

Federal Court



Cour fédérale

Date: 20240709

Docket: T-743-24

Citation: 2024 FC 1082

Ottawa, Ontario, July 9, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

**ROGERS MEDIA INC.
ROGERS COMMUNICATIONS INC.
BCE INC.
BELL MEDIA INC.
CTV SPECIALTY TELEVISION ENTERPRISES INC.
THE SPORTS NETWORK INC.
LE RESEAU DES SPORTS (RDS) INC.
GROUPE TVA INC.
FUBOTV INC.**

Applicants

and

**JOHN DOE 1, JOHN DOE 2, JOHN DOE 3
OTHER UNIDENTIFIED PERSONS WHO OPERATE
UNAUTHORIZED STREAMING SERVERS THAT
PROVIDE OR WILL PROVIDE ACCESS TO CONTENT
OWNED OR EXCLUSIVELY LICENSED
BY THE APPLICANTS IN CANADA**

Respondents

and

**BELL CANADA
BRAGG COMMUNICATIONS INC. dba EASTLINK
COGECO CONNEXION INC.
FIDO SOLUTIONS INC.
ROGERS COMMUNICATIONS CANADA INC.
SASKATCHEWAN TELECOMMUNICATIONS
TEKSAVVY SOLUTIONS INC.
TELUS COMMUNICATIONS INC.
VIDEOTRON LTD.
2251723 ONTARIO INC. dba VMEDIA**

Third Party Respondents

JUDGMENT AND REASONS (PUBLIC)

[1] The applicants broadcast live sports events to the Canadian public. Internet pirates capture the broadcasts and unlawfully stream the same live sports events to online viewers. The anonymous and elusive pirates make money by infringing the applicants' copyright.

[2] This application seeks an injunction from this Court to try to stop them. It is granted.

[3] The applicants have demonstrated that they are entitled to a permanent injunction and a "wide" injunction against the John Doe Respondents under the *Copyright Act*, RSC, 1985, c C-42. Akin to previous orders of this Court, the injunction will include terms that require the Third Party Respondents to implement certain steps to aid in the effective implementation of the Court's order, by preventing the unauthorized streams from reaching viewers in Canada. Having been consulted in advance on the terms the applicants proposed, the Third Party Respondents – who committed no wrongful acts at all – did not oppose them in their final form.

I. **Background to this Application**

[4] The present application seeks to build upon recent decisions of the Court that issued site-blocking orders to interrupt the infringement of copyright in the broadcast of live sports events.

[5] In *Bell Media Inc v. GoldTV.Biz*, 2019 FC 1432 [*GoldTV FC*], the Court had granted earlier interlocutory injunctions against John Doe defendants directing them to cease operating GoldTV. The injunctions did not curb the conduct. So the plaintiffs sought a mandatory interlocutory order against third party internet service providers (“ISPs”), which provide Internet access to individuals and businesses in Canada. Gleeson J. found a strong *prima facie* case of copyright infringement, irreparable harm to the plaintiffs and that the balance of convenience favoured granting an order. The Court’s order directed the ISPs to block access to a specific list of IP addresses and Web domain names that included two website domain names, ten subdomains and eleven IP addresses. Gleeson J.’s order was a “static” site-blocking order in that it listed the sites to be blocked and provided that new sites could be added by order of the Court. The Court subsequently varied and extended its order a number of times.

[6] The Federal Court of Appeal affirmed the Court’s order: *TekSavvy Solutions Inc v. Bell Media Inc*, 2021 FCA 100 [*GoldTV FCA*] (leave to appeal dismissed: SCC File No. 39876). It found that the Court had jurisdiction to make the order under sections 4 and 44 of the *Federal Courts Act*, RSC, 1985, c F-7, reinforced by subsection 34(1) of the *Copyright Act* which includes injunctive relief among the remedies for copyright infringement.

[7] In *Rogers Media Inc. v. John Doe 1*, 2022 FC 775 [*Rogers Media 2022*], the Court made a “dynamic” site-blocking order in relation to the unlawful streaming of live NHL games during the 2021-2022 season. Pentney J. determined that the defendants had made deliberate and elaborate efforts to breach the plaintiffs’ copyright. The plaintiffs demonstrated a very strong likelihood that they would be successful at trial in establishing that the defendants had infringed their copyright and were doing so in an “ongoing and flagrant fashion”: *Rogers Media 2022*, at paras 131-132. The plaintiffs also established that they had suffered irreparable harm and that an order was necessary to stop or at least reduce the unlawful streaming of live NHL games over which the plaintiffs held copyright. Justice Pentney concluded that the balance of convenience favoured the plaintiffs and it was just and equitable to grant an injunction.

[8] Pentney J.’s reasons provided an extensive analysis of the evidence, which included the technology used to deliver the unauthorized live sports content to viewers, from the source feed uploaded to streaming infrastructure and delivered through streaming servers to the end users who are customers of ISPs. Justice Pentney also described methods of site-blocking. See *Rogers Media 2022*, at paras 43-56, 57-65, 174-181.

[9] Under the Court’s order in *Rogers Media 2022*, the plaintiffs monitored and identified certain Internet protocol (“IP”) addresses to be blocked to prevent the unauthorized streaming of each live NHL game. The list was kept on a secure server and updated on a regular basis. The injunction required the ISPs to obtain the list from the secure server and use it to block their subscribers’ access to the unauthorized streaming during the time “window” of the NHL game.

After the game ended, the ISP would end the blocking of the listed IP addresses. The process repeated with each broadcast of a live NHL game.

[10] This Court has also issued separate site-blocking orders for the NHL 2022-2023 season (Order dated November 21, 2022, in Court File T-955-21, Gagné ACJ), the 2022 FIFA World Cup (Order dated December 6, 2022, in Court File T-1894-22, Mosley J.), and Toronto Blue Jays' games and Major League Baseball ("MLB") playoffs during its 2023 season (Order dated July 18, 2023, in Court File T-1253-23, Lafrenière J.).

[11] Thus, in previous cases, applicants have obtained interlocutory injunction orders, for a stated period of time, for live sports events of a single professional league, in proceedings commenced as actions, against John Doe defendants. Those orders included mandatory terms as against ISPs named as third party defendants who had committed no wrongdoing.

[12] In the present case, the applicants together hold the exclusive rights to communicate the full live event footage and/or full live telecast of certain live sports events in Canada. By this application, they seek to prevent the unauthorized online streaming of their copyright live sports events, including National Hockey League ("NHL") games, National Basketball Association ("NBA") games, and Premier League football matches. In their draft Order, they have defined the term "Protected Live Content".

[13] Other than to attend the game in person, the only lawful way to watch these live sporting events (the Protected Live Content) in Canada is through the applicants' services.

[14] In particularized contrast to the prior proceedings in this Court, the applicants seek a permanent injunction, for a stated period of time, for live sports events of multiple professional sports leagues, in proceedings commenced as an application, against John Doe respondents and ISPs named as third party respondents. The order requested by the applicants aims to protect their copyright in the broadcast of live games of the NHL, NBA and Premier League, specifically:

- a) 2023-2024 NHL season: September 23, 2023, to June 24, 2024 (last possible game);
- b) 2023-2024 NBA season: October 5, 2023, to June 23, 2024 (last possible game);
- c) 2024-2025 NBA season: Approximately the first week of October 2024 to mid-June 2025 (schedule has not been released);
- d) 2025-2026 NBA season: Approximately the first week of October 2025 to mid-June 2026 (schedule has not been released);
- e) 2023-2024 Premier League season: August 11, 2023, to May 19, 2024; and
- f) 2024-2025 Premier League season: Approximately August 2024 to May 2025 (schedule has not been released).

[15] The applicants also seek to add additional copyright live sports events during the two-year term of the Judgment, by updating what is included in “Protected Live Content”.

[16] Critical to the assessment of both liability and remedy on this application is that the allegations of copyright infringement concern live sports events. This contrasts with on-demand video content that can be watched at a time of the viewer’s choice. As is intuitive, the applicants’

evidence confirms that sports events are best experienced live and that viewers nearly always do so: the average viewership of reruns of sporting events is believed to be 5% or less of the viewership for live events (different affidavits referred to 1%, 3% and 5%). Live sports events are amongst the most watched content on television.

[17] The affidavit evidence from employees of the applicants also shows that they have invested very substantial financial resources to obtain the rights to broadcast live NHL, NBA and Premier League games in Canada and to produce associated programming, which in turn generate very substantial revenues from advertising (based on sizeable viewership) and subscription fees paid by consumers (either for a cable or satellite package, or for online services).

[18] This evidence is consistent with evidence from a representative of Friend MTS Limited (“FMTS”) relating to live sports events, who testified based on experience elsewhere as well as with respect to Canada.

II. **Liability under the Copyright Act**

A. ***Process Issues***

(1) The applicants properly filed an application

[19] As noted, the applicants joined together to commence an application seeking an order to enforce their copyright by way of permanent but time-limited injunction, rather than commencing separate proceedings by way of an action and seeking an interlocutory injunction under Rule 373. This makes procedural sense.

[20] First, common questions of law and fact arise in respect of their copyright claims and requests for injunctive relief. Some of the evidence would have overlapped if they had commenced separate proceedings, including the evidence of an employee of FMTS, which will be discussed below. The applicants' claims arise from substantially similar facts and are very similar matters in substance. The order they have requested seeks to address the same problem (pirated communications of live sports events) and is directed at the same Third Party Respondent ISPs. See Rule 102 of the *Federal Courts Rules*, SOR/98-106.

[21] Second, the *Copyright Act* contemplates a summary application may be used for infringement proceedings. See Rule 300(b); *Copyright Act*, subsection 34(1) and paragraph 34(4)(a); and *BBM Canada v. Research In Motion Limited*, 2011 FCA 151, [2013] 1 FCR 117.

[22] Third, as the applicants advised, there are no practical reasons to commence an action. The relief sought is only injunctive, based on affidavit evidence that is extensive but not contested. The applicants do not require discovery and did not expect the John Doe Respondents to appear. There are no credibility issues that need to be resolved at a trial. The applicants do not seek damages. They therefore will not seek default Judgment against the John Doe Respondents for financial compensation as there is no prospect of enforcing a money Judgment against them (either because they cannot be identified or they are outside the Court's jurisdiction). If the applicants had commenced one or more actions, the actions would be discontinued after the interlocutory injunction expired. While the facts and evidence on this application are admittedly complex, they are manageable and amenable to adjudication by summary application, as previous site-blocking motions have demonstrated.

[23] Finally, there are obvious efficiencies for the parties and their common counsel, for the Third Party Respondents, and for the Court.

[24] Accordingly, I conclude that the applicants have properly commenced this proceeding by way of application and did not need to commence one or more actions under the *Copyright Act* and the *Federal Courts Rules*.

(2) The applicants do not need to add the copyright owners as parties

[25] The applicants observed that their proposed order would constitute a decision on the merits in a proceeding commenced by them as rightsholders, which implied that the copyright owners must be made a party to the proceeding: see *Copyright Act*, subsections 41.23(1) and (2). However, the applicants maintained that the exception in paragraph 41.23(2)(c) applies – it is a case in which the Court should conclude that the interests of justice do not require the copyright owner to be a party.

[26] I agree. The copyright owners have confirmed their support of the applicants' application and have executed confirmatory licences in favour of the applicants for the purposes of this proceeding. The Canadian Intellectual Property Office has issued certificates of registration of the copyright in the asserted works. The affidavit evidence filed by the applicants also advised that the owners have confirmed that they will not separately seek a site-blocking order for the same acts of infringement as the applicants have alleged. The applicants do not seek a financial order against any respondent in this proceeding, so there is no risk of double compensation being awarded or double damages being imposed.

(3) The John Doe Respondents were served but did not appear

[27] By order dated May 16, 2024, the Court validated service of the application materials on the John Doe Respondents. No one appeared for any of the John Doe Respondents at the hearing.

B. *Copyright Infringement*

(1) The applicants' rights under the *Copyright Act*

[28] The applicants hold rights that are protected by the *Copyright Act*. The evidence establishes the following with respect to the applicants:

- a) Rogers Media Inc., Bell Media Inc. and Groupe TVA Inc. hold all national and regional rights to live NHL games in Canada for the 2023-2024 season;
- b) Rogers Communications Inc. and BCE Inc. hold the exclusive rights to communicate to the public in Canada, through television broadcast and online streaming, certain live NBA games for the 2023-2024 season through the 2025-2026 NBA season including all pre-season and regular season live games played by the Toronto Raptors, all regular season live games involving other NBA teams broadcast on Sportsnet or TSN stations, and all NBA playoff live games;
- c) Rogers Media distributes NHL and NBA Live Games and various related sports news and highlight shows on Sportsnet-branded discretionary stations. Bell distributes NHL and NBA Live Games, and various related sports news and highlight shows on TSN-branded discretionary stations and RDS-branded discretionary stations, and their corresponding online subscription services (TSN and RDS). Groupe TVA distributes NHL Live Games, and various related sports

- news and highlight shows, on its TVA conventional station and its TVA Sports-branded discretionary stations and through its corresponding online service;
- d) NHL and NBA Live Games, and related programs, can only be accessed in Canada with a paid television subscription to a broadcast distribution undertaking (including the television stations mentioned immediately above) or through a subscription to the online services of the applicants Rogers Media, Bell and Groupe TVA;
 - e) FuboTV Inc. (“Fubo”) holds the exclusive rights to communicate to the public in Canada, through television broadcast, online streaming, and any other method of broadcast, all Premier League football matches from the 2022-2023 Premier League season until at least the 2024-2025 Premier League season (inclusive); and
 - f) Fubo is the sole source of Premier League matches in Canada. They can only be accessed through its FuboTV “Sports” and “Premier” paid subscription packages.

[29] For the purposes of the *Copyright Act*, I am satisfied that the applicants have the exclusive rights to communicate the live sports events just described (which are all included in the phrase “Protected Live Content”), or to authorize their communication, to the public in Canada by telecommunication: *Copyright Act*, paragraph 3(1)(f). The applicants contended that any person who communicates or distributes this content to the public without the owners’ consent infringes the applicants’ copyright under the *Copyright Act*, section 27.

[30] The applicants also referred to additional rights for other live sports content that will be broadcast in the future and that they will acquire or renew rights for future broadcast of other live

sports events. In my view, these rights are appropriately addressed at the remedy stage under section 39.1.

(2) Copyright Infringement and Enforcement Efforts

[31] Based on the evidence in the record, whose content I have summarized below, I am satisfied that the John Doe Respondents have infringed the applicants' copyright in the Protected Live Content.

[32] The evidence identified two types of online piracy for live sports events. One uses open websites that offer unauthorized, free viewing of live sports events. These pirates make money through advertising and perhaps other methods. The other type offers viewers unauthorized subscription services. The viewer accesses the live sports content through a computer, smartphone or television set-top box and pays a fee to watch.

[33] The applicants filed affidavit evidence from a representative of FMTS, a company hired to monitor the Internet and identify sites and services providing unauthorized access to live streams of sports events. Its services also include sending takedown notices and providing site-blocking solutions. FMTS has done monitoring and assisted with the implementation of site-blocking orders made in proceedings in several countries, including by this Court. FMTS has carried out dynamic site-blocking for Premier League games for 8 years (since the last part of the 2016-2017 season).

[34] The affidavit from the FMTS employee advised that based on its experience, the task of identifying persons responsible for operating a streaming platform or infrastructure involved in providing unauthorized live sports content is “a very difficult and often impossible endeavour”. The affidavit advised that operators of such platforms and infrastructure use various methods to remain anonymous and avoid legal proceedings, including:

- a) Never using their real identity in online activities (e.g., by using pseudonyms and/or fake identities);
- b) For unauthorized subscription services, offering subscriptions exclusively through third party resellers (i.e., they avoid dealing directly with viewers);
- c) Registering relevant websites with false ownership information to show that their owner is located in a different location, or by blocking the disclosure of public information from WHOIS databases;
- d) Controlling their websites through offshore corporations based in other countries, and sometimes having offshore bank accounts;
- e) Receiving payments through anonymous payment methods that are difficult or impossible to trace (e.g., cryptocurrency);
- f) Using fictional businesses and false identities to receive payments; and
- g) Regularly moving the location of their servers. (It is normally possible to detect the physical location of the pirates’ servers.)

[35] The affidavit indicated that in most cases, the only reliable information about the streaming server and related infrastructure is the IP address of the server and the hosting provider that rents that server to the operator of it (the pirate).

[36] For this case, the applicant Rogers Media mandated FMTS to identify sites and services providing unauthorized access to live streams of certain sports television stations owned by Rogers Media that broadcast NHL and NBA content during specific time periods between 2022 and 2024. FMTS used various proprietary tools to identify, capture and analyze streaming servers providing unauthorized access to monitored sports television stations owned by Rogers Media in Canada. It did so in real time.

[37] The record contains evidence of unauthorized streaming of live sports events by John Doe 1, John Doe 2 and John Doe 3 involving NBA and NHL games and a Premier League match, in late 2023 and early 2024. For example, John Doe 1 provided unauthorized access to a live stream of an NHL game in October 2023 and an NBA game in January 2024. John Doe 1 operates infrastructure comprising at least one unauthorized streaming server located in the Netherlands, which provided access to an unauthorized live stream of Sportsnet for the October game and Sportsnet West for the January game. The unauthorized streaming servers used for both games had the same IP address. The conduct of John Doe 2 and John Doe 3 is substantially the same for different games. This evidence shows individual infringements of the applicants' copyright.

[38] FMTS also identified tens of thousands of examples of unauthorized access to streams of NHL, NBA and Premier League games carried out by streaming servers. The detailed evidence, with dates and the numbers of incidents, is in the application record (some of which was filed on a confidential basis to protect FMTS's monitoring methods and technical strategies). This is evidence of widespread and persistent infringement of the applicants' copyright.

[39] I note here that FMTS was able to identify distinct streaming servers that provided the unauthorized access. It was also able to compile [REDACTED] to assist with the implementation of site-blocking. A substantial majority of the streaming servers were on FMTS's existing [REDACTED], and nearly all were located outside Canada. FMTS created [REDACTED] using criteria that it provided to the Court in confidential evidence. [REDACTED] is updated on a regular basis, applying the criteria, in an effort to ensure that site-blocking activities are current, accurate, comprehensive and targeted, and also do not prevent access to lawful communication of live sports content. I will return to this [REDACTED] below.

[40] The applicants also provided their own evidence related to the pirating of their live sports events and seeking to enforce their copyright. This evidence included references to:

- a) Efforts by one or more of the applicants to stop or reduce piracy through legal proceedings in Canada, directly against alleged infringers of the copyright who can be identified (in some cases with subsequent contempt proceedings), or by site-blocking orders against anonymous infringers as described already;
- b) Reporting pirate conduct to online search engines (seeking to delist the services from search results) and to payment services that are used to pay for unauthorized services;
- c) Monitoring social media platforms to find advertisements for services that provide unauthorized access to live sports content;
- d) Sending notices to alleged infringers, which are mostly ignored; and
- e) Industry groups involved in anti-piracy campaigns.

[41] Overall, these Canadian legal proceedings and self-help remedies seem to be at most partially effective to address piracy, owing to the anonymity of the pirates, the physical location of the servers and related infrastructure outside Canada, and the surreptitious nature of the conduct. As a result, the applicants have sought to block access to unauthorized content through other remedies, including static and dynamic site-blocking orders.

[42] I conclude that the applicants have demonstrated that the John Doe Respondents have infringed the applicants' copyright in their exclusive rights to broadcast live sports events as captured by the term "Protected Live Content" and set out in Schedule 1 of the Judgment issued in this proceeding.

III. **Remedies under the Copyright Act**

[43] This Court's prior site-blocking decisions have issued mandatory injunctions on an interlocutory motion. They applied the three-stage framework from *RJR-MacDonald* (a serious issue to be tried based on a preliminary assessment of the merits, irreparable harm and the balance of convenience or harms to the parties), albeit with distinctive considerations at each stage: see *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311. They were mandatory interlocutory injunctions because they required a responding party to take positive action: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 SCR 196, at para 16. On a motion for a mandatory injunction, at the first stage an applicant must show that it is very likely to succeed on the merits at trial: *CBC*, at paras 13, 15-18. In both the *GoldTV* and *Rogers Media 2022* site-blocking cases, the evidence established a very strong *prima facie* case on the merits that the unknown defendants had engaged in ongoing breach of their copyright in the broadcasts

of live sports events: *Rogers Media 2022*, at paras 9, 110-111, 118, 331; *GoldTV FC*, at paras 1, 57; *GoldTV FCA*, at paras 61, 67-68.

[44] In the present case, the applicants seek distinct and final injunctive relief against the two groups of respondents. First, the applicants seek a permanent injunction against the John Doe Respondents and no financial compensation: *Copyright Act*, subsection 34(1). This injunction is proscriptive, in that it would bar the John Doe Respondents from conduct that infringes the applicants' copyright. The applicants also seek a "wide" injunction against the John Doe Respondents under section 39.1 that would enjoin the infringement of copyright in other works. Second, the applicants seek a two-year mandatory injunction as against the Third Party Respondents that requires them to take certain steps to prevent the infringement of the applicants' copyright.

A. ***Legal Principles***

[45] A permanent injunction may be granted for copyright infringement: *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 SCR 339, at para 85; *Vidéotron Ltée v. Konek Technologies Inc.*, 2023 FC 741, at paras 21, 72-75; *Microsoft Corporation v. Liu*, 2016 FC 950, at para 35; *Wing v. Velthuisen*, 197 FTR 126, 9 CPR (4th) 449 (FC), at paras 65-67.

[46] This Court has granted permanent injunctions in copyright infringement proceedings based on an assessment of the likelihood or risk of future wrongful conduct (either continued infringement or re-infringement): *Burberry Limited v. Ward*, 2023 FC 1257, at para 77;

Vidéotron Ltée, at para 73; *Lululemon Athletica Canada Inc. v. Campbell*, 2022 FC 194, at para 31; *Thomson v. Afterlife Network Inc.*, 2019 FC 545, at para 37; *Young v. Thakur*, 2019 FC 835, at para 36. Issuing an injunction to restrain further infringement has become a typical remedy if the legal test is met, assuming there is sufficient risk that the unlawful conduct will continue: *Lululemon Athletica*, at paras 29-30; *Trimble Solutions Corporation v. Quantum Dynamics Inc.*, 2021 FC 63, at para 66.

[47] As a court of equity, the Court may also grant an order against third party respondents if it appears to be just or convenient to make such an order: *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, [2017] 1 SCR 824, at para 28; *Lukács v. Canada (Citizenship and Immigration)*, 2023 FCA 36, at para 61; *GoldTV FCA*, at paras 18-21, 30-32, 39-45; *Federal Courts Act*, sections 4 and 44; *Copyright Act*, section 34.

[48] To obtain a permanent injunction, the claiming party must establish three elements:

- 1) an infringement of rights – that is, proof of each of the elements of the cause of action on a final adjudication of the claimed rights;
- 2) that damages or other alternative remedies are not sufficient or adequate to address the wrongful conduct; and
- 3) that there is no impediment to the Court’s discretion to grant an injunction.

See: *Google Inc.*, at para 66 (Côté and Rowe JJ., dissenting), citing *1711811 Ontario Ltd. (AdLine) v. Buckley Insurance Brokers Ltd.*, 2014 ONCA 125, at paras 74-80; *Bruderheim Community Church v. Moravian Church In America (Canadian District)*, 2020 ABCA 393, at para 24; *Liu v. Hamptons Golf Course Ltd.*, 2017 ABCA 303, at para

17; *NunatuKavut Community Council Inc v. Nalcor Energy*, 2014 NLCA 46, at paragraphs 46–72; *Cambie Surgeries Corp. v. British Columbia (Medical Services Commission)*, 2010 BCCA 396, at paras 27-28, 32, 34-37; *Vidéotron Ltée*, at para 72; *Alberta Health Services v. Johnston*, 2023 ABKB 209, at para 124.

[49] In addition:

- a) The injunction should be carefully tailored to remedy the wrong committed or threatened in the specific case and to ensure compliance with its aim: *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 SCR 612, at para 24; *Nalcor Energy*, at para 71; *Cambie Surgerie*, at paras 39-40.
- b) The terms of a permanent injunction, particularly one that involves mandatory action, should be carefully examined to ensure that its terms are precisely drafted: *Pro Swing*, at para 24; *Google Inc.*, at para 75; *Co-operative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd.*, [1998] A.C. 1 (H.L.), at p. 13H). See similarly, *Thibodeau v. Air Canada*, 2014 SCC 67, [2014] 2 SCR 340, at paras 126-127.
- c) One of the reasons for careful drafting of an injunction order is that non-compliance may give rise to contempt proceedings: see *Lululemon Athletica*, at paras 32-35.
- d) The Court should be cautious about making orders that require ongoing supervision or “cumbersome court-supervised updating”: *Pro Swing*, at para 24; *Google Inc.*, at para 76. See similarly, *Thibodeau*, at paras 126, 128, 131.

[50] The requirements for a permanent injunction are conceptually distinct from the three-step framework for an interlocutory injunction, including a mandatory injunction. In some cases, such

as this one, the elements are more closely related than in other cases. The permanent injunction requires a final adjudication of the plaintiff's or applicant's rights, whereas a mandatory interlocutory injunction requires proof that the applying party is "very likely to succeed" on the merits at an eventual trial. If the evidence is very clear, the legal standard may make no difference: see e.g., *GoldTV FCA*, at paras 67-68. The requirements for a permanent injunction do not include the second and third *RJR-MacDonald* steps, although the inadequacy of money damages may feature in both and both may consider equitable factors in deciding whether to grant relief: *Nalcor Energy*, at paras 60-62; *Cambie Surgeries*, at para 27; *Google Inc.*, at para 25. See *GoldTV FCA*, at paras 60-61; *Rogers Media 2022*, at paras 110-111; *Bombardier Recreational Products Inc. v. Arctic Cat, Inc.*, 2020 FC 691, at para 189; *GoldTV FC*, at paras 51-54. The decided cases do not suggest (nor do I) that the legal tests for an interlocutory mandatory injunction and a permanent injunction should not remain distinct.

B. *Permanent Injunction against the John Doe Respondents*

[51] I agree with the applicants that the John Doe Respondents should be enjoined permanently from infringing the applicants' copyright in the Protected Live Content, under subsection 34(1) of the *Copyright Act*. The definition of Protected Live Content in the Court's Judgment (Schedule 1) will include the applicants' rights in the NHL, NBA and Premier League games.

[52] The applicants' evidence amply demonstrates pervasive, continued and likely conscious copyright infringement by the John Doe Respondents, who select the live content to stream to viewers and take active steps to make it available to members of the Canadian public through

servers and infrastructure outside Canada. The injunction is necessary owing to the inability of other legal and self-help remedies to restrain the conduct of the stealthy offshore pirates, and the ineffectiveness of any damages that could be awarded against them. I see no equitable considerations that prevent the Court from issuing a permanent injunction and every indication that it is just and equitable to do so.

C. “Wide” Injunction against the John Doe Respondents

[53] Having decided to grant an injunction under subsection 34(1), the next question is whether to grant a wide injunction under section 39.1. That provision enables the Court to “further enjoin” (in the French version of the Act: “*le tribunal peut en outre interdire*”) the John Doe Respondents from infringing the copyright “in any other work” (“*sur d’autres oeuvres*”) or subject-matter, if the requirements in paragraphs 39.1(1)(a) and (b) are met. If the requirements in those two provisions are met, subsection 39.1(2) provides that the further injunction may extend to works (or other subject-matter): (a) in respect of which the applicants did not have an interest in the copyright when the application was commenced, or (b) that did not exist when the application was commenced. Section 39.1 of the Act provides:

Wide injunction

39.1 (1) When granting an injunction in respect of an infringement of copyright in a work or other subject-matter, the court may further enjoin the defendant from infringing the copyright in any other work or subject-matter if

(a) the plaintiff is the owner of the copyright or the person to whom an interest in the copyright has been granted by

Interdiction

39.1 (1) Dans les cas où il accorde une injonction pour violation du droit d’auteur sur une oeuvre ou un autre objet, le tribunal peut en outre interdire au défendeur de violer le droit d’auteur sur d’autres oeuvres ou d’autres objets dont le demandeur est le titulaire ou sur d’autres oeuvres ou d’autres objets dans lesquels il a un intérêt concédé par

licence; and

(b) the plaintiff satisfies the court that the defendant will likely infringe the copyright in those other works or subject-matter unless enjoined by the court from doing so.

Application of injunction

(2) An injunction granted under subsection (1) may extend to works or other subject-matter

(a) in respect of which the plaintiff was not, at the time the proceedings were commenced, the owner of the copyright or the person to whom an interest in the copyright has been granted by licence; or

(b) that did not exist at the time the proceedings were commenced.

licence, si le demandeur lui démontre que, en l'absence de cette interdiction, le défendeur violera vraisemblablement le droit d'auteur sur ces autres oeuvres ou ces autres objets.

Application de l'injonction

(2) Cette injonction peut viser même les oeuvres ou les autres objets sur lesquels le demandeur n'avait pas de droit d'auteur ou à l'égard desquels il n'était pas titulaire d'une licence lui concédant un intérêt sur un droit d'auteur au moment de l'introduction de l'instance, ou qui n'existaient pas à ce moment.

[54] I agree with the applicants that the circumstances and evidence filed on this application demonstrate that a wide injunction is warranted against the John Doe Respondents. It is clear from the evidence that the John Doe Respondents will continue to infringe the applicants' copyright in the Protected Live Content, and will likely infringe their future exclusive rights to broadcast other copyright works, as live sports events occur.

[55] What are the rights and the "other works" to which the further, wide injunction will apply? The applicants pointed to evidence that they currently broadcast many other live sports

events, in respect of which they presumably already have rights. Counsel advised that the applicants intend to add rights in relation to the broadcast of live MLB games. They also adduced evidence that they expect to continue to obtain rights to live sports events, including by way of additional rights to NHL games, over the proposed two-year term of the injunction. Finally, at the hearing the applicants noted evidence suggesting that some unauthorized streaming services provide access to full channels (such as all of the Sportsnet channels), which may also be added to Schedule 1.

[56] With those other and to-be-acquired rights in mind, the applicants requested that the Court include terms that would allow them to update the definition of Protected Live Content in Schedule 1 of the Court's Judgment, upon service and filing of an affidavit or other supporting evidence demonstrating their ownership or exclusive licence in live sports content not already included in Schedule 1 (or attesting that certain rights and content should be removed). The applicants' proposed terms would not require any determination or adjudication by the Court to change Schedule 1. However, the proposed terms would allow any respondent to object and bring the matter to Court by motion and if so, the Schedule would remain unamended until the motion is decided (or the Court orders otherwise). Otherwise, the amendment of Schedule 1 would come into effect 10 days after the service and filing of the proposed update materials.

[57] The applicants did not refer to any decided case (whether interlocutory or final) that enabled a plaintiff or applicant to do this. The Court's prior dynamic site-blocking orders did not contain terms enabling the plaintiffs to update the definition of Protected Live Content in the schedules to the orders, in the manner proposed in this proceeding.

[58] In *Thomson v. Afterlife Network Inc.*, 2019 FC 545, the applicant sought a wide injunction under section 39.1 related to obituaries she and other authors had written. The defendant operated a website that was a database of obituaries. The application was certified as a class proceeding. The applicant described the respondent's conduct as "obituary piracy". The Court found continued infringement of copyright in the original works and a permanent injunction against the respondent but declined to issue a wide injunction. Justice Kane explained:

[51] The onus is clearly on the party seeking the injunction to demonstrate that the infringer will likely infringe the copyright in other works. Wide injunctions have been awarded where the likelihood of continued infringement was demonstrated (*Nintendo of America Inc v King*, 2017 FC 246 at paras 175-177, [2018] 1 FCR 509) and refused where the Court was not satisfied of the likelihood (*Interbox Promotion Corp v 9012-4314 Québec Inc*, 2003 FC 1254 at para 67, 2003 FCT 1254).

[...]

[53] Section 39.1 permits the Court to enjoin the same defendant from infringing other works, including works that did not exist when the proceedings commenced. However, those other works must be the works of the same plaintiff. In this case, a wide injunction would only enjoin Afterlife and Mr. Leclerc from infringing other works of the Applicant and Class Members. The Court has no evidence that there are other works by the same Class Members or that there will be other works by the same Class Members. The Court must also be satisfied that Afterlife is likely to infringe the other works of the Class Members. While Mr. Leclerc's creation of another obituary website suggests that he is inclined to repeat a similar type of conduct, whether he will likely infringe the works of Class Members remains speculative, as does the notion that the same Class Members will author obituaries in the future.

[59] In *Burberry*, Justice Walker issued a "rolling" order that permitted an *ex parte* informal motion and affidavit evidence to fold in additional business names used by the infringing defendants and future detention of counterfeit merchandise at the Canadian border, upon proof of

connection of the additional name or future detention to one or more of the defendants: *Burberry*, at paras 88-92.

[60] With this case law in mind, the resolution of the issue in this case involves an interpretation of section 39.1 and consideration of the evidence adduced to support the applicants' position.

[61] The applicants did not refer to any extrinsic evidence showing what Parliament intended or contemplated in enacting section 39.1: see *An Act to amend the Copyright Act*, SC 1997, c 24, section 20. Looking at section 39.1 with section 34, Parliament presumably sought to give the Court additional remedial flexibility to address serial copyright infringement – for example, infringement that continues during the litigation process and is expected to continue after Judgment. Remedial flexibility is consistent with the nature of an injunction as a remedy whose origins are in equity. It seems unlikely Parliament specifically contemplated dynamic site-blocking orders to prevent copyright infringement during live streaming when it enacted the provision in 1997.

[62] I turn to the text and statutory context of the provision to explain the conclusion I have reached, recognizing that this application was unopposed so there were no competing submissions on how to interpret the provision.

[63] Paragraph 39.1(1)(a) contemplates that the applicants be a person to whom an interest in the copyright “has been granted by license” (*le demandeur “a un intérêt concédé par licence”*).

Paragraph (b) requires that the applicant “satisfies the court” (“*si le demandeur lui [le tribunal] démontre*”) that the respondents will likely infringe the copyright in “those other works” (“*sur ces autres oeuvres*”) unless enjoined from doing so. The text of these phrases suggests that when issuing an order or judgment, the Court should be in a position to determine (at the time of Judgment and on the evidence in the record) whether the applicants have rights granted by licence, what the “other works” are and whether the respondents are likely to infringe the copyright in those other works.

[64] That said, these phrases must be read in the context of the adjacent subsection 39.1(2), which expressly contemplates that the further (wide) injunction issued under subsection (1) may extend to rights not held by the applicants when the application was commenced, or works that did not yet exist at that time. I observe that a claimant’s rights in such “other works” could, in a given case, be obtained after the lawsuit is commenced but before the time of Judgment, or they could be obtained at some time after Judgment. Of course, it is axiomatic that orders and judgments speak from the time they are endorsed in writing and signed by the Court, unless they provide otherwise (e.g. orders *nunc pro tunc*): see Rule 392(2). See also *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60, [2015] 3 SCR 801, at paras 85-90; *Canada v. Larsson*, 1997 CanLII 6178 (FCA).

[65] In this application, the applicants seek an ability to amend a schedule to the Judgment after it is issued, without any additional adjudication by the Court, to add new rights that would constitute Protected Live Content. The applicants’ evidence was that rights to live sports events are licensed after lengthy and detailed negotiations between the applicants and the owners, some

of which are not finalized until after the sports season has commenced. The applicants' evidence was essentially that they broadcast the live games before the parties have executed their agreement, doing so on the strength of their business relationship and their accord on critical terms of the licence. Thus, if the applicants are unable to implement site-blocking when a sports season begins and have to wait for the licence to be signed and for the Court to issue an order (even on informal motion), there will be a delay and the applicants may not be able to protect their copyright broadcasts by dynamic site-blocking during the early games in that season. The applicants adduced separate evidence about the impact of delay arising from informal motions under previous site-blocking orders. The applicants' position was that the sooner the Judgment can be implemented to block the unauthorized broadcast of games, the more effective the Judgment will be in stopping copyright infringement.

[66] I agree that by virtue of the evidence in the record related to copyright infringement of live sports events and the scope of section 39.1, the applicants should have a mechanism in this case to update the definition of Live Protected Content to include rights that do not exist as of the time of Judgment in respect of live sports events occurring after Judgment. However, I am not inclined to believe that the Court should stretch the remedial flexibility granted by section 39.1 to enable a party to enforce new or additional rights under the *Copyright Act* without, at minimum, adjudication of the issues related to the rights and works under paragraphs 39.1(1)(a) and (b).

[67] Whether or not section 39.1 could bear it in law (a question I do not decide), in this case I decline on the evidence to grant a wide injunction that would enable Schedule 1 to be updated without a motion to the Court to determine whether the proposed post-Judgment revisions meet

the requirements of subsection 39.1(1). While I am conscious of the commercial realities of lengthy and detailed negotiations related to live sports events, the timing of completion of such negotiations is something within the parties' control. The negotiating parties have a common financial interest in preventing copyright infringement in the communication of the live sports events. In addition, there should be no material concerns about the Federal Courts' ability to provide responsive and timely determination of truly urgent issues (see *Wilson v. Meeches*, 2023 FCA 233, at para 21) and the filed evidence does not persuade me otherwise. I conclude there is insufficient basis to exercise the Court's remedial discretion in the manner proposed by the applicants, even assuming the statute permits it.

[68] As such, and to implement the requirements of subsection 39.1(1), the Judgment will contain terms that will enable the applicants to file a motion to the Court with supporting evidence to amend Schedule 1. This will ensure that the Court is satisfied that the applicants have the rights in the live sports events they wish to protect by dynamic site-blocking (before they do so under Court Judgment) and (b) that the John Doe Respondents will likely infringe the applicants' rights in the broadcast of those live sports events, all on evidence filed with the Court. To avoid a proliferation of motions, the applicants may do so twice without leave of the Court and thereafter with leave. I will remain seized of the proceeding for such motions, subject to the direction of the Chief Justice if I am not readily available.

[69] I am not persuaded that the same legal and factual analysis applies to the removal of rights in Protected Live Content from Schedule 1. If relevant rights have expired, they can no longer be enforced. For clarity, the Judgment will enable the non-enforcement or removal of

rights that have expired from Schedule 1 without a prior motion and order from the Court, subject to (a) service and filing of a confidential affidavit supporting why the deletions have been made and (b) giving confidential notice to the Third Party Respondents. I do not propose to deal with any theoretical revocation or termination of the applicants' rights.

[70] The applicants' request for a wide injunction will be granted, with a mechanism to update Schedule 1 as just described.

D. *Order and Terms as against the Third Party Respondents*

[71] The applicants provided the terms of their proposed Judgment to the Third Party Respondents several weeks before the hearing of this application. The terms are mandatory in that they require the Third Party Respondents to take certain steps to implement dynamic site-blocking. Subject to some revisions just before the hearing and some clarifications at it, the Third Party Respondents did not oppose the terms proposed by the applicants.

[72] Broadly speaking, the proposed Judgment reflected the terms of dynamic site-blocking orders previously issued by the Court on an interlocutory basis in relation to live NHL, FIFA, MLB season and Premier League games. I agree with the applicants that a two-year mandatory injunction implementing dynamic site-blocking should be issued, unopposed, as against the Third Party Respondents as the best effective remedy to stop the widespread and persistent infringement of their copyright in the communication of live sports events in Canada.

[73] The applicants proposed one change to prior dynamic site-blocking orders that requires some explanation. The Judgment will include a [REDACTED] related to [REDACTED] [REDACTED] to block during live games (known as “Protected Live Content Windows” under the Judgment). [REDACTED] will be generated by FMTS on a rolling basis. The mechanism for doing so is based in part on a formula with specific criteria. I have examined those criteria and conclude that they are acceptable in the present case, in that they satisfactorily include [REDACTED] IP addresses to block and remove [REDACTED] [REDACTED] based on monitoring and other evidence available to FMTS (as of now and as gathered during the two year term of the Judgment). As some of the evidence is properly confidential (as I address below), I will observe that [REDACTED] will be generated using evidence from FMTS’s years-long experience in monitoring the unauthorized communication of live sports events in several sports leagues including (but not limited to) the NHL, NBA and Premier League.

[74] The [REDACTED] will be in Schedule 2 to this Judgment, but will be updated regularly during the two-year term of the Judgment. The applicants argued that their proposed mechanism to update [REDACTED] automatically (without a Court order) would increase the effectiveness of the Judgment compared with prior site-blocking orders. While I did not find the increased effectiveness evidence to be as compelling as the applicants contended, the proposed mechanism does not expand the scope of the injunction to add any “new” respondent (akin to *Burberry*), nor any new licensed rights or additional works (so it does not invoke the wide injunction provision in section 39.1). Rather, using information available to FTMS and the criteria described in the confidential evidence, the mechanism updates the specific means [REDACTED] being used by the pirates to infringe the applicants’ copyright and ensures that the site-blocking is better

targeted and current in the application of site-blocking during Protected Live Content Windows. The proposed terms relating to Schedule 2 also do not appear to run contrary to any provision in the *Copyright Act* to which my attention was drawn. As a result, and with acceptable inclusion and exclusion criteria, I do not believe that an ongoing role for the Court by way of informal motion is legally or practically required to update Schedule 2 of the Judgment, subject to (a) service and filing of a confidential affidavit supporting why the deletions have been made and (b) giving confidential notice to the Third Party Respondents.

[75] As mentioned, the Judgment will terminate two years after it is issued, other than the permanent injunction against the John Doe Respondents. Practically speaking, that injunction will end when the applicants' infringed rights come to an end. If motions are filed to amend Schedule 1, the Court may revisit the sunset provision in the Judgment as it concerns the permanent injunction.

IV. **Confidentiality Order under Rule 151**

[76] The open court principle protects the public nature of hearings and court records. Under this principle, every person, as a general rule, has the right to access the courts, to attend hearings and to consult court records: *Canadian Broadcasting Corp. v. Named Person*, 2024 SCC 21, at paras 27-28. Confidentiality orders are made only in rare circumstances: at para 32.

[77] The test for a confidentiality order under Rule 151 of the *Federal Courts Rules* was described in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522 and recently affirmed in *Sherman Estate v. Donovan*, 2021 SCC 25,

[2021] 2 SCR 75. The moving party must establish that (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[78] Under Rule 151, the moving party must provide a convincing evidentiary basis to justify issuing a sealing order, in particular to demonstrate a serious risk of harm. The risk in question must be substantiated and well grounded in the evidence: *Sherman Estate*, at paras 35, 62, 102; *Sierra Club*, at paras 46, 54; *Desjardins v. Canada (Attorney General)*, 2020 FCA 123, at paras 82, 85, 87-88, 94.

[79] The Federal Court of Appeal has emphasized that courts be vigilant in applying the open court principle: *Canadian National Railway Company v. Canada (Transportation Agency)*, 2023 FCA 245, at para 9; *Ontario Addiction Treatment Centres v. Canada (Attorney General)*, 2023 FCA 236, at para 11. Any secrecy in court proceedings must be “necessary, justified and minimized”: *Ontario Addiction Treatment Centres*, at para 11 (citing *Sierra Club* and *Sherman Estate*).

[80] The applicants filed affidavits and written submissions in confidential and public versions, the latter with redactions for information that they characterized as “sensitive technical aspects of the evidence”. They also submitted a draft Order that has confidential terms in Schedule 2.

[81] The applicants submitted that unless the confidential aspects of these documents were sealed from the public, pirates will likely be able to rely on the detailed technical information to implement techniques allowing them to circumvent the Court's Judgment and continue offering infringing content. According to the applicants, this would not only undermine the value and impact of the Judgment, but also orders previously issued in other jurisdictions that rely on similar technical approaches to block infringing content.

[82] I have reviewed the applicants' affidavit evidence and written submissions in light of the legal principles. I agree that an order should be made under Rule 151.

[83] The confidential information filed by the applicants includes technical information about FMTS's monitoring and site-blocking methods. As the affidavit evidence attests, this information is confidential and commercially sensitive on its face. Disclosure to the public raises a serious risk to FMTS's commercial and business interests. Disclosure would also adversely impact the public interest in combatting persistent infringements of copyright law and in the effective implementation of site-blocking orders issued by this Court. As the applicants submitted, disclosing certain aspects of the redacted information – including the criteria used in Schedule 2 – would compromise the effectiveness of the dynamic site-blocking by providing information to persons involved in the infringing conduct that would be used to avoid the site-blocking. There is additional, related evidence explaining the relevant technology to the Court which, alongside the confidential information already described, must also be sealed in order to maintain the secrecy of the monitoring and order implementation techniques. The same reasoning applies to evidence of the results of FMTS's monitoring and to evidence covering

FMTS's experience in implementing prior site-blocking orders, including dynamic orders and the prior orders of this Court. The evidence described the results of the site-blocking efforts, and work done to ensure that the orders are effective and targeted at IP addresses and infrastructure involved in the distribution of unauthorized content and not legitimate websites or streaming services.

[84] There is no realistic alternative to a confidentiality order covering the redacted information.

[85] I also conclude that the salutary effects of a confidentiality order covering the redacted information outweigh the adverse effects on the open court principle. While there is considerable confidential evidence related to technical matters, the redactions to the application record and the applicants' written submissions were appropriately tailored to ensure that the Court had necessary relevant information on which to adjudicate while giving access to information that enables the public to understand the issues and evidence in the proceeding.

[86] Accordingly, I conclude that the evidence demonstrates that the portions of the record that the applicants filed confidentially must remain confidential and sealed from public access. The overall conclusion I have reached is substantially similar to *Rogers Media 2022* (see at para 324 and at paragraphs 22-26 of the order). The present Judgment will include similar terms.

[87] The confidentiality order under Rule 151 also extends to the confidential version of these Reasons and Schedule 2 of the Judgment. The Reasons have been drafted to ensure the public

understands the nature and contents of the Judgment and the reasons for issuing it, without compromising the private or public confidentiality interests. In consultation with the parties, the Court will issue a timely public version.

V. **Conclusion**

[88] The application is granted. No party requested costs and no costs order will be made.

[89] As already mentioned, I will remain seized of this proceeding for any issues that arise in relation to the Judgment during its two-year term and specifically to deal with any informal motions that may arise.

[90] Finally, I would like to recognize and commend the helpful and thorough written submissions by the applicants' legal team and oral submissions made by Mr Lavoie Ste-Marie.

JUDGMENT in T-743-24

THIS COURT’S JUDGMENT is that:

1. In this Judgment, “**Protected Live Content**” refers to the full live event footage and/or full live telecast of certain live sports events produced and/or broadcast by some or all of the applicants in Canada, as the case may be, and for which that or these applicants either own the copyright or benefit from an exclusive license, as listed in Schedule 1.
2. The John Doe Respondents, by themselves or by their employees, representatives and agents, or by any company, partnership, trust, entity or person under their authority or control, or with which they are associated or affiliated, shall immediately cease providing unauthorized access to live streams of Protected Live Content owned or exclusively licensed by the applicants in Canada, including by directly or indirectly operating, maintaining, and/or promoting unauthorized streaming servers that provide or facilitate access to live streams of Protected Live Content in Canada, and are restrained from otherwise, directly or indirectly:
 - (a) communicating Protected Live Content to the public by telecommunication in Canada, including transmitting or otherwise making available Protected Live Content to the public by telecommunication in a way that allows members of the public to have access to it from a place individually chosen by them; and
 - (b) inducing and/or authorizing anyone to infringe the applicants’ right to communicate Protected Live Content to the public by telecommunication in Canada.

3. Subject to the terms of this Judgement, the Third Party Respondents shall, during each of the Protected Live Content Windows (as this term is defined in Confidential Schedule 2 of this Judgment) specified in Schedule 1 of this Judgment, subject to paragraph 4 of this Judgment, block or attempt to block access, by at least their residential wireline Internet service customers, to each of the IP addresses for the Target Servers (as this term is defined in Confidential Schedule 2 of this Judgment and as may be hereafter varied) which the applicants or their appointed agent have notified to the Third Party Respondents in accordance with this Judgment.
4. Timing of implementation:
 - (a) The Third Party Respondents shall begin to block access to the IP addresses of the Target Servers notified pursuant to this Judgment immediately, if they are in a position to do so;
 - (b) Any Third Party Respondent that cannot immediately begin implementation of this Judgment shall take steps to comply without delay, and in any case shall begin to block access under this Judgement no later than seven (7) days after it is issued; and
 - (c) Any Third Party Respondent that is unable to fully comply with the terms of this Judgment within fifteen (15) days shall advise the applicants, pursuant to the terms of paragraph 9 of this Judgment.
5. The applicants shall collectively appoint a single agent to fulfill the duties outlined in this Judgment (the “**Agent**”).

6. The Agent may notify to the Third Party Respondents an IP address to be blocked as a Target Server pursuant to paragraph 3 of this Judgement if:
 - (a) The Agent has detected that the IP address is being used:
 - (i) during any Protected Live Content Window, to communicate Protected Live Content to the public by telecommunication without authorization; or
 - (ii) during any Pre-Monitoring Period (as defined in Confidential Schedule 2 of this Judgment) to communicate to the public by telecommunication without the applicants' authorization a station on which Protected Live Content is scheduled to be broadcast during a Protected Live Content Window corresponding to that Protected Live Content; or
 - (iii) in a manner that meets one or more of the detection conditions specified in paragraphs 2(c) and 2(d) of Confidential Schedule 2 of this Judgment; and
 - (b) the Agent has concluded that at the time of the detection the IP address satisfies the safeguard requirements of paragraph 2(e) and 2(f) of Confidential Schedule 2 of this Judgment.
7. When a Protected Live Content Window concludes and no other Protected Live Content Window is ongoing, the Agent shall give notice to the Third Party Respondents in accordance with this Judgment to unblock all Target Servers that have previously been notified for blocking. The Third Party Respondents shall use reasonable efforts to unblock as soon as reasonably practical after the end of the Protected Live Content Window.

8. The Third Party Respondents have no obligation to verify whether the IP addresses to be blocked as Target Servers notified by the Agent pursuant to this Judgment have been correctly identified, and are wholly reliant on the applicants or the Agent accurately identifying and communicating to the Third Party Respondents such IP addresses in compliance with this Judgment. The Third Party Respondents also have no obligation to verify the accuracy or compliance of proposed updates to Schedule 1 or 2 of this Judgment requested or made by the applicants pursuant to paragraphs 19 to 21 of this Judgment, and are wholly reliant on the applicants, the Agent and the Expert in this regard.
9. A Third Party Respondent will be deemed to have complied with paragraph 3 of this Judgment if it uses either manual or automated IP address blocking, or an alternative or equivalent technical means (provided that the Third Party Respondent provides reasonable notice to the applicants of said alternative or equivalent means). If a Third Party Respondent is unable to implement either manual or automated IP address blocking, or IP address rerouting, or alternative or equivalent technical means, that Third Party Respondent shall, within fifteen (15) business days of this Judgment or of first becoming aware it is unable to implement the blocking, as applicable, notify the applicants of the step(s) it has taken and why it will be unable to comply with the Judgment.
10. When blocking access to an IP address pursuant to paragraph 3 of this Judgment, the Third Party Respondents shall use reasonable efforts, subject to the limits of their networks and resources, to disable access to the IP address as soon as practicable

following the notification by the applicants or their appointed Agent pursuant to this Judgment. For each Protected Live Content Window, a Third Party Respondent will be deemed to have complied with paragraph 3 of this Judgment if it uses the technical means set out in paragraph 9 of this Judgment within thirty (30) minutes of the start of the Protected Live Content for that Protected Live Content Window, and at least every thirty (30) minutes thereafter until the end of that Protected Live Content Window, or according to such other schedule as may be agreed between the relevant Third Party Respondent and the applicants in writing. For greater certainty, the Third Party Respondents are not required to make capital investments to acquire additional software and/or hardware to implement the present Judgment.

11. A Third Party Respondent shall not be in breach of this Judgment if it temporarily suspends its compliance with paragraph 3, in whole or in part, when such suspension is reasonably necessary:
 - (a) to correct or investigate potential over-blocking that is caused or suspected to be caused by the steps taken pursuant to paragraph 3;
 - (b) to maintain the integrity or quality of its Internet services or the functioning of its network and/or system(s);
 - (c) to upgrade, troubleshoot or maintain its Internet services or blocking system(s), including as a result of technical or capacity limitations of its blocking system(s); or
 - (d) to prevent or respond to an actual or potential security threat to its network or systems,

provided that:

- (e) the Third Party Respondent gives notice to the applicants as soon as reasonably practical in advance of, during or following such suspension and provides the reason for such suspension and an estimate of its duration, or if the suspension does not last longer than forty-eight (48) hours, uses commercially reasonable efforts to maintain a record of the suspension and provides that record to the applicants upon request; and
- (f) the suspension lasts no longer than is reasonably necessary.

For greater certainty, a Third Party Respondent shall not be in breach of this Judgment where it suspends, in part, compliance with paragraph 3 because the capacity of its blocking system is exceeded by the number of IP addresses for the Target Servers notified in accordance with this or another Judgment or Order, provided it continues to block or attempt to block access to the number of IP addresses that does not exceed the capacity of its blocking system. A Third Party Respondent may hold a reasonable portion of its capacity in reserve if it deems it necessary to do so in order to be able to respond to threats to its subscribers and to maintain the integrity of its network and services. Any such measure must be justified with reference to the network capacity used for similar purposes within the twelve (12) months preceding this Judgment.

The applicants shall treat any information received pursuant to this paragraph confidentially and shall use it solely for the purposes of monitoring compliance with this Judgment.

Notifications of IP addresses of Target Servers to the Third Party Respondents

12. Any notifications given by the Agent under paragraph 6 of this Judgment must:
 - (a) be notified to the Third Party Respondents by means of publishing a consolidated list of all the IP addresses of the Target Servers to be blocked during each Protected Live Content Window on a secure electronic platform to which each of the Third Party Respondents has been given access by arrangement with the Agent, in the manner specified in paragraphs (b) - (d);
 - (b) be in a fully specified data format, that is provided to the Third Party Respondents in advance;
 - (c) be published to said platform on an ongoing basis during each Protected Live Content Window, and (save as set out in paragraph 13 below) not during other periods; and
 - (d) be published in such a manner that they are brought actively to the attention of all Third Party Respondents as contemporaneously as is reasonably practicable.
13. Any notifications given by the Agent under paragraph 7 of this Judgment must be notified to the Third Party Respondents by the same means as those specified in paragraph 12 of this Judgment and given within fifteen (15) minutes of the expiry of the relevant Protected Live Content Window, and shall be effected by publishing a list containing a single previously-disclosed IP address controlled by the Agent.
14. The notifications of IP addresses of Target Servers to the Third Party Respondents pursuant to this Judgment will follow the technical requirements set out in Confidential Exhibit GD-14 to the Affidavit of George Demetriades sworn on April 5, 2024.

Notification to Target Servers

15. Where the Agent notifies an IP address for blocking in accordance with paragraph 6 of this Judgment, the Agent must within a reasonable period of the first occasion when that IP address is notified (being no later than the end of the day on the day of the Protected Live Content Window in question) send to the hosting provider associated with the IP address an electronic notice that contains at least the following information:
- (a) that access to the IP address has been blocked in Canada by Court Judgment;
 - (b) the identity of the applicants who obtained this Judgment and of the applicable Protected Live Content;
 - (c) a link to an internet location from which the public version of this Judgment may be accessed; and
 - (d) a statement that affected server operators have the right to apply to the Court to discharge or vary the Judgment pursuant to paragraph 23 below.

Notification to Third Party Respondents' Customers

16. The applicants shall post this Judgment, as well as an explanation of the purpose of the Judgment, and contact information for any inquiries or complaints, on their websites, in a prominent manner.
17. Where access to a Target Server is blocked by a Third Party Respondent pursuant to this Judgment, that Third Party Respondent shall make reasonable efforts to make the following information immediately available to its residential Internet service customers

who attempt to access the Target Servers and whose access is blocked, to the extent it is technically possible and practical with that Third Party Respondent's current technology:

- (a) that access has been blocked by this Judgment;
 - (b) the identity of the applicants and the Federal Court File for this matter and contact information of the applicants, to be provided by the applicants to the Third Party Respondents for use by such customers;
 - (c) a statement to the effect that the operators of the Target Servers (i.e., the Respondents), any third party who claims to be affected by this Judgment, and any Internet service customer affected by the Judgment, may apply to the Court to discharge or vary the Judgment pursuant to paragraph 23 below; and
 - (d) contact information that the applicants' Agent shall provide to the Third Party Respondents, and may update from time to time on thirty (30) days' notice, that enables the affected customer to readily contact the applicants or their Agent to direct any complaints, including false positives.
18. Any personal information collected to achieve the objectives of this Judgment, or collected through any Deep Packet Inspection (DPI) or other system adopted to achieve the objectives of this Judgment, will be used solely for the purposes of providing notice to customers, will not be disclosed, and will only be retained as long as is strictly necessary to ensure the integrity of the customer notification obligation.

Changes to Schedule 1

19. Schedule 1 to this Judgment and the list of "Protected Live Content" may be updated through the following mechanism:

- (a) Any applicant may serve and file up to two motions to amend Schedule 1 to add live sports content, with appropriate evidence and submissions to support the motion including:
 - (i) An affidavit and/or any other admissible evidence demonstrating their ownership or exclusive license in live sports content not already included in Schedule 1 to this Judgment; and
 - (ii) An amended Schedule 1 providing an updated definition of “Protected Live Content”;
- (b) Any additional motions to amend Schedule 1 shall not be filed without leave of the Court;
- (c) Any applicant may direct that this Judgment need not be implemented in relation to rights to live sports content that it no longer has, by providing notice to the Third Party Respondents and filing an affidavit attesting that Protected Live Content already included in Schedule 1 to this Judgment should not longer be included and why, in the same manner as paragraph 21 of this Judgment, below.

Changes to Confidential Schedule 2

- 20. No changes to the contents of Confidential Schedule 2 paragraphs 1(a) to 1(g) and 2(a) to 2(e) may be made unless approved by Order of this Court.
- 21. The applicants may make additions and deletions to Confidential Schedule 2 paragraph 2(f) from time to time, including within seven (7) days of issuance of this Judgment, if the applicants or the Agent become aware that the criteria for inclusion set out at paragraph 187 to the Affidavit of George Demetriades sworn on April 5, 2024,

have been met or are no longer met, as the case may be. If additions are made, the applicants shall also serve and file an affidavit supporting why these additions meet the criteria for inclusion within fifteen (15) days of the addition being made. Additions and deletions shall be made by the applicants giving confidential notice to the Third Party Respondents and filing a confidential letter with the Court, specifying the additions and/or deletions and confirming that the criteria for inclusion have been met or are no longer met, as the case may be. Deletions must be made without delay as soon as the applicants or their Agent become aware that the criteria for inclusion are no longer met.

22. All parties have permission to apply by way of motion to vary the contents of Confidential Schedule 2, such motion to be supported by evidence and on notice to all the other parties.

Permission to apply

23. The operators of the Target Servers (i.e., the John Doe Respondents), any other third party who claims to be affected by this Judgment, and any Internet service customer of the Third Party Respondents affected by the Judgment, may bring a motion to seek a variation of this Judgment insofar as this Judgment affects their ability to access or distribute non-infringing content by serving and filing a motion record within thirty (30) days of the first occurrence of the event that allegedly affects them and that results from this Judgment.
24. This Judgment shall in no way limit the ability of a Third Party Respondent to seek to stay, vary, or set aside this Judgment or oppose on any basis any other related or similar

Order or Judgment sought by the applicants or any other party. In particular and without limitation, this Judgment shall in no way limit the ability of a Third Party Respondent to raise issues in connection with the implementation of this Judgment on grounds relating to the technical implementation of this Judgment, impacts on a Third Party Respondent's services to its subscribers, or the effectiveness of the Judgment in preventing the unauthorized streaming during Protected Live Content Windows.

Sunset clause

25. With the exception of the permanent injunction against the John Doe Respondents set out at paragraph 2 and subject to any further Order or Judgment of this Court, this Judgment shall terminate two (2) years after its date of issuance.

Confidentiality

26. The motion for an order under Rule 151 is granted. The following documents filed in support of the applicants' application for the issuance of the present Judgment shall continue to be treated as confidential under Rules 151-152 of the *Federal Courts Rules* and be sealed in the Court record:
- (a) The confidential version of the affidavit of Ben Grad;
 - (b) The confidential version of the affidavit of Damian Poltz;
 - (c) The confidential version of the affidavit of Andre LeBlanc;
 - (d) The confidential version of the affidavit of Juan Manuel Ramos Gurrion;
 - (e) The confidential version of the affidavit of George Demetriades;

- (f) The confidential version of the applicants' Memorandum of Fact and Law (a public version having been provided);
 - (g) Schedule 2 to this Judgment, which pertains to the detection and notification criteria;
 - (h) Reports to be submitted to the Court pursuant to paragraphs 32 and 33 and affidavits filed pursuant to paragraphs 34-35; and
 - (i) Notifications submitted to the Court pursuant to paragraph 21, (collectively, "Confidential Information").
27. The Confidential Information shall be treated as confidential by the Registry of the Court and shall not be available to anyone other than the applicants, the Third Party Respondents and appropriate Court personnel except as permitted by the *Federal Courts Rules* or as otherwise ordered by this Court. Any Respondent or third party bringing a motion pursuant to paragraph 23 of this Judgment who wishes to have access to the Confidential Information for the purposes of these proceedings shall serve and file a motion record seeking leave from the Court to have access to the Confidential Information.
28. Any party who is authorized to have access to the Confidential Information pursuant to paragraph 27 of this Judgment may only make use of the Confidential Information for the purposes of these proceedings and shall not disclose the Confidential Information to anyone (except their legal counsel or experts who have been informed of the present Judgment), without leave from the Court.

Reporting to the Court

29. The applicants shall retain the services of Mr. David Lipkus as an independent expert to review the application of the criteria by the applicants' Agent for the identification of IP addresses for blocking, including the application of all of the criteria set out in Confidential Schedule 2 ("**Expert**"). If Mr. Lipkus is unavailable, unable or unwilling to act as independent expert, or if the applicants seek to retain a different independent expert, the applicants shall, with input from the Third Party Respondents, propose up to three potential experts by letter to the Court, and the Court will advise the applicants which potential expert they must retain.
30. The Expert shall be provided the necessary access to facilities, processes or information that is needed to fulfil these responsibilities.
31. The Expert will be subject to an ongoing obligation of confidentiality and shall not disclose any information obtained pursuant to this mandate, except as permitted by the terms of this Judgment.
32. The Expert will prepare:
 - (a) An Initial Confidential Report, which shall be prepared and provided to the parties and the Court, on a confidential basis, within thirty (30) days of the 1-year anniversary of the issuance of this Judgment;
 - (b) An Initial Public Report, which shall be prepared following consultations with all parties as to proposed redactions or alternate wording needed to protect confidential information in the Initial Confidential Report. If the parties cannot agree on

proposed redactions, the Expert can seek the assistance of the Court to resolve the issue. This Initial Public Report shall be issued as soon as is feasible following the completion of the Initial Confidential Report. This Initial Public Report shall be posted on each party's website within thirty (30) days of its completion, replacing the reports posted on each party's website with regard to the implementation of live and dynamic IP address blocking order issued by this Court on May 27, 2022 (T-955-21), November 21, 2022 (T-955-21), and July 18, 2023 (T-1253-23);

- (c) A Final Confidential Report, which shall be prepared and provided to the parties and the Court, on a confidential basis, within sixty (60) days of the termination of this Judgment pursuant to paragraph 25 above; and
- (d) A Final Public Report, which shall be prepared following consultations with all parties as to proposed redactions or alternate wording needed to protect confidential information in the Final Confidential Report. If the parties cannot agree on proposed redactions, the Expert can seek the assistance of the Court to resolve the issue. This Final Public Report shall be issued as soon as is feasible following the completion of the Final Confidential Report. This Final Public Report shall be posted on each party's website within thirty (30) days of its completion, replacing the Initial Public Report, and be kept online for a period of no less than six (6) months.

- 33. In the event the Expert identifies any material issue in the application of the criteria by the applicants' Agent for the identification of IP addresses for blocking, including the application of all of the criteria set out in Confidential Schedule 2, he shall report on such

issues to the applicants, the Third Party Respondents and the Court within fifteen (15) business days, independently of the reporting schedule set out at paragraph 32.

34. Within thirty (30) days of the 1-year anniversary of the issuance of this Judgment, the applicants shall file with the Court, and serve on all Third Party Respondents, one or more affidavits comprising (i) a confidential list of all IP addresses that were notified for blocking pursuant to this Judgment, with the dates and times on which they were required to be blocked, and the criteria which were applied that resulted in them being notified for blocking; (ii) the details of any complaint received from operators of Target Servers, their hosting provider or any other third party (including customers of the Third Party Respondents); and (iii) any material technical issues encountered with the implementation of this Judgment, including any issues reported by the Third Party Respondents to the applicants.
35. Within sixty (60) days of the termination of this Judgment pursuant to paragraph 25 above, the applicants shall file with the Court, and serve on all Third Party Respondents, one or more affidavits comprising the information of points (i) to (iii) listed at paragraph 34 above, and (iv) any relevant available data pertaining to the effectiveness of the Judgment.

Costs of Implementation

36. The applicants shall indemnify and save harmless the Third Party Respondents for:
- (a) the reasonable marginal cost of implementing this Judgment, up to a maximum amount of \$50,000.00; and

- (b) any reasonably incurred loss, liability, obligation, claim, damages, costs (including defence costs), or expenses resulting from a third party complaint, demand, action, claim, application or similar proceeding whether administrative, judicial, or quasi-judicial in nature, in respect of the Third Party Respondents as a result of their compliance with the Judgment.
- 37. With respect to the costs referenced in paragraph 36(a) above:
 - (a) the Third Party Respondents shall provide the applicants with an itemized invoice setting out the claimed costs elements and the total cost claimed, within sixty (60) days of the termination of this Judgment pursuant to paragraph 25 above; and
 - (b) the applicants shall, within thirty (30) days of receipt of the invoice, either (i) pay the invoice; or (ii) serve and file a motion disputing the reasonableness of the costs claimed in the invoice, failing which the costs shall be deemed to be reasonable.
- 38. The undersigned will remain seized for this proceeding including any motions arising in relation to this Judgment, subject to any Direction from the Chief Justice.
- 39. There is no costs order.

“Andrew D. Little”

Judge

**SCHEDULE 1: PROTECTED LIVE CONTENT
AND PROTECTED LIVE CONTENT WINDOWS**

	Owner or Exclusive Licensee	Protected Live Content	Protected Live Content Window
1	Rogers Media Inc. Rogers Communications Inc. BCE Inc. Bell Media Inc. CTV Specialty Television Enterprises Inc. The Sports Network Inc. Le Réseau des Sports (RDS) Inc. Groupe TVA Inc.	National Hockey League (NHL)	All national and regional NHL games broadcast in Canada by any of the applicants in the first column, via television broadcast and/or online streaming during the 2023-2024 NHL season, including the 2024 Stanley Cup playoffs and final series, as per the schedule found on the NHL website (www.nhl.com/schedule), subject to variations by the NHL, as may be notified to the Third Party Respondents by the applicants and/or their Agent from time to time.
2	BCE Inc. Rogers Communications Inc.	National Basketball Association (NBA)	The following NBA games for the 2023-2024 to the 2025-2026 NBA seasons: a) All pre-season NBA games and all regular season NBA games played by the Toronto Raptors basketball club; b) All regular season NBA games involving one or more NBA teams (other than the Toronto Raptors basketball club) that are broadcast on the Sportsnet or TSN stations; and c) All playoff NBA games involving one or more NBA teams (including the Toronto Raptors basketball club).

	Owner or Exclusive Licensee	Protected Live Content	Protected Live Content Window
3	FuboTV Inc.	Premier League	All Premier League matches for the 2023-2024 and 2024-2025 seasons.

- (a) [redacted]
[redacted] [redacted] [redacted] [redacted]
[redacted]
- (b) [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
[redacted]
- (c) [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
- (d) [redacted] [redacted]
[redacted]

[redacted]

- (e) [redacted] [redacted] [redacted] [redacted] [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
(f) [redacted] [redacted]
[redacted]

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-743-24

STYLE OF CAUSE: ROGERS MEDIA INC., ROGERS COMMUNICATIONS INC., BCE INC., BELL MEDIA INC., CTV SPECIALTY TELEVISION ENTERPRISES INC., THE SPORTS NETWORK INC., LE RESEAU DES SPORTS (RDS) INC., GROUPE TVA INC., FUBOTV INC. and JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, OTHER UNIDENTIFIED PERSONS WHO OPERATE UNAUTHORIZED STREAMING SERVERS THAT PROVIDE OR WILL PROVIDE ACCESS TO CONTENT OWNED OR EXCLUSIVELY LICENSED BY THE APPLICANTS IN CANADA AND BELL CANADA, BRAGG COMMUNICATIONS INC. dba EASTLINK, COGECO CONNEXION INC., FIDO SOLUTIONS INC., ROGERS COMMUNICATIONS CANADA INC., SASKATCHEWAN TELECOMMUNICATIONS, TEKSAVVY SOLUTIONS INC., TELUS COMMUNICATIONS INC., VIDEOTRON LTD., 2251723 ONTARIO INC. dba VMEDIA (THIRD PARTY RESPONDENTS)

PLACE OF HEARING: OTTAWA, ONTARIO (BY VIDEOCONFERENCE)

DATE OF HEARING: JUNE 3, 2024

CONFIDENTIAL JUDGMENT AND REASONS: A.D. LITTLE J.

DATED: JULY 9, 2024

APPEARANCES:

Guillaume Lavoie Ste-Marie
Christopher Guaiani
Nicholas Di Piano

FOR THE APPLICANTS

No one appearing

FOR THE RESPONDENTS
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, AND
OTHER UNIDENTIFIED PERSONS WHO OPERATE

UNAUTHORIZED STREAMING SERVERS THAT
PROVIDE OR WILL PROVIDE ACCESS TO
CONTENT OWNED OR EXCLUSIVELY LICENSED
BY THE APPLICANTS IN CANADA

Guillaume Lavoie Ste-Marie
Christopher Guaiani
Nicholas Di Piano

FOR THE THIRD PARTY RESPONDENTS
BELL CANADA, FIDO SOLUTIONS INC.,
ROGERS COMMUNICATIONS CANADA INC.,
VIDEOTRON LTD AND
2251723 ONTARIO INC. DBA VMEDIA

No one appearing

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Samuel Ross

FOR THE THIRD PARTY RESPONDENT
COGECO CONNEXION INC.

Jamie Patterson

FOR THE THIRD PARTY RESPONDENT
SASKATCHEWAN TELECOMMUNICATIONS

No one appearing

FOR THE THIRD PARTY RESPONDENT
TEKSAVVY SOLUTIONS INC.

Maxwell Czerniawski
Christopher Naudie

FOR THE THIRD PARTY RESPONDENT
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SOLICITORS OF RECORD:

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Montreal, Quebec

FOR THE APPLICANTS

Smart & Biggar LLP
Barristers and Solicitors
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FOR THE THIRD PARTY RESPONDENTS
BELL CANADA, FIDO SOLUTIONS INC.,
ROGERS COMMUNICATIONS CANADA INC.,
VIDEOTRON LTD AND
2251723 ONTARIO INC. DBA VMEDIA

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TELUS COMMUNICATIONS INC.