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30th Annual IP Conference - IP & Live Content Piracy in Sports

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Teksavvy Solutions Inc. v. Bell Media Inc., 2021 FCA, LTAD, 2022 CanLII 21665 (SCC)

- ↪ Court of Appeal affirms jurisdiction to grant site blocking orders – here unauthorized IPTV service operated as “GoldTV”.
- ↪ Order authorized “static” site blocking - specific sites to be blocked, with ability to add new sites to avoid circumvention.
- ↪ Jurisdiction exists under general power to grant mandatory injunctions against “innocent ISPs” where “just and equitable” and under *Copyright Act*.
- ↪ Court inspired by *Cartier* factors from U.K. trade-mark site blocking order.
- ↪ Court influenced by Supreme Court global search engine de-indexing order in *Google v Equustek*, premised on violation/infringement of trade secrets, trade-marks, and copyrights.
- ↪ Injunction did not violate *Charter* right to freedom of expression.
- ↪ Established strong common law precedent supporting orders against intermediaries.

Rogers Media Inc. v. John Doe 1, 2022 FC 775

- ↪ Court issues “dynamic” site blocking order to enable blocks to happen in real time while NHL hockey play-off games are broadcast.
- ↪ New precedent, though similar orders have been granted in U.K., Ireland, and in EU countries e.g. Premier League cases.
- ↪ Court relying on expert evidence that dynamic blocking orders are effective.
- ↪ Court follows *GoldTV* basis for granting mandatory injunction.
- ↪ Court imposed conditions:
 - ↪ ISPs to block to the limits of their current technical capacity to do so;
 - ↪ ISPs to be indemnified (to a capped amount) for their costs;
 - ↪ Plaintiffs will retain and pay for an independent expert to verify that the IP addresses identified for blocking fit within the strict criteria defined in the Order (prevent over blocking), and to monitor the ISPs’ implementation to identify any practical difficulties and expert will provide a confidential report to the Court and the parties, and later a public report.

Bell Media Inc. v. John Doe 1, 2022 FC 1432

- ↪ Dynamic blocking order during the FIFA World Cup Live Match Windows.
- ↪ Requires ISPs to block or attempt to block access, by at least their residential wireline Internet service customers, to each of the IP addresses notified by appointed agent using specific detection criteria.
- ↪ Unblocking to occur outside of match windows.
- ↪ ISPs can use either manual or automated IP address blocking, or an alternative or equivalent technical means.
- ↪ Order terminated at the end of FIFA World Cup Qatar 2022.

Other Issues

- Virtually no notice and takedown in Canada.
- No copyright in sporting events per se, but copyright subsists in the recording of a sporting event.
- NHL – “broadcasters who hold the rights to particular NHL games film and produce them (by adding elements such as text, images, videos, and commentaries to the footage). Copyright in the live footage and production is then assigned from the broadcaster(s) to the NHL or to the local NHL team playing the game; the NHL and the teams in turn licence these rights back to the broadcasters”.
- Broadcasters also have copyright in broadcast signals e.g. fix it, reproduce it, authorize another broadcaster to retransmit it simultaneously with the broadcast, and authorization right.

Other Issues

- ▭ Specific regime to overcome existing hurdles?
 - ▭ Administrative
 - ▭ Court
- ▭ Further multi-jurisdictional de-indexing orders?

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