

Federal Court



Cour fédérale

Date: 20210114

Docket: T-1176-20

Citation: 2021 FC 53

Ottawa, Ontario, January 14, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

WARNER BROS. ENTERTAINMENT INC.
AMAZON CONTENT SERVICES LLC
BELL MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
NETFLIX STUDIOS, LLC
NETFLIX WORLDWIDE ENTERTAINMENT, LLC
PARAMOUNT PICTURES CORPORATION
SONY PICTURES TELEVISION INC.
UNIVERSAL CITY STUDIOS PRODUCTIONS,
LLP

Plaintiffs

and

TYLER WHITE dba BEAST IPTV
COLIN WRIGHT dba BEAST IPTV

Defendants

JUDGMENT AND REASONS

[1] The Plaintiffs executed on November 24, 2020, an interim injunction issued pursuant to rule 374 of the *Federal Courts Rules*, SOR/98-106, as amended [FCR]. The interim injunction was granted following an *ex parte* motion because giving notice to the Defendants would defeat the purpose of the motion. It was extended, on consent of all parties, to allow for the Defendants to hire counsel to represent their interests. The terms of the interim injunction continued to apply until judgment is to be rendered on the motion brought by the Plaintiffs, dated December 1, 2020. This is the said judgment.

[2] The two Defendants brought their own motions on December 14 (cross-motions), asking that the interim injunction be set aside, in whole or in part.

I. The Plaintiffs' motion

A. *The interim injunctions*

[3] The interim orders, one for each Defendant, provided that their execution was to be reviewed by the Court. The said orders, which were executed simultaneously on November 24, require, among other things, the transfer of control of the infrastructure of the Beast IPTV Service to the independent supervising solicitors.

[4] In order to achieve that purpose of transferring the control of the infrastructure of the Beast IPTV Service, the Defendants were ordered to:

- provide the independent supervising solicitors the identity of the registrar accounts with which certain domains and subdomains are registered; the Defendants were also to provide the independent solicitors with the login credentials for each account;

- provide the independent supervising solicitors the identity and location of the servers and hosting provider accounts for the servers associated with the Beast IPTV Service and with certain domains and subdomains; the Defendants were to provide the login credentials (or other credentials) necessary to access the highest available privilege level to the servers and accounts;
- disclose any other domain (and subdomain), registrar account, hosting provider account, and server associated with the development, hosting, operation and promotion of the Beast IPTV Service and sale of subscriptions to the Beast IPTV Service; the independent supervising solicitors are to be provided with the login credentials (or any other credentials) necessary to access the highest available privilege level for these.

[5] For that same purpose, computer forensic experts were authorized:

- to log into the accounts and servers using the credentials thus obtained;
- to modify the login credentials for the accounts and servers;
- to deactivate any domain, subdomain, server or service associated with the accounts or servers;
- to transfer control over the accounts, domains, subdomains and servers to the independent supervising solicitors as custodians; the independent supervising solicitors, assisted by the computer forensic experts, are to act as custodian of the modified login credentials.

[6] The interim orders were enjoining and restraining the Defendants, by themselves or through various other persons or entities, from:

- developing, operating and maintaining, promoting, providing support, selling subscriptions, or authorizing any one to sell subscriptions to unauthorized IPTV

Services, including the Beast IPTV Service, that provide users with unauthorized access to cinematographic works for which the copyright is owned by the Plaintiffs;

- developing, maintaining, updating, hosting, distributing, promoting or selling any software application that provides access to unauthorized IPTV services, including the Beast IPTV Service, the Beast IPTV Android Application and the Beast IPTV Perfect Player;
- operating, maintaining, updating, hosting, promoting or selling access to domains (and subdomains) through which IPTV (which includes the Beast IPTV Service) is made available, or indirectly made available, advertised, offered for sale or sold;
- from communicating the Plaintiffs' works to the public by telecommunication, including by transmitting or making available, without authorization, the television channels owned and operated by one of the Plaintiffs, Bell Media Inc. on which are broadcast the Bell Programs ("Bell channels");
- making available to the public the Plaintiffs' works and the Bell Channels, by telecommunication so that members of the public have access from a place and at a time individually chosen by them.

[7] The Defendants were ordered to disclose to the independent supervising solicitors and to the Plaintiffs' solicitors various financial information concerning the Beast IPTV Service, as well as assets and revenues, in Canada or abroad.

[8] The Defendants were enjoined and restrained from disposing of their assets.

[9] The Plaintiffs' solicitors and the independent supervising solicitors were ordered to inform the Defendants (or the persons on whom the order was executed) about rights they have, including their right to seek advice from counsel. The Notice to the Defendants appended to the

interim order runs for 14 paragraphs. Moreover, the Statement of Claim was served on the Defendants as part of the execution of the interim orders.

[10] The interim orders also provided for the execution of the orders by authorising the presence of representatives of the Plaintiffs, law enforcement officers only to the extent necessary and the independent supervising solicitors to record all or parts of the execution of the orders. The Plaintiffs were ordered to treat as confidential the information and material obtained in accordance with the execution of the interim orders; the information and material can be filed with the Court under seal; it was to be marked as confidential. The independent supervising solicitor and the Plaintiffs' counsel were authorized to consult the material and information obtained, but only for the purpose of preparing the independent supervising solicitors' report and also for the purpose of continuing the orders as interlocutory injunctions, the review motions and, more generally, for the purpose of this proceeding.

[11] Other specific elements of the interim orders deserve to be mentioned in view of allegations of the violation of the orders:

- a person on whom the order was served, or who has notice of the order, had to refrain during the execution of the order from using a computer, telephone, or other communication device, except in the presence of the independent supervising solicitor; furthermore, that person was ordered to refrain, for a period of 48 hours after service of the order, from disclosing to, or discussing with, any other person, the existence of the order or the proceeding (except of course for the purpose of obtaining legal advice). Moreover, the orders extended to the prohibition to inform or warn anyone that the Plaintiffs might execute the order against her or him.

[12] Given the nature of the proceedings, the Court record was to be held in sealed envelopes in the Court registry until 48 hours following the service of the various documents (Statement of Claim, Motion seeking interim injunction, the order, etc.).

B. *What is now sought*

[13] The present motion before the Court addresses the review ordered by the Court of the execution of the interim orders. The reports were filed by the two independent supervising solicitors, Mr. David Hutt from Nova Scotia, and Mr. David Lipkus from Ontario. It is said that the execution of the two orders was done lawfully and properly, although both Defendants are alleged to have largely refused to comply with the terms of the orders. Hence, the Plaintiffs seek an order pursuant to rule 467 of the FCR, the purpose of which is to charge the Defendants, Mr. Tyler White and Mr. Colin Wright, with contempt of the interim order, together with a declaration that the execution of the interim order was proper and lawful.

[14] The Plaintiffs ask for an order converting the interim injunction into an interlocutory injunction, in accordance with rule 373 of the FCR.

[15] They also ask that the affidavits of Andrew McGuigan and Yves Rémillard submitted for the purpose of the current motion, both dated November 30, 2020, be kept under confidentiality seal in accordance with rule 151 of the FCR.

[16] Finally, the Plaintiffs seek an order directing David Lipkus, the independent supervising solicitor involved in the execution of the interim order on the Defendant, Colin Wright, to

disclose to the Plaintiffs' counsel the financial disclosure provided by Mr. Wright to Mr. Lipkus on November 24, 2020.

II. Mr. Colin Wright's cross-motion

[17] In his Notice of Motion of December 14, 2020, Mr. Wright asks the Court to set aside, in whole or in part, the interim injunction that applies to him, as well as dismissing the interlocutory injunction motion.

[18] Mr. Wright claims that the show cause motion concerning the alleged contempt of court should also be dismissed.

[19] A number of paragraphs from the affidavits of Andrew McGuigan and Yves Rémillard should be stricken from the record according to Mr. Wright. They are:

- (a) affidavits of September 29, 2020, relating to the granting of the interim order:
 - (i) Andrew McGuigan: paras 73, 147, 159, 160, 165, 167, 230 to 234, 261 to 267 (and related exhibits);
 - (ii) Yves Rémillard: paras 14 to 16, and 18 to 21;
- (b) affidavits of November 30, 2020, relating to the Plaintiffs' motion about the review of the execution of the interim order, an order converting the interim order into an interlocutory order and an order charging the Defendants with contempt of court:
 - (i) Andrew McGuigan: paras 6, 7, 12 to 21, 29, 30 to 39 (and related exhibits);
 - (ii) Yves Rémillard: paras 5 to 7.

[20] Mr. Wright also argues that an adverse inference ought to be drawn in view of the failure of the Plaintiffs to offer evidence of persons having personal knowledge of “material facts”.

[21] The argument advanced by Mr. Wright is that the interim injunction did not meet the requirement of an Anton Piller order and a Mareva injunction. Furthermore, the use of evidence coming from a confidential informant should be stricken as inadmissible or, at least, be given no weight.

[22] There was no evidence to support the inference that Mr. Colin Wright would dispose of his assets or destroy materials before the discovery process, or that he would render himself judgement-proof. At any rate, the confidential evidence constitutes hearsay evidence which is inadmissible because it is neither necessary nor reliable.

III. Mr. Tyler White’s cross-motion

[23] Defendant Tyler White also characterized the interim injunction as an Anton Piller order. As such, it failed the test for its issuance in that sufficient admissible evidence was not proffered that the issue is very serious and that there is irreparable harm. Furthermore, there lacked evidence that Mr. White was in possession of incriminating evidence or that he would destroy incriminating material before discovery. The Defendant claimed that the interim order was overbroad and “would not even be available after trial”.

[24] It is also claimed that the secrecy of even the existence of this proceeding, resulting in the non-availability of a publicly available docket, ought to be corrected. This resulted from a

Direction issued by a member of the Court on October 2, 2020, at the outset of the present proceedings. It should be noted that the Direction specifically provides that the confidentiality lasts only until “la Cour ait entendu ladite requête, ou jusqu’à ordonnance contraire de la Cour” [TRANSLATION] “The Court has heard the motion, or unless the Court orders otherwise”. Indeed, the hearing which took place on December 18, 2020 was open to the public, except for some segments which were held *in camera* at the parties’ request.

[25] The Defendant also seeks for certain parts of the affidavits of Andrew McGuigan to be stricken on the basis that they contain inadmissible hearsay evidence and fail to identify an alleged “confidential source”.

[26] It is argued that the Plaintiffs failed to disclose to the Court the existence of a recent decision from the Federal Court of Appeal which, argues the Defendant, undermines the main basis for the alleged infringement set out in the Statement of Claim. The argument is in respect to subsection 2.4(1.1) of the *Copyright Act*, RSC, 1985, c C-42. It is said that the Federal Court of Appeal decision in *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 [ESA] makes the Plaintiffs’ *prima facie* case less than strong, thus not meeting the test for the issuance of an Anton Piller order. According to this Defendant, the true state of the law was not disclosed, as it should have been on an *ex parte* motion. It is alleged that the Court of Appeal “clearly ruled that so-called “making available” right in subsection 2.4(1.1) of the *Copyright Act* does not constitute a cause of action as such” (Notice of cross-motion on behalf of Defendant Tyler White, p. 3).

IV. The Plaintiffs' case

[27] The Plaintiffs ask that the execution of the interim injunction be declared to be lawful and proper. They seek to convert the interim injunction into an interlocutory injunction to remain valid until the final determination of the proceeding on the merits. In view of the alleged failure of the Defendants to abide by the terms of the interim order, the Plaintiffs seek an order pursuant to rule 467 to appear before a judge to hear the evidence and present any defence to a charge of contempt.

A. *The execution of the interim orders*

[28] The interim orders concerning the Defendants were served and executed simultaneously on November 24, 2020. The reports of independent supervising solicitors David Hutt (concerning Tyler White) and David Lipkus (concerning Colin Wright) have not been challenged by the Defendants.

[29] In essence, Mr. Hutt's report, dated November 30, 2020, states:

- Mr. White indicated he would not cooperate, after having consulted counsel; he was advised that this may result in adverse inferences or a finding of contempt of court, yet he maintained his refusal;

“upon arrival at Mr. White's house, he was advised that the court documents being served on him related to Beast IPTV, to which Mr. White immediately replied “never heard of it” ” (D. Hutt's affidavit, para 20);

- later on, Mr. White continued to assert having no knowledge of Beast IPTV and not knowing Colin Wright. For instance, paragraph 28 of D. Hutt's affidavit reports:

28. As he led us into the house Mr. White asked me, “so what are these people suing me for anyway?” I began to reply, referencing control of Beast IPTV, but Mr. White interrupted me, saying, “I don’t control shit. I don’t even have a computer in my house.”

He repeated having not heard of Beast IPTV and not even having a computer, which was corrected by his partner, Ms. Gallant-Osmond:

38. At 10:01am Mr. White interrupted my explanation of the Order’s terms to ask, “you need a computer to do that, don’t you? I don’t even have a computer.” Ms. Gallant-Osmond then reminded Mr. White, in the presence of Ms. Kean, Mr. Ford, Mr. White and me, that he owned a laptop, and he clarified: “I got one laptop that I just bought.”

In the end, Mr. White refused to cooperate, having been advised more than once of the possible consequences and having confirmed that he understood the warnings given to him.

[30] As for the report of Mr. Lipkus, he states in his affidavit that Colin Wright understood the explanations that were given to him concerning the terms of the order to be executed. He denied any involvement with Beast IPTV, having stopped after receiving a letter two years ago. Mr. Wright indicated he could not comply with the order “because he is no longer involved in any way with Beast IPTV” (D. Lipkus’ affidavit, para 16).

[31] I prefer to quote verbatim paragraphs 18 and 19 of Mr. Lipkus’ affidavit which report on the denegations by Mr. Wright:

18. Following the telephone conversation [with counsel], Colin Wright told me that he was previously involved in selling IPTV services, including Vader, Nitro, Beast and others, but he stopped after he received a cease and desist letter from the Alliance of Creativity sometime in 2018/2019. He told me that he spoke with Sundeep Chauhan, the author of the letter, and believed that the matter was resolved because he ‘took down’ his websites. He advised me that he was not

connected, even though he used to be a “big seller” of these IPTV services. He asked to review the motion materials that referred to him specifically, and he reviewed the Affidavit of Mr. Andrew McGuigan at paragraphs 161-173, and 224- 266, and the written representations at paragraphs 58-67, and 70-71.

19. He further told me that he is not the owner of the domain names (or subdomain names) listed in the Beast IPTV Order, nor with the following domain names identified to me by the Plaintiffs’ legal representative: billing.beastsoftware.net, billing.strikeforcetvip.com, billing.thebeastbox.net, clients.gamersetv.com, and whmcs69.com. He again confirmed to me that he had no login credentials nor access to the accounts, and that the Plaintiffs’ could not link him to any of the accounts.

It should be noted that Mr. Lipkus reports further that “Colin Wright told me that he was not comfortable complying with the Beast IPTV Order without having his lawyer review the entirety of the materials served” (D. Lipkus’ affidavit, para 22).

[32] Mr. Wright nevertheless agreed to supply some financial information to the independent supervising solicitor, as well as a list of his assets, as long as these were sealed in an envelope marked confidential. Here is how the matter was handled according to paragraph 22 of

Mr. Lipkus’ affidavit:

22. ... He agreed to fill out the consent forms provided to him by Ryan Evans, and he obtained the bank account numbers for TD Bank, and a joint RBC account - he listed the information on the consent forms provided, and signed them. He took photos of the forms, and I placed them into a sealed envelope marked CONFIDENTIAL DISCLOSURE (1 of 2). I placed a piece of tape over the words SEALED on the back of the envelope. He disclosed his assets to me and I wrote down this information on a sheet of paper. Colin Wright also took a photo of that sheet of paper. I then placed the handwritten document into a sealed envelope marked CONFIDENTIAL DISCLOSURE (2 of 2). I placed a piece of tape over the

words SEALED on the back of the envelope. The sealed envelopes remain in my secure custody in a locked cabinet at Kestenberg Siegal Lipkus LLP's office, located at 65 Granby Street, Toronto, Ontario, M5B1H8. Attached hereto and marked as Schedule "C" are digital copies of the front and back of the sealed envelopes I placed into the locked cabinet.

According to the evidence before the Court – no evidence was offered by Mr. Wright on the execution of the interim order, and Mr. Lipkus was neither contradicted nor cross-examined – that is the extent of the cooperation in the execution of the interim order by Mr. Wright.

B. *Further information compiled and offered as evidence as a result of the execution of the two interim orders*

[33] During the execution of the interim order concerning Tyler White, Andrew McGuigan, an investigator acting on behalf of the Plaintiffs, was monitoring the execution of the order from a remote location; in the days following, Global Content Protection (GCP), for whom Mr. McGuigan works, monitored “for any activities or changes to the Beast IPTV Service related to these enforcement efforts” (A. McGuigan’s second affidavit of November 30, 2020 at para 6). It is important that the contents of the affidavit be reviewed in some detail.

[34] Mr. McGuigan reports on the following:

- the Defendants’ attempts to conceal evidence during the execution of the orders;
- contact and/or coordination between the Defendants within hours of the execution of the interim orders;
- transfer and/or deletion of the Beast IPTV Service domains and subdomains by the Defendants;

- misrepresentations and deception by the Defendants concerning their involvement with the Beast IPTV Service;
- Mr. White's strategies to evade enforcement and to conceal assets;
- Mr. Wright's misrepresentations concerning his involvement with Beast IPTV Service.

I note that the evidence proffered by Mr. McGuigan was not contested other than the use made of information obtained from confidential sources.

[35] Thus, while the interim order concerning Mr. White was being executed, a confidential source advised GCP that Mr. White contacted a third party on Skype. The instructions given by Mr. White were to delete immediately the beaстиptv.cc and the powergraphics.shop domains. They are both associated with the Beast IPTV Service, the powergraphics.shop domain being the payment portal associated with beaстиptv.cc domain. Screen captures are put in evidence and the exchange involves "Ty" Mr. McGuigan's affidavits identify "Ty" as being the user name associated with the Skype account "tylerdwhite1". The Skype exchange shows the surprise of Ty's interlocutor and how adamant Ty is about the deletions. At the end of the exchange, Ty explains "No. I [*sic*] getting sued". Both domains were not online anymore within hours and their associated websites had been suspended. Mr. White remained in possession of his phone during the execution of the interim order.

[36] On November 25, there was a conversation, which was recorded, between Mr. White and a confidential source, which indicates that a third party would have reactivated beaстиptv since Mr. White did not secure its registrar account. This short exchange refers to "Brad", who is

alleged to refer to Colin Bradley Wright, the other Defendant, thereby suggesting the continued involvement of “Brad”:

[11min05sec]

Third Party: I don't know man. You need to talk to Brad. You need to stop.

Mr. White: We are stopped... it's done. I already had Beast down... I took it down today. Somehow it came back up... and then when I try to login into the domain registrar I can't get into it now.

In the same recorded conversation, Mr. White indicates he may need the assistance of his interlocutor “in the next couple of days”:

[26min44sec]

Mr. White: I might need you... so... like in the next couple of days. Like if I'm paying you... I might need you to like to wipe wipe stuff... like wipe servers or wipe.... You know what I mean... so just be... ahh...

[37] The connection with Colin B. Wright is further referred to during the same conversation:

[4min03s]

3rd Party: ... What... what happened, like they sent you a Court letter or how did it go down?

White: Oh they came and served me with this load of evidence... Yeah... It's like Columbia Pictures, [muffled] Netflix, Amazon, [Muffled]

...

[4min25s]

3rd Party: Did you talk to Brad about it?

White: Oh yeah... Oh yeah.... He knows. I know. But it is what it is. You know.

...

[17mins15sec]

White: Well you know man... I don't ... listen... I don't even look for sympathy. We did it ourselves we knew we knew what [muffled] risks are. I just need basically get them to know that...

like to get them to think that I'm not the ring leader or I'm not in charge I don't control everything....

3rd Party: Did they talk to you about Brad and all that

White: Oh they did the same thing to Brad on the same day...

Mr. Colin B. Wright was the only other person served on November 24, 2020 in relation to the Beast IPTV Service:

3rd Party: What about all the mods and all that all the helpers and stuff?

White: No... No. That's what I'm telling them... I'm just a helper... you know.

...

[24min46s]

White: ...When I talked to Sal... he said I need to find a lawyer that's with a big firm. So tomorrow I'm going to start calling around. It's hard to find someone to take this case though... right?

3rd Party: That's always been an issue when these things happen there's always a few good ones in a few states but never in your area.

White: Yes. It doesn't matter because of my area b/c its federal court....So that's why like... All over Canada I could find one...But the problem is everybody we call... because even Brad is having a hard time... everybody we call, there's a conflict...

In his first affidavit, Mr. McGuigan had already testified as to the connection between the pseudonym “Brad B” and the username “@CVOmam” on Telegram, an instant messaging platform online used by the operators of the Beast IPTV Service to communicate with subscribers. GCP was monitoring user @CVOmam (“B”) on the morning of November 24. That user was signed in on Telegram when the team executing the interim order at the premises of Mr. Wright arrived. The user logged off at around 8:40 am. A photograph taken at 8:38:40 am, as

members of the team were entering the premises, shows Mr. Wright using his phone. The Plaintiffs advance that Mr. Wright was in the process of signing out of the Beast IPTV Telegram group. Just minutes before, Colin Wright had told the independent supervising solicitor not having been involved in IPTV in over two years.

[38] The concealment of assets is also discussed during the November 25 telephone conversation with a third party:

[14min43sec]

Mr. White: ...[muffled] to the bank took everything I could out and then you know obviously they'll see that and they'll say 'where's that' ... and I'll be like 'I don't know. I stashed it, sorry. I f****d up'. Whatever it's civil court not criminal... right... but I'll still have what I took out, you know what I mean.

[16mins15sec]

Mr. White: I think if I ...if I just friggen you know... just take out what I've got and then they sue me for whatever but I claim bankrupt and say I don't have it ... at least then I know that with the amount I can take out... I know that... you know... I'm good.

... what are they gonna do... I mean the amount to keep will keep me going for a while, right?

[21mins43s]

3rd Party: Ahhh... man... this is bad news, man.

White: Ah whatever man. Like I said... worst case scenario I'll friggin I got I guess I got enough to keep me keep me going.... You know... you know what I mean

[22min46sec]

3rd Party: Did they tell you not to take not to erase evidence and things like that...not to start wiping things down? Did they warn you about that?

Mr. White: Yeah.. They said don't... yeah...in the order it says I can't sell... I can't sell my house or nothing... I can't sell any assets... I can't move like... wire money or transfer money and I can't like change it into cryptocurrency or anything like that.

3rd Party: This is a court order or what they said?

Mr. White: Yeah it's a court order... for 14 days... the Court order only lasts 14 days.

But like I said... yeah sure it's a court order... but like even if they look and say you didn't listen to the court... I don't know I could even play it off... my dad's here... 'tell them you're a drug addict'... I could play it off say 'sorry man I friggen went on a bender'... what [muffled] I need help... you know what I mean.

[39] As for the involvement of Mr. Wright, the Plaintiffs refer to information provided by a confidential source that “Brad” had requested moving two domains associated with Beast IPTV Service payment portals to a new server. A copy of the chat log is in evidence (Exhibit AM-73).

V. Submissions, arguments and discussion

[40] Two issues may be disposed of quickly. First, it is not disputed that the interim injunctions were executed properly and legally. Neither counsel for Mr. Wright nor counsel for Mr. White even allude to the issue, although both counsel raise issues concerning the orders themselves. At any rate, the evidence led by the Plaintiffs makes it plain that the duties incumbent on the Plaintiffs and the independent supervising solicitors were fully met. Among the various duties, I note the duty to explain the interim orders and to advise of the right to seek the assistance of counsel. The Statement of Claim, the Interim Order applicable to each Defendant, materials filed in order to be granted the said interim injunctions as well as a Notice of Motion the purpose of which was to review the interim orders were all served on November 24. A declaration that the execution of the interim orders was done properly and lawfully will be made.

[41] Second, the Plaintiffs seek an order authorizing the withdrawal of their deposit of \$100,000. That sum of money was deposited with the Court as a security for damages that may have arisen out of an improper execution of the two interim injunctions. Given that there have not been any, the Plaintiffs are entitled to the order for the return of their deposit.

A. *Contempt of court*

[42] The matter of the issuance of an order pursuant to rule 467 of the *Federal Courts Rules* (show cause) can also be dealt with quickly. The Plaintiffs contend that both Defendants disobeyed the orders of the Court; as a matter of fact the Plaintiffs argue that both Defendants declined to cooperate fully. Only Mr. Wright provided some disclosure of financial information and a list of assets, left under seal in the hands of Mr. Lipkus, the independent supervising solicitor. The Defendants' argument is to contend that if the interim orders are to be vacated, then not only an interlocutory injunction should not be issued, but there should not be an order pursuant to rule 467 of the *Federal Courts Rules*.

[43] With all due respect, this falls short of the mark. A court order is valid until it is quashed.

In *Wilson v The Queen*, [1983] 2 SCR 594, Justice McIntyre stated at page 599:

It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. ...

The principle has not disappeared as it has been cited by the Federal Court of Appeal in *Canada (Attorney General) v Lewry*, 2012 FCA 125, at para 17 and *Canada (Attorney General) v Siggelkow*, 2012 FCA 123, at para 17.

[44] The principle of the validity of a court order, whether it is subsequently quashed or not, is discussed at length in *Canada (Human Rights Commission) v Canadian Liberty Net*, [1996] 1 FC 787 at paragraphs 16-19:

16 Our legal system is anchored in the rule of law. Hence, it is clear that, where a court issues an order, that order must be obeyed even if it turns out, for some reason, that it was issued in error. This is so because more is at stake than the simple question of the validity of a particular order. What is at stake is the very integrity and authority of the judicial institutions of Canada.

17 Citizens cannot choose to disobey court orders which they feel are wrong. That would be a recipe for chaos. In this country of "peace, order and good government," we must abide by court orders even while they are being legally challenged in the courts in an orderly way. This does not mean that courts never make mistakes; they clearly do. That is why we have an appeal system. If a litigant feels that a court decision was wrong, the appropriate course of conduct is to challenge it through the available legal channels, not to challenge it by refusing to obey it.

18 In my view, this is so regardless of the basis on which the correctness of the court order is assailed. For courts may err in a variety of ways. It should not make any difference whether the alleged error is one of fact, law, or evidence. It should be the same if the order is being impugned on constitutional grounds. Similarly, if the challenge is on a jurisdictional basis the order must be respected. This must be so, for otherwise anyone who wished to disobey a court order could claim that the court lacked the jurisdiction to issue that order, thereby circumventing this vital principle of obedience to judicial orders during challenges to their legality. The history of Canadian administrative law teaches us how rubbery the concept of jurisdiction can be, comprehending at times even egregious errors of law, fact and procedure. To countenance an exception to the principle for jurisdiction errors would risk rendering it virtually meaningless.

19 In all of these situations equally, in my view, the proper procedure to be followed by a litigant, who believes a court order was mistakenly made, is to appeal or to seek judicial review. In the interim, a stay may be sought. What cannot be tolerated in this country is people taking the law into their own hands and disobeying those court orders they feel are mistakenly made.

[45] Indeed, in *Netbored Inc. v Avery Holdings Inc.*, 2005 FC 1405 [*Netbored*] , it was found that the plaintiffs could be charged with contempt of court for breaching the conditions of an interim injunction order that was subsequently vacated. At paragraph 77, Justice Hughes states

[77] While the Anton Piller Order has been vacated, that Order, save as to the portion respecting confidential information which always was a nullity, was from the time it was granted until this time, a valid Order of the Court. As such the Order was entitled to respect and to be obeyed by those affected by it. As stated by Goulding J. in *Wardle Fabrics Ltd. v. G. Myristis Ltd.*, [1984] F.S.R. 263 at 271-272:

...I would have thought that if the court makes an order within its jurisdiction, by which I mean in such circumstances that the purported order is not a nullity in law, then a party is bound to obey it at his risk of contempt proceedings if he does not, and that the subsequent discharge of the order as having been irregularly obtained would not in logic and principle affect the disobedient party's liability to penalties for contempt. It seems to me the system of administering justice would break down if the subjects were entitled to apply their own or their adviser's ideas to the possibilities of subsequently setting aside an order and to disobey on the strength of such private judgment and then, if the judgement turned out not to have been right, be free from all penalty.

At paragraph 79, Justice Hughes goes on to issue the show cause order and at paragraph 80 he states that “(t)he fact that the Order was imprecise and now has been vacated does not remove the contempt”. Mr. Knopf, the counsel for Mr. Wright, conceded during the afternoon hearing that the case at hand is not one where the Court did not have jurisdiction. With this issue clarified, we can see that the breach of an interim order can rightly be the basis for an allegation of contempt, regardless of whether or not it is subsequently vacated.

[46] This position stated in *Netbored* on the validity of contempt proceedings, despite the order from which said proceedings arise later being found invalid, is in line with the same

principle stated by the Supreme Court in *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892, at para 186:

186 Having found that the statutory provision on which the Tribunal's order was based is invalid, it follows that the order cannot continue to stand. I would therefore accede to the appellants' request that the Tribunal's order be quashed. However, the effective date of the quashing of the order must be the date that this judgment is issued. For the purposes of the contempt proceedings, it must be considered to be valid until set aside by legal process. Thus, the ultimate invalidity of the order is no defence to the contempt citation.

[My emphasis.]

[47] This principle continues to be authoritative and was taken up by Justice Lafrenière recently in *Bacon St-Onge v Conseil des Innus de Pessamit*, 2019 FC 794 at paragraph 67.

[48] It is worth noting that rule 399(1) of the FCR provides that an *ex parte* order may be set aside or varied because “the party against whom the order is made discloses a *prima facie* case of why the order should not have been made”. But the fact that the order is set aside does not affect its validity. Paragraph (3) of rule 399 states:

Effect of order

(3) Unless the Court orders otherwise, the setting aside or variance of an order under subsection (1) or (2) does not affect the validity or character of anything done or not done before the order was set aside or varied.

Effet de l'ordonnance

(3) Sauf ordonnance contraire de la Cour, l'annulation ou la modification d'une ordonnance en vertu des paragraphes (1) ou (2) ne porte pas atteinte à la validité ou à la nature des actes ou omissions antérieurs à cette annulation ou modification.

It follows that a show cause order will be issued if the conditions for its issuance are met.

[49] For an order under rule 467 to issue, the Court must be “satisfied that there is a *prima facie* case that contempt has been committed” (rule 467(3)). The Plaintiffs must present evidence at the show cause stage that there is a court order, that the Respondents have the knowledge of the order and that they deliberately disobeyed the order (*Mennes v Oddie*, 2001 FCT 571, at para 5, *Orr v Fort Mckay First Nation*, 2012 FC 1436, at paras 13 to 15; more generally on the three elements, *Carey v Laiken*, 2015 SCC 17, [2015] 2 SCR 79, at paras 32 to 35).

[50] The uncontradicted evidence of the two independent supervising solicitors provides ample proof of the required elements, such that I am satisfied that a *prima facie* case exists. The interim orders were served on the Defendants and they were explained to the Defendants who explicitly chose to disregard them. A *prima facie* case has therefore been made and an order pursuant to rule 467 is granted. The specific elements of the interim orders alleged to have been disobeyed are listed in the order appended to the judgment and reasons for judgment.

B. *Should the interim orders be set aside*

[51] The Defendants argue that the interim orders ought to be set aside for a variety of reasons. In the case of Mr. Wright, he argues that the interim order contains an Anton Piller order and a Mareva injunction. The requisite elements to be granted such order were not met; the Plaintiffs have relied on confidential sources, which should result in the information be declared inadmissible or be given no weight.

[52] As for Mr. White, he also claims that the Plaintiffs have failed to meet the requirements for an Anton Piller order:

- insufficient evidence that Mr. White had in his possession incriminating documents or “things”;
- Plaintiffs have not shown a real possibility that Mr. White may destroy documents or “things” before the discovery process;
- the damage to be suffered by the Plaintiffs was not proven through sufficient admissible evidence;
- the Court was not well served by the Plaintiffs in that there is recent jurisprudence from the Federal Court of Appeal which undermines the Plaintiffs’ contention around the “making available” in their Statement of Claim, in view of comments made by the Court of Appeal about ss. 2.4(1.1) of the *Copyright Act*.

I will examine these arguments in seriatim.

(1) Mr. Wright

[53] Mr. Wright accurately states that the Statement of Claim discusses, among other things, with respect to the development, operation, maintenance, promotion and sale of subscriptions to the Beast IPTV Service, which is said by the Plaintiffs to be an “unauthorized internet streaming service that provides unauthorized, immediate and unlimited access to a vast amount of cinematographic works for which the copyright is owned by the Plaintiffs to tens of thousands of subscribers around the world, including Canada” (Statement of Claim dated October 2, 2020, para 14).

[54] IPTV Services are described at paragraph 28 of the Statement of Claim:

28. Internet Protocol Television (“IPTV”) is the delivery of television content (including motion pictures) over the Internet.

Some individuals or businesses who may legally receive a television broadcast subsequently configure and operate “**IPTV services,**” which connect to private Internet servers that immediately re-transmit that broadcast on the Internet without the authorization of the applicable rights holders. IPTV services are also capable of transmitting on-demand video content to users over the Internet.

[Bold in the original.]

The Statement of Claim continues by differentiating IPTV Services:

30. While legitimate IPTV services such as Bell FIBE TV are available to Canadian consumers, illegitimate and unauthorized IPTV services that do not have the authorization from copyright owners to rebroadcast live television content or to make video on-demand content available to users are also increasingly widespread.

The allegation explains in more details how they typically operate:

31. Unauthorized IPTV services typically make a vast amount of motion picture and television content available through a user-friendly interface designed to provide a user experience very similar to the experience offered by legitimate cable, satellite, or other subscription-based television services. For example, users can select live content from a channel guide and video on-demand content by browsing through various genres or a searchable menu.

32. Unauthorized IPTV services are usually provided through a subscription-based revenue model. Once users have purchased a subscription, which is typically offered in monthly increments and generally much cheaper than those offered by legitimate television services, IPTV content can be viewed through various electronic devices. For example, content can be viewed on a standard computer, a smartphone, or on a “set-top box” - a device that can be connected to any standard television set to enable additional functionalities for that television.

[55] It is alleged that the Plaintiffs learned in August 2018 that the Defendants were operating the Beast IPTV Service. It is described at paragraph 38 and 40 of the Statement of Claim:

38. The Beast IPTV Service is specifically designed to provide users with immediate and unauthorized access to an enormous number of television channels (over 1,600) from around the world, including channels dedicated to: sports; motions [*sic*] pictures; and television series.

40. The content broadcast by Beast IPTV Service includes a vast amount of copyrighted works owned by the Plaintiffs, which is broadcast without their authorization.

[56] The allegation against the Defendants is that they are key individuals responsible for launching, developing, operating, promoting and selling subscriptions to the Beast IPTV Services. It will suffice for our purposes to note the various platforms through which a user gains access:

49. Once a user has purchased a subscription to the Beast IPTV Service, whether directly through the Beast IPTV Service or indirectly through a third-party reseller, the user can access the Beast IPTV Service on the following platforms:

- a. any Internet browser (“**the Beast IPTV Web Portal**”);
- b. a software application designed for Android-based devices (“**the Beast IPTV Android Application**”)
- c. a set-top box (“**the Beast IPTV set-top box interface**”);
- d. a media player for Android devices (“**the Beast IPTV Perfect Player**”); and
- e. a M3U Playlist (“**the Beast IPTV M3U Playlist**”).

[Bold in the original.]

[57] More particularly, it is alleged that Mr. White is the key founder, operator and promoter of the Beast IPTV Services while Mr. Wright is said to be “a 50/50 partner of Mr. White in the operation of the Beast IPTV Service” (Statement of Claim, para 41).

[58] The Statement of Claim relies on sections 2.4(1.1), 3(f) and 27 of the *Copyright Act*. It is specifically pleaded that “the Defendants, through their operation of the Beast IPTV Service, communicate the Plaintiffs’ Works to the public by telecommunication, including by making the Plaintiffs’ Works available to users by telecommunication in a way that these users have access to them from a place and at a time of their choosing ...” (Statement of Claim, para 72). The Defendants are said to be engaged in the selection of the contents to which users have access by (1) operating, promoting, supporting and selling subscriptions, (2) making the Beast IPTV Service available through platforms, (3) operating domains and subdomains on which users purchase and have access to the Beast IPTV Service.

[59] The Statement of Claim concludes with representative lists of works protected by copyright that have not been authorized for distribution by the Defendants through the Beast IPTV Service. Furthermore, a list of pay and specialty channels of Bell Media Inc., one of the Plaintiffs, is supplied.

[60] The Court was satisfied that interim orders should issue because the *ex parte* motion satisfied the test: (1) a serious issue to be tried, (2) irreparable harm if the application is not granted, and (3) balance of convenience favours the Plaintiffs. If notice of the motion were to be given to the Defendants, that would defeat the purpose of the motion (rule 374(1)).

[61] The Court’s conclusions were based on a voluminous dossier of close to 1000 pages comprised of numerous affidavits:

- Nikki Moffat of Bell Media: the witness testified as to the many television channels owned and operated by Bell Media. The affidavit dealt with how Bell Media produces some of the programs that are on some of its television channels;
- Shawn Omstead of Bell Media: the witness testified concerning Bell Media's ownership of Canadian rights to communicate to the public by telecommunication via television broadcast Bell programs. Mr. Omstead also testified on the damage caused by illegal IPTV Services. The witness supplied a number of exhibits;
- Sundeep Chauhan, the Vice-President of GCP of the Motion Picture Association-Canada: the witness' main focus was on enforcement efforts by this industry association, including with respect to Beast IPTV. The witness identified representative lists of the Plaintiffs' works, with their respective Canadian Copyright Registrations. One focus of the testimony was on the effects of illegal IPTV Services on the studio Plaintiffs;
- Andrew McGuigan, a Director of GCP and the main investigator: the witness provided with significant granularity the details of his investigation. He explained how IPTV (internet protocol television) works to deliver television content over the internet. The witness focused on the Beast IPTV Service to reveal administrative and payment portals. Access to the content from the Beast IPTV Service can be on devices such as set-top boxes, computers, tablets and smartphones. Through investigative work, Mr. McGuigan identified four root domains and a large number of subdomains (addresses on the internet are often referred to as domains and subdomains) associated with the Beast IPTV Service. Moreover, a confidential source identified new domains which have been created but are not actually used.

The witness received the assistance of a confidential source who obtained information through confidential informants. That source has proven to be reliable in view of the corroboration (affidavit of Andrew McGuigan, para 165). Mr. McGuigan goes through the painstaking process of connecting the Defendants to Beast IPTV (from paragraph 161 to paragraph 267). The investigator establishes a strong *prima*

facie case of connecting Beast IPTV to the Defendants. The circumstantial evidence proved to be persuasive.

- Yves Rémillard, an investigator in the Corporate Security department associated with Bell Media: the witness provides further confirmation concerning Mr. Wright. A confidential source had advised Mr. McGuigan that Mr. Wright was involved with the Beast IPTV Service and he was operating under the pseudonym “Brad B”. That same source provided the witness with an IP address identified as being associated with “Brad B”. That address is the IP address of a subscriber to Bell Canada’s internet services. A search of Bell Canada’s internal system “revealed that the IP address is linked to the account of Mr. Wright at his current address ...” (para 21).

[62] This provides the context in which the arguments made on behalf of Mr. Wright for setting aside the interim order are presented. The Plaintiffs relied on information coming from a confidential source and the order was granted in spite of the essential conditions for an Anton Piller order and Mareva injunction were not met. We begin with the information provided by a confidential source. There is no doubt that a confidential source was used and provided leads that proved, according to the Plaintiffs, to be reliable and produced valuable information.

[63] Defendant Colin Wright takes the view that reliance on confidential source(s) is inappropriate. He argues that the Plaintiffs rely extensively on those sources of information. Defendant Colin Wright contends that there exists no privilege protecting the identity of the confidential source(s). Ultimately, the argument appears to boil down to the Plaintiffs having not used the best available evidence.

[64] The Plaintiffs counter by pointing out that the use of confidential informants is not unprecedented, as contended by the Defendants. In fact, in another case involving unauthorized

IPTV services, the evidence was considered by this Court (per Leblanc J. and Annis J. in T-329-19). More importantly, they rely on rule 81 of the FCR to argue that the affidavits are admissible.

[65] Rule 81(1) is clear that hearsay is presumptively admissible for motions such as this one seeking interim injunctions. Rule 81 reads:

Content of affidavits

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

Affidavits on belief

(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

SOR/2009-331, s. 2.

Contenu

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

Poids de l'affidavit

(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

DORS/2009-331, art. 2.

[66] I share the view expressed recently by Justice Kane in *Gray v Canada (Attorney General)*, 2019 FC 301:

[133] The prohibition of hearsay does not apply on “motions, other than motions for summary judgment or summary trial”. Therefore, under Rule 81(1), affidavits with hearsay are presumptively admissible on interlocutory motions (*John Doe v R*,

2015 FC 236 at paras 21-22, 256 ACWS (3d) 782), which would include motions for production of documents. This evidence does not need to meet the necessity and reliability requirements in order to be admissible. Applying such requirements to hearsay in affidavits on motions would fail to give effect to the words of Rule 81(1). However, Rule 81(1) provides as a condition that the affiant state the grounds for their belief. Rule 81(2) also permits an adverse inference to be drawn where a party fails to provide evidence of persons having personal knowledge of material facts.

[67] Counsel for Mr. Wright resorted to *ME2 Productions, Inc. v Doe*, 2019 FC 214 [*ME2 Productions, Inc.*], a case concerned with the sufficiency of evidence in order to issue a Norwich order, the Plaintiffs in that case wanting the names and addresses of subscribers claimed to be in breach of copyright by downloading and sharing movies over which the Plaintiffs have copyright. In my view, this case provides little assistance here. First, the context is quite different. The Court in *ME2 Productions, Inc.* insisted that the privacy interests of a large number of individuals whose names would be subject to disclosure must be considered. Second, the key evidence came from a declaration by someone appended as an exhibit to the affidavit of a law clerk in the office of the law firm representing the Plaintiffs, thus putting the declarant beyond the reach of cross-examination. In the words of Pentney J., “this evidence is simply not good enough. I find that before granting a Norwich order better evidence must be filed” (para 123). This is simply not the case here. We are not dealing with an affidavit as an exhibit to another affidavit which says very little. Indeed, Mr. McGuigan, for instance, was not beyond the reach of cross-examination for the purpose of contesting the reliability of the source as appears to have been the case in *ME2 Productions, Inc.* as the device chosen was to interpose a law clerk, as opposed to the main investigator in this case.

[68] The Plaintiffs refer to information supplied by the confidential informant that relates directly to Mr. Wright:

- Mr. Wright, along with Mr. White, run the Beast IPTV Service;
- the pseudonym “Brad B” is used by Mr. Wright and an IP address identified as being associated with “Brad B” is supplied by the confidential source. A search of Bell Canada’s internal system reveals that the IP address is linked to the account of Mr. Wright at his current address;
- the Skype identification code of Mr. Wright was the pseudonym “Brad B”;
- the username @CVOmam on Telegram is used by Mr. Wright;
- a list of Beast IPTV content source revealing the names “Brad-98cGghz” and segastreams.

[69] That kind of information was assessed and corroborated, which attests to the reliability of the information and its provider. In effect, investigations were initiated and they confirmed the tips provided. Having reviewed the evidence presented at the interim stage, I accept the following, taken from paragraph 23 of Plaintiff’s response to the cross-motions (December 17, 2021):

- i. The Skype identification code for ‘Brad B’ indicated that he lives in Canada;
- ii. CVO is a type of Harley Davidson motorcycle that was found on Mr. Wright’s Facebook profile;
- iii. The IP address linked to ‘Brad B’ was traced to Mr. Wright’s home address;
- iv. “Segastreams” is a domain registered with Go-Daddy by Colin Wright from Ontario;

- v. The website beastiptv and vaderstreams.ca (another site registered to Colin Wright) use the same google analytics account; and
- vi. The website beastiptv.com contained many of the same or similar assets (for example, image files) that were previously used on Mr. Wright's vaderstreams.ca website.
 - First McGuigan Aff., paras 233-234, 243-259, 262-265, Exhibits AM-49 to AM-51, AM-58 to AM-61, AM-62 to AM-65 [PMR Oct. 2, 2020- Tabs 5 and AM-49 to AM-51, AM-58 to AM-61, AM-62 to AM-65] (Confidential)
 - First Rémillard Aff. dated September 29, 2020, paras 18-21 [PMR Oct. 2, 2020- Tab 6] (Confidential)

[70] The same kind of exercise was conducted with respect to the other Defendant, Tyler White. Obviously, facts obtained independently from the confidential informant support the veracity of the information provided. To put it plainly, the belief that the information is accurate is demonstrated by the further investigations which confirm the veracity of the information provided by a confidential informant.

[71] The only evidence before the Court is that which came from the witnesses presented by the Plaintiffs. There is no evidence offered by the Defendants to counter the evidence presented by the Plaintiffs, which corroborates the evidence of the confidential source. Neither is there any cross-examination of the affiants which might, for instance, challenge the grounds for their belief. As the Court of Appeal stated in *Lumonics Research Ltd. v Gould et al.*, [1983] 2 F.C. 360, at page 369:

... In my opinion, R. 332(1) imposes only two conditions to the admissibility of affidavit evidence of belief: first, that the affidavit be filed on an interlocutory motion, and, second, that the deponent indicate in his affidavit the grounds of his belief. Once those conditions are met, the affidavit evidence is, in my view,

admissible even though it may have little or no weight or probative value.

[72] Accordingly, the evidence is admissible. In the circumstances of this case, I see no reason why an adverse inference should be drawn given the failure to provide evidence of the person with the personal knowledge of some material facts. It is self-evident that, at the early stage of the proceedings when the Plaintiffs were seeking an interim order against Defendants who wished to keep their activities covert (affidavit of Andrew McGuigan, paras 161 to 163), it is important to protect the identity of sources who have provided significant information which has proven to be accurate (*Split Lake Cree First Nation v Sinclair*, 2007 FC 1107). The said sources may be able to provide more information, should the interim orders be issued and executed. This was indeed what happened in this case. I agree with the Plaintiffs that it is evident that the continuing investigation would have been compromised and that evidence which emerged after the execution of the interim orders may not have become available. Indeed there is no reason to doubt the veracity of the information provided in view of the corroboration.

[73] It follows that the conclusion sought by Mr. Wright that paragraphs from the affidavits of Messrs. McGuigan and Rémillard that rely on hearsay evidence must be stricken cannot be granted. As per rule 81, the evidence is admissible. The same is true for the conclusion that an adverse inference ought to be drawn.

[74] The other argument raised by Mr. Wright to set aside the interim order affecting him is that, given the nature of the order sought (which he presents as being an Anton Piller order), the

essential requirements were not met. In the alternative, the paragraphs of the order which are in the nature of a Mareva injunction ought to be struck.

[75] Defendant Colin Wright argues that, based on *Celanese Canada Inc. v Murray Demolition Corp.*, 2006 SCC 36, [2006] 2 SCR 189 [*Celanese*], four essential conditions must be met for an Anton Piller order to be validly issued. They are:

35 There are four essential conditions for the making of an *Anton Piller* order. First, the plaintiff must demonstrate a strong *prima facie* case. Second, the damage to the plaintiff of the defendant's alleged misconduct, potential or actual, must be very serious. Third, there must be convincing evidence that the defendant has in its possession incriminating documents or things, and fourthly it must be shown that there is a real possibility that the defendant may destroy such material before the discovery process can do its work: ...

The Defendant contends that the third and fourth conditions are the most crucial and they were not established with sufficient evidence in this case.

[76] The Defendant relies extensively on *Vinod Chopra Films Private Limited v John Doe*, 2010 FC 387 for some propositions:

- a court issuing an Anton Piller order should also consider the harm done to the defendant (on its case or the interests of justice so that they are not brought into disrepute) (para 24);
- “It should not take a position where it will put enough evidence to persuade a court to issue an order, then “cooper up” any deficiencies later, if challenged” (para 20);
- “An Anton Piller Order is to be granted only where there is a grave danger that relevant material may be destroyed” (para 20);

- “In short, post Order conduct of a defendant may be introduced but used with extreme caution if it is to be used in support of an allegation made at the *ex parte* hearing that the defendant would have been likely to destroy relevant material” (para 22).

In effect, a mere possibility that incriminating documents will be destroyed is not a real possibility.

[77] The Plaintiffs argue that the interim orders are not Anton Piller orders. Their purpose is not to collect incriminating evidence, but rather to preserve the Court’s jurisdiction by preventing the Defendants from avoiding this Court’s jurisdiction by transferring the ownership or control of the Beast IPTV Service outside this Court’s jurisdiction. There is a need to avoid hollow judgments.

[78] It is for the independent supervising solicitors to obtain the necessary credentials to take control of the infrastructure and act as custodians. Thus the interim orders do not have the effect of handing over to the Plaintiffs the Beast IPTV Service, or its infrastructure; there is no inspection of potential evidence and no inspection for any other purpose.

[79] As the Supreme Court noted in *Celanese*, “(a)n Anton Piller order bears an uncomfortable resemblance to a private search warrant” (para 1). The Court notes at paragraph 30 that “Anton Piller orders, obtained *ex parte*, now regularly permit searches and seizures not only from places of business but from residential premises”. Robert Sharpe, in his seminal work

Injunctions and Specific Performance, Canada Law Book, Looseleaf ed., Thomson Reuters, describes at # 2.1100 the Anton Piller:

In *Anton Piller KG v. Manufacturing Processes Ltd.* the English Court of Appeal upheld the propriety of a practice then current in industrial property cases of awarding a novel and innovative form of *ex parte* injunction. These orders give the plaintiff access to the defendant's premises to inspect documents and remove items to which the plaintiff asserts a proprietary claim. They are made where the plaintiff has demonstrated a strong case and where it is clear that the defendants are rogues who would flout the ordinary process of the court and effectively deprive the plaintiff of a remedy.

[Footnotes omitted and my emphasis.]

The interim orders issued in this case are not of the typical Anton Piller variety; they are not search warrants:

Most cases have involved the problems posed by patent and copyright "pirates". Sophisticated and relatively cheap modern recording and copying equipment has facilitated illegal reproduction and yielded large profits. While plaintiffs can discover and enjoin particular retailers, this often proves ineffectual. Illicit materials are simply transferred to other outlets and the source remains unknown. The beneficial aspects of *Anton Piller* orders in such circumstances are clear and this judicial innovation has often provided a remedy where other less drastic measures would surely have been ineffectual. The order secures for the plaintiff evidence of the defendant's wrong and as well allows the plaintiff to seize material that is the subject of a proprietary claim. *Anton Piller* orders are flexible in scope.

(#2.1110)

[Footnotes omitted and my emphasis.]

Here, the order is not to conduct a search *stricto sensu* "the purpose of which is to seize and preserve evidence to further its claim in a private dispute" (*Celanese, supra*, para 1).

[80] Nevertheless, the interim orders issued in this case have, by their nature, a measure of intrusiveness similar to that of the typical Anton Piller. In my view, that calls for the test for the issuance of an order similar, to a large extent, to the Anton Piller to meet *mutatis mutandis* the requirements of the Anton Piller order. That will explain why there must be a demonstration of a strong *prima facie* case and the damage to the Plaintiffs must be very serious; in the words of the Supreme Court in *Celanese*, “it must be shown that there is a real possibility that the defendant may destroy such material before the discovery process can do its work” (para 35). It seems to me that these requirements should apply to the interim order of the sort sought in this case.

[81] The presence of very serious damage to the Plaintiffs is not challenged in this case. At any rate, it remains that the requirement of the second essential condition should also apply for the type of intrusive order sought here: that serves as a limitation on the kind of cases where the issuance of that order can be considered. The requirement was met; there was ample evidence.

[82] The third essential condition (convincing evidence that the defendant has in its possession incriminating documents or thing) cannot be fully applicable to orders other than an Anton Piller order. However, such condition serves in the Anton Piller context to negate the proverbial “fishing expedition”. The same can be applied here. In the context of an order the purpose of which is to avoid the transfer of the ownership or control of the Beast IPTV Service, the identification of domains and subdomains, which should be the subject of this “freezing order” (in this case, paragraph 2B) to 2G)), do suffice. It cannot be said that a fishing expedition was being conducted. That is satisfied in this case.

[83] Thus, it is the existence of a strong *prima facie* case and the real possibility that control of the Beast IPTV Service may be transferred that deserve closer attention. In my view, the Plaintiffs have discharged their burden to that effect.

[84] The *prima facie* case with respect to the Defendant is strong (the Plaintiffs claim that it is very strong). The evidence presented by Andrew McGuigan and Yves Rémillard shows that Beast IPTV is in the business of offering to the public access, for a fee, to material whose copyright is owned by the Plaintiffs. The Beast IPTV Service is not licensed or otherwise authorized. The evidence available at the time the interim order with respect to Mr. Wright established his involvement with the Beast IPTV Service. The evidence confirming the involvement of Mr. Wright, along with Mr. White, in the running of the Beast IPTV Service included the following:

- the information provided by a confidential source, which reveals the involvement of both Mr. White and Mr. Wright in the operation of the Beast IPTV Service;
- that Mr. Wright uses the pseudonym ‘Brad B’;
- an IP address that was associated with ‘Brad B’;
- that Mr. Wright’s Skype identification code (live id: 969da6a673a19cad) also used the pseudonym ‘Brad B’;
- that Mr. Wright used the username @CVOman on Telegram;
- a list of Beast IPTV content source which reveal the names “Brad-98cGghz” and Segastreams;
- the Skype identification code for ‘Brad B’ indicated that he lives in Canada;

- CVO is a type of Harley Davidson motorcycle that was found on Mr. Wright's Facebook profile;
- The IP address linked to 'Brad B' was traced to Mr. Wright's home address;
- "Segastreams" is a domain registered with Go-Daddy by Colin Wright from Ontario;
- The website beasitv and vaderstreams.ca (another site registered to Colin Wright) use the same google analytics account; and
- The website beasitv.com contained many of the same or similar assets (for example, image files) that were previously used on Mr. Wright's vaderstreams.ca website.

Other than the information provided by a confidential source, this is undoubtedly circumstantial evidence. But circumstantial evidence can be powerful. It can lead to a guilty verdict for murder. Sopinka, Lederman & Bryant (*Law of Evidence in Canada*, LexisNexis, 3rd Edition, 2009) refer to the definition in *Commonwealth v Webster*, (1850) 59 Mass (5 Cush. 295) 52 Am. Dec. 711 as an approved definition:

The distinction, then, between direct and circumstantial is this: Direct or positive evidence is when a witness can be called to testify to the precise fact which is the subject of the issue on trial. That is, in a case of homicide, that the party accused did cause the death of the deceased. Whatever must be the kind or the force of the evidence, this is the fact to be proved. But suppose no person was present on the occasion of the death and, of course, there is nobody that can be called to testify to it. Is it wholly unsusceptible of legal proof? Experience has shown that circumstantial evidence may be offered in such a case – that is, that body of facts may be proved, of so conclusive a character as to warrant a firm belief of the fact, quite as strong and certain as that on which discreet men are accustomed to act in relation to their most important concerns.

(#2.74)

It is commonly used and its treatment is no different than for any kind of evidence. We read at #2.77 and #278 of the *Law of Evidence*.

§2.77 Each piece of evidence need not alone lead to the conclusion sought to be proved. Pieces of evidence, each by itself insufficient, may however when combined, justify the inference that the fact exists. Accordingly, a trial judge must be careful not to exclude individual pieces of evidence if there is an undertaking that the evidence tendered is part of a larger combination. Whether or not there is a rational explanation for that evidence other than the guilt of the accused in a question for the jury.

2. The Treatment of Circumstantial Evidence

§2.78 In civil cases, the treatment of circumstantial evidence is quite straightforward. It is treated as any other kind of evidence. The weight accorded to it depends on the strength of the inference that can be drawn from it and this is a task for the trier of fact.

[Bold in original and footnotes omitted.]

[85] This evidence which formed part of the record has not been challenged. Had the Plaintiffs failed to adduce sufficient admissible evidence, there would not have been an obligation for the Defendants to adduce their own. However, once the Plaintiffs satisfy their burden, there is nothing available to offer a different perspective. As a result, the unchallenged evidence not counterbalanced by other evidence confirms the information according to which Messrs. White and Wright were much involved in the Beast IPTV Service whose activities include access to copyrighted contents over some 1600 channels. That satisfies the test of a strong *prima facie* case.

[86] Is there a real possibility of risk that there will be a transfer of the control of the Beast IPTV Service? I am satisfied that the real possibility exists.

[87] The Court was presented at the *ex parte* motion stage with evidence from which it can be inferred that there exists a real possibility. In *British Columbia (Attorney General) v Malik*, 2011 SCC 18, [2011] 1 SCR 657 [*Malik*], the Supreme Court acknowledged the availability of drawing inferences:

[59] It will often be difficult or perhaps impossible for a plaintiff to show that a defendant will actually destroy evidence, but it is always open to the court to draw inferences reasonably compelled by the surrounding circumstances. As Paperny J. (as she then was) observed in *Capitanescu v. Universal Weld Overlays Inc.* (1996), 46 Alta. L.R. (3d) 203 (Q.B.):

Generally, courts have inferred a risk of destruction when it is shown that the defendant has been acting dishonestly, for example where matter has been acquired in suspicious circumstances, or where the defendant has knowingly violated the applicant's rights. [para. 22]

This passage was cited with approval by the Alberta Court of Appeal in *Catalyst Partners Inc. v. Meridian Packaging Ltd.*, 2007 ABCA 201, 76 Alta. L.R. (4th) 264, at para. 13.

As can be seen, inferences are in fact to be expected; they will be based on the circumstances of each case.

[88] In the case at bar, the representations presented in the *ex parte* motion are found at paragraphs 112 to 121 and 130 to 138 of the Plaintiffs' written case. These representations are based on more than 60 paragraphs from the affidavit of Mr. McGuigan and four from the affidavit of Mr. Chauhan (together with many exhibits). I have carefully reviewed their evidence.

[89] Among the facts uncovered in these affidavits, we find:

- the Defendants were already involved in the operations of the Vader Streams IPTV Service. While Mr. White denied involvement, Mr. Wright confirmed that he undertook to cease those activities while both Defendants received a “cease and desist” letter. They shut down the websites targeted by the letters. GCP had numerous conversations with the Defendants during which they admitted their activities as a reseller of subscriptions to the Vader Streams IPTV Service. As found before, the Beast IPTV Service violates the copyright owned by the Plaintiffs and the Defendants operate the service. The cease and desist letters did not fully serve their purpose as the Defendants, according to the uncontradicted evidence, have continued activities of the same nature;
- operators of the Beast IPTV Service indicated that measures were taken to ensure the security and longevity of the Service (late July 2020). Evidently, the operators are not planning on going out of business;
- also in late July 2020, the payment portal used to process new subscriptions through beasptv.com had been rerouted from merchants in Nova Scotia and Ontario to an operator located in Phoenix, Arizona thus putting these outside the jurisdiction of this Court;
- in August 2020, a new website and billing portal was built for the Beast IPTV Service with IP addresses associated with a host in Chicago, Illinois, USA;
- Mr. White openly discussed that the best thing to do in the business of illegal IPTV services is “to always hide your shit, hide your tracks (...)”;
- both Defendants know that their activities may well violate the *Copyright Act* (“cease and desist” letters), yet they appear to persevere, and show their capacity and willingness to have operations outside the Court’s jurisdiction.

[90] These facts show that the Defendants are aware of their legal jeopardy, they demonstrate their desire to continue their lucrative business, they show their ability to operate outside the

jurisdiction: it can be inferred knowledge, motivation, capacity and willingness to ensure security and longevity. Going back to the paragraph from *Capitanescu v Universal Weld Overlays Inc.* (1996), 46 Alta. L.R. (3d) 203 (Q.B.) quoted approvingly by the Supreme Court in *Malik*, at paragraph 59, risk of destruction can be inferred from Defendants acting dishonestly or when a Defendant knowingly violated the rights of an Applicant. In this case, there is significant evidence from which to infer. Indeed the easiness with which infrastructure - in this case, some four domains and a number of subdomains hosted on servers located around the world (Canada, US, Moldova) - can be moved is also a consideration. As mentioned by Robert Sharpe, piracy cases are very much using Anton Piller orders for obvious reasons. As noted appropriately by the Plaintiffs, the special remedies were granted by this Court in similar circumstances: *Paramount Pictures Corporation et al v Lemarier et al*, order of Martineau J., dated October 16, 2015; *Bell Canada v Lackman*, order of Leblanc J., dated June 9, 2017, affirmed at 2018 FCA 42, [2018] 4 FCR 199 [*Lackman*].

[91] As a result, the order found at paragraph 2B) and following of the interim order concerning the Defendant Colin Wright was properly made. There is a strong *prima facie* case, there is real possibility that the infrastructure would be moved outside the jurisdiction of the Court and there was convincing evidence that the Plaintiffs were not conducting a fishing expedition.

[92] Mr. Wright also asserts that the Mareva injunction was not properly issued because there was not demonstrated that there exists a real risk that Mr. Wright will dispose of or remove assets to render himself judgment-proof.

[93] The Plaintiffs argue that given the strong case presented against the Defendants, their proclivity to operate in violation of the law and how lucrative a business they operate (the estimate put in evidence is for revenues from around \$USD 1M to \$USD 9M annually), there is a serious risk the Defendant will attempt to make themselves essentially judgment-proof. The Defendants are sophisticated and experienced individuals; they are aware that their activities are in violation of the law. To use the words of the Plaintiffs, “if given chance, [the Defendants] would likely dissipate their assets to avoid satisfying a final judgment” (Plaintiffs’ written representations, October 2, 2020, subtitle between paras 129 and 130). I agree.

[94] The availability of the Mareva injunction was recognized by our highest court in *Aetna Financial Services v Feigelman*, [1985] 1 SCR 2. The Court found that “unless there is a genuine risk of disappearance of assets, either inside or outside the jurisdiction, the injunction will not issue” (p. 25). A condition precedent is the demonstration of a strong *prima facie* case. It also seems to me that the Court must be alive to the possibility that the Mareva injunction is sought for an ulterior motive, that of tying up “the assets of the defendant, not for the purpose of their preservation until judgment, but to force, by litigious blackmail, a settlement on the defendant who, for any one of many reasons, cannot afford to await the ultimate vindication after trial” (p. 37).

[95] Here is how the author Sharpe seeks to balance the various interest at # 2.760:

... Unless strictly limited to cases where the plaintiff’s prospect of ultimate success is strong and to cases where the defendant is bent on flouting the court’s process, restraining the defendant’s freedom to deal with his or her property upon the filing of an unsecured claim could well produce serious injustice.

On the other hand, it is equally difficult to justify the invariable refusal of such relief. The rationale underlying the ordinary interlocutory injunction is met where the plaintiff is able to show that there is a strong case on the merits and that, if the defendant is not stopped, the plaintiff's right to an appropriate remedy at trial will be lost. The purpose of interlocutory injunctive relief is to prevent the effective destruction of the plaintiff's rights in the period of delay awaiting trial. If the risk that the plaintiff's right will be destroyed exceeds the risk that the defendant may be unduly interfered with, an interlocutory injunction is justified. That purpose is met where the plaintiff can demonstrate that a money judgment will be rendered useless if the defendant is not prevented from evading the reach of the court's process.

[Footnotes omitted and my emphasis.]

I am satisfied that, in this case, and for the reasons given with respect to the transfer of the control of the Beast IPTV Service, there exists a genuine risk of the disappearance of assets; there are grounds to believe there is a real risk of the assets being removed out of the jurisdiction, thus depriving the Plaintiffs of the fruits of a judgment.

[96] The two critical factors are met in this case: there is a strong *prima facie* case facing the Defendants. There can also be inferences drawn from the facts. Here, the facts that justified an order seeking to prevent the transfer of the control of the Beast IPTV Service outside the jurisdiction apply equally to an order preventing the transfer of assets: the Defendants have the knowledge, the motivation and the capacity to move assets. Without any new evidence, or the challenge of the evidence offered by the Plaintiffs, all that is to be considered by the Court is evidence that translates into a strong *prima facie* case and a real risk of assets being removed before judgment.

(2) Mr. White

[97] In support of his contention that the interim order affecting him ought to be set aside and vacated, Defendant Tyler White raised two issues. First and foremost, he claimed that the Plaintiffs' disclosure was not full and frank in that they failed to disclose relevant case law. Second, what he calls the "Anton Piller order" was improperly granted.

[98] Defendant Tyler White argues that the Federal Court of Appeal decision in *ESA (supra)* is a crucial judgment which was not disclosed by the Plaintiffs. There is no doubt that the judgment was not disclosed. It is less than clear that it is crucial or even relevant.

[99] As I understand it, Mr. White sees in *ESA* a decision that somehow contradicts the Court of Appeal decision of barely two years ago in *Lackman (supra)*. He seems to understand *ESA* as having decided something momentous "about the meaning of the so called "making available right" ", something that "calls the currency of the *Lackman* decision into serious doubt" (written representations, paras 83 and 82). He concludes that "(i)t is impossible to see how, in light of the recent FCA decision in *ESA v SOCAN*, the act of hosting or distributing an add-on could give rise to the primary infringement in the communication to the public" (written representations, para 84), the conclusion reached by the Court of Appeal just two years earlier.

[100] With all due respect, it is impossible to agree with such a proposition. Although the technology used in *Lackman* (creation and operation of the TVAddons website) differs, the goal of the operation is the same as that contemplated in this case: offering, for a fee, a product to

customers allowing access without authorization to copyrighted programming. I note in passing that the interim order issued by Leblanc J. is very similar to the order issued in this case (*Lackman*, paras 8 and 9).

[101] The Court of Appeal in *Lackman* found:

[22] These factual errors, in turn, led the Judge to a misinterpretation of the law and of the cases. Pursuant to paragraph 3(1)(f) and section 27 of the *Copyright Act*, the appellants, as creators and distributors of television programs, have the sole right to communicate these works to the public by telecommunication and to authorize such act. There is clearly a strong *prima facie* case that the respondent, by hosting and distributing infringing add-ons, is making the appellants' programs and stations available to the public by telecommunication in a way that allows users to access them from a place and at a time of their choosing, thereby infringing paragraph 2.4(1.1) and section 27 of the *Copyright Act*.

[My emphasis.]

Paragraph 1 of the *Lackman* decision sets out the context; the underlying action was very much similar to our case, which makes 22 very much binding on this Court:

[1] The appellants Bell Canada, Bell Expressvu Limited Partnership, Bell Media Inc., Vidéotron S.E.N.C., Groupe TVA Inc., Rogers Communications Canada Inc. and Rogers Media 2018 FCA 42 (CanLII) Inc. (the appellants) are appealing the order of Justice Bell of the Federal Court (the Judge) dated June 29, 2017 (Justice Bell's Order or Reasons), whereby he vacated the Anton Piller order granted by Justice LeBlanc on June 9, 2017 (Justice LeBlanc's Order) and dismissed the appellants' motion for an interlocutory injunction. In the underlying action, the appellants alleged that Adam Lackman (the respondent) infringed copyright by communicating and making available to the public the appellants' programs, and by inducing and/or authorizing users of infringing add-ons to initiate acts of infringement through the business it operates under the name TVAddons.ag (TVAddons or the TVAddons website).

[My emphasis.]

[102] *Lackman* is clearly strong authority. The original interim order resembled very much the order issued in this case. The Court of Appeal confirmed the use of subsection 2.4(1.1). Indeed, the Court of Appeal went on to state that paragraph 2.4(1)(b) of the *Copyright Act* cannot be relied on as an “exception” in this case as, “when all the evidence on the record is properly considered, the respondent’s website cannot be regarded as a mere neutral conduit for information provided by others” (para 27). The Court comments some more on the protection afforded innocent disseminators:

[32] It is also important to recall that the purpose of paragraph 2.4(1)(b) is to protect innocent disseminators. Again, I fail to understand how the respondent can cloak himself in the shroud of an innocent disseminator, when his website clearly targets those who want to circumvent the legal means of watching television programs and the related costs. By using the infringing addons that are promoted as being “the best”, “most popular” and “all free” (Conf. McGuigan Aff. at para. 64), users can stream various types of television content from streaming sites immediately and for free. I do not think that Parliament envisioned this type of activity when paragraph 2.4(1)(b) was enacted.

At this stage, Mr. White claims that the *ESA* decision should be preferred, even though it did not allude to *Lackman*.

[103] In fact, the *ESA* decision deals with a very different matter. The issue concerned a proposed tariff for the communication of musical works. The question was whether new subsection 2.4(1.1) of the *Copyright Act*, what the Court of Appeal calls the “making available provision”, was an event for which a tariff was payable. In my view, *ESA* provides no assistance to Mr. White in his attempt to escape the Court of Appeal jurisprudence in *Lackman* (but also *Bell Canada v. 1326030 Ontario Inc. (iTVBox.net)*, 2016 FC 612 [*Bell Canada*], aff’d 2017 FCA 55, referred to in *Lackman* at paras 34 to 36). In *ESA*, the Court of Appeal was invited to

conclude that subsection 2.4(1.1) and paragraph 3(f) triggered two tariffs, one when musical works are posted on servers and again when the posted works are transmitted by way of downloading or streaming over the internet. The Court of Appeal said no.

[104] Subsection 2.4(1.1) of the *Copyright Act* reads:

2.4 (1) ...	2.4 (1) [...]
...	[...]
(1.1) For the purposes of this Act, communication of a work or other subject-matter to the public by telecommunication includes making it available to the public by telecommunication in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that member of the public.	(1.1) Pour l'application de la présente loi, constitue notamment une communication au public par télécommunication le fait de mettre à la disposition du public par télécommunication une œuvre ou un autre objet du droit d'auteur de manière que chacun puisse y avoir accès de l'endroit et au moment qu'il choisit individuellement.

As for paragraph 3(1)(f), it reads as follows:

3(1) ...	3(1) [...]
...	[...]
(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,	f) de communiquer au public, par télécommunication, une œuvre littéraire, dramatique, musicale ou artistique;
...	[...]
and to authorize any such acts.	Est inclus dans la présente définition le droit exclusif d'autoriser ces actes.

The *ESA* Court refused to “attempt to offer comprehensive guidance” (para 95). It is difficult to see how the decision can be “critical case law” and how it can be expanded as proposed by the Defendant. It merely found that subsection 2.4(1.1) did not create a new exclusive right in the context of setting tariffs. That is all that is discussed in *ESA*. The paragraphs of the decision that are relevant are paragraphs 96 and 97:

[96] On the submissions made, this much can be said. Subsection 2.4(1.1) does not create a new exclusive right. The Board used a “deeming provision” to create a right which, simultaneously, was and was not part of the communication right. When the deeming provision is set aside, all that is left is what the Board itself described (at para. 117) as a “preparatory act”. This is consistent with Parliament’s use of the word “includes” in subsection 2.4(1.1). It would be contrary to the policy of the Act to establish a tariff on a preparatory step as this would constitute disaggregating rights for the purpose of adding an additional layer of royalties: *C.B.C.* at para. 63; *Entertainment Software Association* at para. 9.

[97] If there is no new exclusive right, there is no basis for the Board’s conclusion that a stream does not merge with the making-available which preceded it so as to justify payment of two separate fees. Since there is only one right at stake, the only issue is whether the right has been triggered, and the only fees payable are those payable for the exercise of the right.

The Court of Appeal does not go any further than this: subsection 2.4(1.1) does not allow for two different fees to be charged. The effect of subsection 2.4(1.1) is not to create a new layer of royalties. *ESA* certainly cannot displace the precedential value of *Lackman* where the issues discussed are on all fours with the case under review here. Accordingly the *prima facie* case continues to be a strong *prima facie* case of copyright infringement. The *ESA* decision is of no assistance to the Defendant.

[105] Mr. White's written case gets into the true nature of paragraph 2.4(1)(b). It is not clear what is the point the Defendant attempts to make precisely. It seems to be an attempt to respond to the simple point made by the Plaintiffs that the Defendants are not merely acting as a "conduit", which prevents them from relying on paragraph 2.4(1)(b). The use that can be made of the paragraph was addressed in *Lackman* (paras 23 to 28 in particular). Whether paragraph 2.4(1)(b) can prevent liability in the case at bar is for the trial.

[106] Mr. White also claims the failure of the Plaintiffs to establish a cause of copyright infringement. He seems to argue that only the person who posted the work on the server, presumably a wholesaler, from which a chain of transmission sending the work all the way to the user can be liable. As he puts it in his written case, "(t)he fact that such chain of transmission may involve various intermediaries who provide hardware, software, or other services that enable or facilitate these transmissions does not, as a matter of law, make those intermediaries "communicators" for the purpose of s 3(1)(f)" (para 30).

[107] However, as pointed out by the Plaintiffs, that theory does not account for the fact that subsection 3(1) speaks also of "to authorize any such acts", which includes of course paragraph 3(1)(f). That is explicitly raised in both the Statement of Claim and the submissions on the *ex parte* motion. What does "authorize" mean in the context of subsection 3(1) of the *Copyright Act*? The answer may be found in *CCH Canadian Ltd. v Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 SCR 339, at para 38:

38 "Authorize" means to "sanction, approve and countenance": *Muzak Corp. v. Composers, Authors and Publishers Association of Canada, Ltd.*, [1953] 2 S.C.R. 182, at p. 193; *De Tervagne v. Belœil (Town)*, [1993] 3 F.C. 227 (T.D.). Countenance in the

context of authorizing copyright infringement must be understood in its strongest dictionary meaning, namely, “[g]ive approval to; sanction, permit; favour, encourage”: see *The New Shorter Oxford English Dictionary* (1993), vol. 1, at p. 526. Authorization is a question of fact that depends on the circumstances of each particular case and can be inferred from acts that are less than direct and positive, including a sufficient degree of indifference: *CBS Inc. v. Ames Records & Tapes Ltd.*, [1981] 2 All E.R. 812 (Ch. D.), at pp. 823-24. However, a person does not authorize infringement by authorizing the mere use of equipment that could be used to infringe copyright. Courts should presume that a person who authorizes an activity does so only so far as it is in accordance with the law: *Muzak, supra*. This presumption may be rebutted if it is shown that a certain relationship or degree of control existed between the alleged authorizer and the persons who committed the copyright infringement: *Muzak, supra*; *De Tervagne, supra*; see also J. S. McKeown, *Fox Canadian Law of Copyright and Industrial Designs* (4th ed. (loose-leaf)), at p. 21-104, and P. D. Hitchcock, “Home Copying and Authorization” (1983), 67 C.P.R. (2d) 17, at pp. 29-33.

[My emphasis.]

[108] The Plaintiffs plead their case on three theories of liability:

- communicating by telecommunication;
- making available;
- authorizing a communication by telecommunication.

[109] These are theories of liability that were considered in *Lackman* by the Federal Court of Appeal (para 22). The defendants are alleged to be responsible for developing, operating, maintaining and promoting the Beast IPTV Service whose whole purpose is to make available unauthorized content to subscribers over the internet. As the *Lackman* Court found, “There is clearly a strong *prima facie* case that the respondent, by hosting and distributing infringing additions, is making the appellants’ programs and stations available to the public by

telecommunication in a way that allows users to access them from a place and at a time of their choosing, thereby infringing paragraph 2.4(1.1) and section 27 of the *Copyright Act*” (para 22).

The causes of action plead by the Plaintiffs are clearly viable.

[110] Mr. White asserts that the Statement of Claim does not mention any act that would constitute infringement. However, that contention is again based on the theory that only those who provide content and post it to server from which the content may be communicated are liable. This Court’s jurisprudence and that of the Court of Appeal do not support such a narrow conception of infringement of copyright.

[111] The Statement of Claim provides, on the contrary, numerous examples of the Plaintiff’s work being streamed using various platforms provided by the Beast IPTV Service (for example, the Plaintiffs refer to paras 51, 54, 58, 61 and 63 of the Statement of Claim). In view of the causes of action pleaded by the Plaintiffs, it is not accurate to say that the Statement of Claim does not plead any fact: it does.

[112] As to what Mr. White calls the Anton Piller order contained in the interim order, the Defendant Tyler White complains about the use of a “confidential source”. As discussed earlier, not only is the use of affidavits made on belief allowed, but in this case credence may be given to the evidence offered by a confidential source because it was corroborated.

[113] It follows that the cross-motions of the two Defendants must be dismissed, with costs.

[114] As a result, the financial disclosure offered by Colin B. Wright on November 24, 2020, but kept under seal by the independent supervising solicitor, David Lipkus, must be released to the Plaintiffs' counsel. The interim order requires the disclosure of that information not only to the independent supervising solicitor but also to "the Plaintiffs' solicitors" (paras 2J) and K). The Plaintiffs are right that there exists no reason to continue to withhold that information. Accordingly, Mr. Lipkus is directed to release those documents.

C. *Should an interlocutory injunction, pursuant to rule 373, remain valid until final determination of the proceeding on the merits?*

[115] Paragraph 373(1) and paragraph 373(2) read:

Availability

373 (1) On motion, a judge may grant an interlocutory injunction.

Undertaking to abide by order

(2) Unless a judge orders otherwise, a party bringing a motion for an interlocutory injunction shall undertake to abide by any order concerning damages caused by the granting or extension of the injunction.

Injonction interlocutoire

373 (1) Un juge peut accorder une injonction interlocutoire sur requête.

Engagement

(2) Sauf ordonnance contraire du juge, la partie qui présente une requête pour l'obtention d'une injonction interlocutoire s'engage à se conformer à toute ordonnance concernant les dommages-intérêts découlant de la délivrance ou de la prolongation de l'injonction.

At the hearing, counsel for the Plaintiffs confirmed that they undertake to abide by any order concerning damages caused by the granting or extension of the injunction. The Defendants did not object to the form in which the undertaking was presented.

[116] There remains the question of whether or not the interim injunction should be converted into interlocutory relief. In my view, given the information that came to light during and after the execution of the interim injunction, the Plaintiffs are entitled to the interim order being converted into an interlocutory injunction.

[117] The Court must be satisfied that:

- there is a serious question to be tried;
- the Plaintiffs will suffer irreparable harm if the interlocutory injunction is not continued;
- the balance of convenience favours the Plaintiffs.

[118] The Court was already satisfied that a strong *prima facie* case of copyright infringement had been demonstrated at the interim injunction stage. The Defendants' cross-motions challenging some aspects of the interim orders were not successful. Moreover, the Defendants did not offer any evidence and they did not cross-examine any of the affiants. In fact, the evidence gathered during and after the execution of the interim orders only strengthened the support of the injunctive relief sought.

[119] Starting at paragraph 33 of these reasons for judgment, through paragraph 39, there is unchallenged evidence, including actual transcripts of conversations and screen captures, that confirm the following:

- both Defendants denied and misrepresented their involvement with the Beast IPTV Service;

- the Defendants attempted to conceal evidence, Mr. Wright going so far as denying being in possession of a computer in a vain attempt to show that he could not be involved in such endeavour;
- within hours of the execution, the Defendants were in contact with each other;
- evidence of the transfer and deletion of domains and subdomains of the Beast IPTV Service;
- the inference that “Brad” refers to Colin B. Wright and “Ty” is Tyler White is even stronger;
- Mr. White’s discussion about withdrawing and concealing as much money as he can.

These elements uncovered after the granting of the interim orders tend to confirm the real risk of assets being concealed or dissipated, and measures to be taken to prevent the transferring of control over the Beast IPTV Service (or deletion of domains and subdomains).

[120] Accordingly, an interlocutory injunction shall be granted. The interlocutory injunction is appended to this Judgment and Reasons as part of the Order.

[121] As for the irreparable harm to be suffered by the Plaintiffs, there is ample unchallenged evidence offered by affiants Shawn Omstead and Sundeep Chauhan that satisfies the Court of the harm IPTV is inflicting on the Plaintiffs. Indeed, the proliferation of IPTV Services increases the damage thereby caused (Chauhan affidavit, paras 43 to 47; Omstead affidavit, paras 35-36).

[122] In *Bell Canada v 1326030 Ontario Inc. (iTVBox.net)*, 2016 FC 612 , our Court concluded as follows on the issue of irreparable harm for the issuance of an interlocutory injunction in a matter similar to the one under review:

[31] I find that the Plaintiffs have established that they would suffer irreparable harm if this injunction were not granted. The market for pre-loaded set-top boxes is rapidly and steadily growing, in a way that cannot be precisely quantified at the moment. The continuing sale of pre-loaded set-top boxes will “place devices in the hands of consumers which the plaintiffs, even if successful at trial, will not be able, in most cases, to locate or to effectively restrain” from accessing copyrighted content (*Titan Linkabit Corp v SEE See Electronic Engineering Inc.*, [1993] FCJ No 208, 48 CPR (3d) 62 at 78-79 (FCTD)). Each user who purchases a pre-loaded set-top box has an incentive to permanently cancel his or her subscription to a distribution service such as those offered by the Distribution Plaintiffs. The loss of actual and potential customers constitutes irreparable harm, as recognized in *Telewizja Polsat SA v Radiopol Inc.*, 2005 FC 1179 at para 22.

[32] The market for pre-loaded set-top boxes will keep growing if left unchecked and the Defendants, or any defendant that may be added to the present claim, are unlikely to have the financial resources required to compensate the Plaintiffs for their losses should the latter succeed on the merits. I am therefore satisfied that they have established that they will suffer irreparable harm.

The decision was affirmed on appeal (2017 FCA 55, at paras 4 and 5). Similarly, in *Lackman* (*supra*) the Court of Appeal was satisfied with the evidence of irreparable harm (para 47). These cases are of the same ilk as the one before this Court.

[123] The Plaintiffs raised a number of reasons why they suffer irreparable harm:

- undermine the right to control the time, place and circumstances in which their copyrighted works are displayed, reproduced and made available;

- incalculable losses in box office revenues and in revenues from home entertainment physical media (DVDs), digital transmissions (Netflix, Crave) and traditional transmissions (paid cable transmissions);
- the legitimate market for access to copyrighted works is irreparably undermined, thereby affecting the relationship with authorized distributors and licensees;
- subscriptions and advertising revenues are negatively affected; the Beast IPTV Service provides users a strong incentive to cancel subscriptions (or even to never become subscribers);
- a wide range of innocent third parties, including theater owners, retailers, broadcasters and their employees are affected. In fact, this whole “eco-system” is jeopardized in that the equilibrium of the system is changed, and continues to change as IPTV Services continue to grow if left unchecked.

[124] I also accept that the transfer of the control of these types of operations outside the jurisdiction of the Court constitutes irreparable harm (*Bell Canada et al v Lackman*, 2017 FCA 154, at para 33, a case where a Court of Appeal judge dealt with a stay application pursuant to section 50 of the *Federal Courts Act*):

[32] From an evidentiary standpoint, the record before me highlights documented instances of improper conduct by the respondent aiming to conceal evidence specifically relevant to the underlying application against him. The possibility of valuable evidence disappearing is real, thus it is necessary to preserve the status quo by way of a stay. These are circumstances warranting the preservation of the evidence gathered so far by the appellants to avoid irreparable harm as their ability to maintain the evidence to assert their rights and move forward with their underlying application against the respondent will be compromised if the stay is not granted.

[33] Having taken notice of the confidential affidavits in the record, the appellants have established sufficient grounds to conclude that a transfer of the respondent’s business activities to a

foreign jurisdiction, including the potential relocation of the control over its website servers, income channels and financial means, is possible. By doing so, the respondent would escape the Federal Courts' jurisdiction. This favours the appellants' position under the second prong of the test.

In my view, there continues to be irreparable harm if the interim injunction is not continued as an interlocutory injunction.

[125] The same holds true for the balance of convenience. Surely it cannot be that the financial loss suffered by the Defendants if they cannot reactivate their operation can counterbalance the harm suffered by the Plaintiffs. Indeed the Defendants have not even suggested on this motion that it is the case they wish to present. At any rate, the Defendants have denied their involvement with the Beast IPTV Service. Furthermore, the sole evidence before the Court supports the contention that the Service allows users, for a fee, to access copyrighted content without authorization: there is a strong *prima facie* case to that effect. The presence of a strong *prima facie* case, together with the post-execution evidence, and the evidence of irreparable harm make it clear in my view that the balance of convenience favours the Plaintiffs.

D. *Confidentiality Order*

[126] A confidentiality order was issued as part of the interim orders dated November 17, 2020. It was in respect of paragraphs taken from the affidavit of Mr. Andrew McGuigan and the affidavit of Mr. Yves Rémillard. That remains in effect.

[127] The Plaintiffs do seek another confidentiality order concerning the affidavits of Messrs. McGuigan and Rémillard (dated November 30, 2020) in support of this motion.

[128] On the other hand, Mr. Tyler White comments on a Direction issued on October 2, 2020.

It reads:

« L'intitulé de la cause, la déclaration, la correspondance datée du 2 octobre 2020 et le dossier de requête ex parte à être déposé par la partie demanderesse le 2 ou le 5 octobre 2020, seront traités de façon confidentielle jusqu'à ce que la Cour ait entendu ladite requête, ou jusqu'à ordonnance contraire de la Cour. »

[TRANSLATION]

“The style of cause, the statement, the correspondence of October 2, 2020, and the matter of an ex parte motion to be filed by the plaintiff on October 2 or 5, 2020, will be kept under confidentiality seal until the Court has heard the motion or unless the Court orders otherwise.”

[Italics in original.]

The Defendant suggests that the open Court principle calls for restraint. However, he did not seek any formal order.

[129] The Direction was issued by a member of this Court at the request of counsel for the Plaintiffs in a letter dated October 2, 2020. The letter explains that an upcoming motion, to be heard *ex parte* and *in camera*, calls for the granting of an interim injunction. Giving notice of the motion would defeat the purpose of the motion (“l’ordonnance recherchée par les demanderesse ne sera efficace que si elle est exécutée de manière coordonnée et concomitante pour les deux défendeurs et ce, sans qu’il n’aient avis préalable de la procédure à leur rencontre”

[TRANSLATION] “The order sought by the plaintiffs will be effective only if it is executed in a

coordinated and concomitant manner for both defendants without prior notice of the proceeding against them”. There is no reason why the Direction of October 2, 2020, is required anymore with respect to the style of cause, the Statement of Claim, the correspondence of October 2, 2020. The Direction is therefore rescinded to the extent that the documents that were to be treated in a confidential fashion (style of cause, Statement of Claim, correspondence of October 2, 2020) by reason of their disclosure jeopardizing the execution of the interim injunction shall be treated like any other document not covered by a confidentiality order.

[130] The justification offered by the Plaintiffs for the affidavits of Messrs. McGuigan and Rémillard of November 30 to remain confidential is that these “affidavits disclose sensitive information about investigative techniques and by rights holders to identify anonymous internet infringers – knowledge of which could be used by potential infringers to help avoid detection of their identities and shield them from prosecution by rights holders” (Plaintiff’s Memorandum of fact and law, para 79). The loss of confidentiality of the investigative techniques will result in serious commercial harm, leading to further acts of copyright infringement. The Plaintiffs also invoke privacy concerns by tying IP addresses associated with residential internet accounts. That kind of information is said to have been necessary to identify the Defendants who denied involvement in the Beat IPTV Service and sought to conceal their identities.

[131] In the circumstances of this case and with the motion for an order of confidentiality not being challenged, the Court is satisfied that the affidavits of Messrs. McGuigan and Rémillard of November 30, 2020 ought to be treated as confidential (rule 151 of the *Federal Courts Rules*,

applying *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522).

VI. Costs

[132] The Plaintiffs request their costs of the motion for the Interim Orders and for the present Review Motion on a solicitor-and-client basis. They suggest that their costs be calculated on the basis of brief submissions.

[133] The suggestion is appropriate. However the parties are invited to justify the basis for the calculation, whether it be solicitor-and-client basis or some other basis (departure from rule 407), including a lump sum, and its quantum, as well as why costs on the *ex parte* motion for the issuance of the interim orders should be awarded. The submissions will be limited to three pages per party (excluding the bill of costs and relevant evidence) and will be due within fifteen (15) days, in the case of the Plaintiffs, and five (5) days after the Plaintiffs' submissions have been filed in the case of the Defendants, such period of time starting from the date of this judgment. It is of course not forbidden for the parties to agree on the quantum.

VII. Amendment to the interlocutory order to allow for the payment of reasonable legal fees and disbursements

[134] The parties were in agreement at the hearing of this matter, on December 18, 2020, that clauses 2M)i. and 2N)i. of the injunction, if it were to be continued, ought to account for the provision, to date and in the future, of any retainer and payment of reasonable legal fees and disbursements incurred in defending and responding to all aspects of the claims advanced by the

Plaintiffs. Clauses 2M)i. and 2N)i. of the interlocutory injunction are accordingly amended.

These amendments are reflected in the formal Order appended herewith.

VIII. Conclusion

[135] As a result, this Court issues the interlocutory injunction sought, as well as the show cause order, and various other orders and a declaration as per the formal Order appended herewith.

“Yvan Roy”

Judge

Federal Court



Cour fédérale

Date: 20210114

Docket: T-1176-20

Ottawa, Ontario, January 14, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**WARNER BROS. ENTERTAINMENT INC.
AMAZON CONTENT SERVICES LLC
BELL MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
NETFLIX STUDIOS, LLC
NETFLIX WORLDWIDE ENTERTAINMENT, LLC
PARAMOUNT PICTURES CORPORATION
SONY PICTURES TELEVISION INC.
UNIVERSAL CITY STUDIOS PRODUCTIONS,
LLLP**

Plaintiffs

and

**TYLER WHITE dba BEAST IPTV
COLIN WRIGHT dba BEAST IPTV**

Defendants

ORDER

UPON considering the interim Orders issued by this Court on November 17, 2020, as against the Defendants [the “Interim Orders”];

UPON considering that the Interim Orders were served upon the Defendants on November 24, 2020, along with the materials submitted by the Plaintiffs in support of the issuance of the Interim Orders, the Statement of Claim, and a Notice of Motion to review the execution of the Interim Orders and to convert the Interim Orders into interlocutory Orders;

UPON motion made by the Plaintiffs for:

- a) a declaration that the Plaintiffs lawfully and properly executed or attempted to execute the Interim Orders on the Defendants;
- b) an Order authorizing the Plaintiffs to withdraw their deposit of \$100,000 filed with the Court on October 27, 2020, which was provided as security for any damages that may have arisen out of any improper execution of the Interim Orders, and ordering the Administrator to pay out said deposit, together with interest accrued thereon, by cheque made payable to Smart & Biggar LLP In Trust;
- c) an Order directing Mr. David S. Lipkus, the independent supervising solicitor in respect of the execution of the Interim Order upon the Defendant Mr. Wright, to disclose to the Plaintiffs' solicitors the financial disclosures provided by Mr. Wright on November 24, 2020;
- d) an Order converting the Interim Orders into interlocutory Orders pursuant to Rule 373 of the *Federal Courts Rules*;
- e) a Confidentiality Order ordering that the affidavits of Mr. Andrew McGuigan and Mr. Yves Rémillard, both dated November 30, 2020, be kept under confidentiality seal, pursuant to Rule 151 of the *Federal Courts Rules*;

- f) an Order pursuant to Rule 467 of the *Federal Courts Rules*, charging the Defendants Mr. White and Mr. Wright with contempt of the Interim Orders;
- g) an award of costs on the Plaintiffs' motion for the Interim Orders and on this motion, on a solicitor-and-client basis, to be calculated on the basis of brief submissions of no more than three (3) pages (excluding the bill of costs and supporting evidence) to be filed within three (3) weeks of this Order.

UPON considering the motion records filed by the Plaintiffs on October 2, 2020, and December 1, 2020, the Defendants' motion records, and the parties' oral submissions made at the hearing for this motion on December 18, 2020;

AND UPON being satisfied that the Order sought should issue, based on the evidence and argument presented to the Court;

THE COURT ORDERS AS FOLLOWS:

1. The execution of the Interim Orders upon each Defendant was lawfully and properly conducted.
2. The Plaintiffs are authorized to withdraw from the Court the deposit of \$100,000 filed on October 27, 2020, as security for damages in connection with the execution of the Interim Orders, and the Administrator shall pay out said deposit, together with interest accrued thereon, by cheque made payable to Smart & Biggar LLP In Trust.
3. The independent supervising solicitor, Mr. David S. Lipkus, is directed to disclose to the Plaintiffs' solicitors the consent forms and all financial information provided

to him by the Defendant, Mr. Colin Wright, on November 24, 2020, pursuant to paragraphs 2J) and 2K) of the Interim Order;

4. The following paragraphs of the Interim Orders, with the following modifications, are converted and extended into Interlocutory Orders, and remain valid until a final determination of this proceeding on the merits:

a. Paragraphs 2A) to 2L), and paragraphs 2O) and 2P);

b. Paragraph 2M), with modification:

2M)i. selling, assigning, alienating, transferring, or otherwise disposing of his assets, including but not limited to the residence located at 2301 Old Sambro Road, Williamswood, Nova Scotia, B3V 1C4, in any way except for the payment of expenses in the normal course of his livelihood, during the course of the present proceedings and nothing in this Order shall prevent the provision, to date or in the future, of any retainer and payment of reasonable legal fees and disbursements incurred in defending and responding to all aspects of the claims advanced by the Plaintiffs during the course of the present proceedings until the final disposition thereof, including any appeals;

c. Paragraph N), with modification:

2 N)i. selling, assigning, alienating, transferring, or otherwise disposing of his assets, including but not limited to the residence located at 13 Tedley Blvd, Brantford, Ontario, NT3 5L5, in any way except for the payment of

expenses in the normal course of his livelihood, during the course of the present proceedings and nothing in this Order shall prevent the provision, to date or in the future, of any retainer and payment of reasonable legal fees and disbursements incurred in defending and responding to all aspects of the claims advanced by the Plaintiffs during the course of the present proceedings until the final disposition thereof, including any appeals;

d. Paragraph 2Q, with modification:

2Q) Authorising an independent supervising solicitor hired by the Plaintiffs to attend to and monitor the execution of this Order;

e. Paragraph 2T), with modification:

2T) Authorising those who are authorized to enforce this Order to do so by communicating with the Defendants by e-mail, phone or videoconference, or by so communicating with the Defendants' counsel if they are represented;

f. Paragraph 2W), with modification:

2W) Authorising the independent supervising solicitor and the Plaintiffs' solicitors to consult the documents and information obtained pursuant to the execution of the Order for the purpose of preparing an independent supervising solicitor report and otherwise reporting to the Court, for the purpose of continuing the Order and for the purpose of this proceeding generally;

5. Orders the Defendants Mr. Tyler White and Mr. Colin Wright:
 - a. to appear before a Judge of this Court for a contempt hearing, at a time and place to be set by the Court [the “Contempt Hearing”];
 - b. to be prepared to hear proof of the acts with which they are charged at the Contempt Hearing, namely:
 - i. Mr. White and Mr. Wright, disobeying paragraph 2B) of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose any of the technical information about the Beast IPTV Service as required at paragraphs 2B) of the Interim Orders, and by instead falsely claiming to have no knowledge of the Beast IPTV Service;
 - ii. Mr. White and Mr. Wright, disobeying paragraphs 2I), 3A) and 3B)i. of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by communicating with third parties with their phones or other electronic devices during the execution of the Interim Orders in order to interfere with the execution of the Interim Orders and conceal evidence, notably by instructing third parties to delete websites, infrastructure or evidence related to this proceeding;
 - iii. Mr. White and Mr. Wright disobeying paragraph 3B)i. of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of

the *Federal Courts Rules*, by communicating with one another and with third parties regarding the existence of this proceeding and of the Interim Order within forty-eight (48) hours after the service of the Interim Orders upon them;

- iv. Mr. White and Mr. Wright disobeying paragraphs 2J) and 2K) of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose to the independent supervising solicitor and the Plaintiffs' solicitor any of the financial information, as required at paragraphs 2J) of the Interim Orders, and by refusing to provide any consent to authorize financial institutions or other service providers to make such disclosures, as required at paragraphs 2K) of the Interim Orders;
- v. Mr. White and Mr. Wright disobeying paragraph 2A) of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by:
 - 1. developing, operating, maintaining, promoting, providing support, selling subscriptions, or authorizing anyone to sell subscriptions to unauthorized IPTV services, including the Beast IPTV Service;
 - 2. developing, maintaining, updating, hosting, distributing, promoting or selling any software application that provides access to unauthorized IPTV services, including the Beast IPTV Service;

3. operating, maintaining, updating, hosting, promoting or selling access to the Internet domains and subdomains through unauthorized IPTV services, including the Beast IPTV Service;

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, and by failing to take the necessary steps to ensure that such persons would cease these activities after service of the Interim Orders upon the Defendants.

6. The affidavits of Mr. Andrew McGuigan and of Mr. Yves Rémillard, both dated November 30, 2020, filed in support of this motion shall be treated as confidential and kept under seal, pursuant to Rule 151 of the *Federal Courts Rules*.
7. Costs to the Plaintiffs for the present motion and for the Plaintiffs' Motion for the Interim Orders, to be calculated on the basis of brief submissions of no more than three (3) pages (excluding their bill of costs and relevant evidence) to be served and filed within fifteen (15) days of this Order, followed by submissions by the Defendants within five (5) days of the submissions of the Plaintiffs having been filed.

“Yvan Roy”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1176-20

STYLE OF CAUSE: WARNER BROS. ENTERTAINMENT INC. ET AL
v TYLER WHITE dba BEAST IPTV ET AL

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN OTTAWA
(ONTARIO), MONTRÉAL (QUÉBEC) AND
MISSISSAUGA (ONTARIO)

DATE OF HEARING: DECEMBER 18, 2020

JUDGMENT AND REASONS: ROY J.

DATED: JANUARY 14, 2021

APPEARANCES:

Ryan T. Evans Evan Nuttall	FOR THE PLAINTIFFS
Howard Knopf	FOR THE DEFENDANT TYLER WHITE
John Russo	FOR THE DEFENDANT COLIN WRIGHT

SOLICITORS OF RECORD:

Smart & Biggar LLP Montréal, Québec	FOR THE PLAINTIFFS
Solicitor Ottawa, Ontario	FOR THE DEFENDANT TYLER WHITE
Pallett Valo LLP Lawyers & Trade-Mark Agents Mississauga, Ontario	FOR THE DEFENDANT COLIN WRIGHT