017	19:57:09	08/02/2017	08:11:41
DOE #35, address unknown	99.228.104.208	05/02/2017	05:03:27	18/02/2017	01:40:17
DOE #36, address unknown	206.186.186.116	04/02/2017	19:02:44	18/02/2017	03:53:12
DOE #37, address unknown	99.243.179.14	27/01/2017	05:58:12	20/02/2017	03:02:01
DOE #38, address unknown	99.229.104.18	01/02/2017	10:29:53	01/03/2017	12:05:59
DOE #39, address unknown	173.35.40.208	20/02/2017	19:01:45	05/03/2017	10:25:25
DOE #40, address unknown	99.242.101.55	19/02/2017	05:03:24	07/03/2017	03:10:18
DOE #41, address unknown	24.52.219.154	30/01/2017	05:08:49	07/02/2017	03:34:36
DOE #42, address unknown	24.212.201.167	23/01/2017	12:42:54	07/02/2017	20:51:50
DOE #43, address unknown	135.23.245.235	20/01/2017	05:42:37	12/02/2017	00:01:56
DOE #44, address unknown	69.60.242.91	22/01/2017	19:36:17	18/02/2017	01:46:55
DOE #45, address unknown	104.158.200.6	22/01/2017	01:29:01	18/02/2017	11:14:34

List of Defendants and Specific Information Regarding Infringements of such Defendants in Court File No. T-480-17

Name & Address	IP Address	1st Notice Date	1st Notice Time (UTC) of Infringement	2nd Notice Date	2nd Notice Time (UTC) of Infringement
DOE #1, address unknown	162.253.131.178	10/01/2017	00:49:09	05/02/2017	08:36:52
DOE #2, address unknown	184.75.214.34	05/01/2017	21:55:29	16/02/2017	05:00:36
DOE #3, address unknown	184.75.212.28	29/01/2017	08:44:40	02/03/2017	03:18:38
DOE #4, address unknown	162.253.128.18	19/01/2017	20:25:15	02/03/2017	22:07:36
DOE #5, address unknown	184.75.212.14	02/01/2017	10:16:46	04/03/2017	15:27:51
DOE #6, address unknown	47.55.22.63	10/02/2017	23:31:51	23/02/2017	23:12:56
DOE #7, address unknown	76.65.199.180	11/01/2017	19:13:57	03/02/2017	21:18:52
DOE #8, address unknown	70.27.115.23	27/01/2017	05:34:31	05/02/2017	05:56:30
DOE #9, address unknown	65.92.126.84	08/01/2017	01:13:28	05/02/2017	22:51:48
DOE #10, address unknown	50.101.89.207	26/01/2017	20:07:13	06/02/2017	20:17:56
DOE #11, address unknown	64.228.237.93	29/01/2017	00:17:06	08/02/2017	23:02:43
DOE #12, address unknown	70.51.156.161	17/01/2017	05:29:14	11/02/2017	00:12:45
DOE #13, address unknown	70.27.145.137	17/02/2017	16:39:23	26/02/2017	10:59:26
DOE #14, address unknown	70.50.131.162	18/02/2017	23:52:52	27/02/2017	10:27:18
DOE #15, address unknown	65.95.199.15	15/02/2017	03:02:25	28/02/2017	19:11:42
DOE #16, address unknown	209.197.136.55	31/01/2017	05:53:45	25/02/2017	07:27:05
DOE #17, address unknown	198.200.109.45	25/01/2017	02:37:25	04/03/2017	04:18:06
DOE #18, address unknown	24.235.62.12	11/01/2017	02:49:20	19/02/2017	11:20:20
DOE #19, address unknown	63.135.23.238	11/01/2017	07:53:44	22/02/2017	18:55:05
DOE #20, address unknown	24.138.152.43	13/01/2017	18:08:15	25/02/2017	06:59:14
DOE #21, address unknown	67.204.221.64	21/01/2017	08:22:02	28/02/2017	06:03:15
DOE #22, address unknown	173.206.5.86	09/01/2017	21:39:52	01/02/2017	02:47:35
DOE #23, address unknown	173.206.90.118	19/01/2017	19:41:04	08/02/2017	03:08:28
DOE #24, address unknown	99.246.124.162	22/01/2017	22:18:01	01/02/2017	01:49:41
DOE #25, address unknown	99.241.64.94	08/01/2017	15:31:56	03/02/2017	04:06:20
DOE #26, address unknown	173.35.0.243	24/01/2017	16:56:14	04/02/2017	05:34:49
DOE #27, address unknown	99.241.117.151	04/01/2017	01:09:42	04/02/2017	22:37:56
DOE #28, address unknown	99.238.224.161	05/01/2017	04:50:35	05/02/2017	06:48:10
DOE #29, address unknown	99.255.34.110	08/01/2017	01:38:37	05/02/2017	22:40:05
DOE #30, address unknown	173.35.149.159	21/01/2017	02:21:10	08/02/2017	20:31:45
DOE #31, address unknown	99.225.134.60	01/02/2017	02:41:08	09/02/2017	02:51:30
DOE #32, address unknown	99.231.34.174	04/02/2017	00:39:12	13/02/2017	00:17:36
DOE #33, address unknown	99.230.89.8	19/01/2017	06:51:54	16/02/2017	08:49:57
DOE #34, address unknown	99.242.221.225	10/02/2017	13:04:14	19/02/2017	05:09:09
DOE #35, address unknown	99.236.252.152	29/01/2017	03:26:13	20/02/2017	16:27:29
DOE #36, address unknown	99.243.197.164	02/01/2017	07:12:48	21/02/2017	02:33:14
DOE #37, address unknown	99.236.13.119	11/02/2017	2:28:55	26/02/2017	01:10:44
DOE #38, address unknown	72.141.69.76	18/02/2017	10:31:30	26/02/2017	05:30:24
DOE #39, address unknown	173.35.36.49	24/01/2017	21:16:50	01/03/2017	17:13:07
DOE #40, address unknown	173.34.230.181	29/11/2016	17:53:37	10/12/2016	19:59:40
DOE #41, address unknown	99.230.176.116	23/11/2016	22:16:22	15/12/2016	05:48:26
DOE #42, address unknown	99.244.90.104	05/12/2016	12:27:17	20/12/2016	09:06:07
DOE #43, address unknown	174.116.26.4	13/12/2016	04:00:39	22/12/2016	2:59:18
DOE #44, address unknown	99.245.56.50	10/11/2016	19:25:09	22/12/2016	14:44:34
DOE #45, address unknown	99.234.213.28	15/12/2016	08:29:12	23/12/2016	09:53:48
DOE #46, address unknown	174.118.250.16	12/11/2016	15:39:38	23/12/2016	17:29:43

DOE #47, address unknown	174.118.1.211	03/12/2016	02:26:34	23/12/2016	21:20:39
DOE #48, address unknown	108.168.110.142	21/02/2017	04:13:17	02/03/2017	03:04:57
DOE #49, address unknown	135.23.144.248	09/01/2017	10:00:47	07/02/2017	23:51:54
DOE #50, address unknown	157.52.0.1	25/01/2017	17:07:31	09/02/2017	04:56:29
DOE #51, address unknown	69.165.233.87	11/02/2017	05:17:52	19/02/2017	05:03:36
DOE #52, address unknown	206.248.132.226	22/02/2017	05:05:46	02/03/2017	03:22:38
DOE #53, address unknown	45.72.250.53	22/02/2017	05:32:31	03/03/2017	03:39:08
DOE #54, address unknown	69.165.165.93	21/11/2016	05:58:07	07/12/2016	09:47:03
DOE #55, address unknown	135.23.64.62	23/11/2016	06:31:54	23/12/2016	15:41:24
DOE #56, address unknown	198.251.53.78	19/01/2017	23:42:42	18/02/2017	01:56:56
DOE #57, address unknown	23.239.47.153	12/01/2017	15:20:14	01/03/2017	07:18:20

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-2177-16, T-463-17, T-480-17

DOCKET: T-2177-16

STYLE OF CAUSE: ME2 PRODUCTIONS, INC. v DOE #1 ET AL. and AMANAH TECH INC., BELL CANADA, ROGERS COMMUNICATIONS INC., TEKSAVVY SOLUTIONS INC., PRIMUS TELECOMMUNICATIONS CANADA

DOCKET: T-463-17

STYLE OF CAUSE: WWE STUDIOS FINANCE CORP. v DOE #1 ET AL. and AMANAH TECH INC., BELL ALIANT REGIONAL COMMUNICATIONS INC., BELL CANADA, CIK TELECOM INC., EASTLINK, DISTRIBUTEL COMMUNICATIONS LTD., ROGERS COMMUNICATIONS INC., TEKSAVVY SOLUTIONS INC., VIANET, VMEDIA INC.

DOCKET: T-480-17

STYLE OF CAUSE: I.T. PRODUCTIONS, LLC v DOE #1 ET AL. and AMANAH TECH INC., BELL ALIANT REGIONAL COMMUNICATIONS INC., BELL CANADA, EASTLINK, DISTRIBUTEL COMMUNICATIONS LTD., ROGERS COMMUNICATIONS INC., TEKSAVVY SOLUTIONS INC., VMEDIA INC., PRIMUS TELECOMMUNICATIONS CANADA, START COMMUNICATIONS, XPLORNET COMMUNICATIONS INC.

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 23, 2018

ORDER AND REASONS: PENTNEY J.

DATED: FEBRUARY 21, 2019

APPEARANCES:

Kenneth R. Clark
Nicholas McHaffie
Jessica Rutledge

FOR THE PLAINTIFFS
FOR THE NON-PARTY RESPONDENT
TEKSAVVY SOLUTIONS INC.

SOLICITORS OF RECORD:

Aird & Berlis LLP
Barristers and Solicitors
Toronto, Ontario

Stikeman Elliott LLP
Barristers and Solicitors
Ottawa, Ontario

FOR THE PLAINTIFFS

FOR THE NON-PARTY RESPONDENT
TEKSAVVY SOLUTIONS INC.