

Federal Court



Cour fédérale

Date: 20220224

Docket: T-759-16

Citation: 2021 FC 832

Ottawa, Ontario, February 24, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**BELL CANADA
BELL EXPRESSVU LIMITED PARTNERSHIP
BELL MEDIA INC.
VIDÉOTRON LTD.
GROUPE TVA INC.
ROGERS COMMUNICATIONS CANADA INC.
and ROGERS MEDIA INC.**

Plaintiffs

and

**L3D DISTRIBUTING INC. dba INL3D
MORCOR COMPUTERS 2000 LTD.
OTTAWA TEK CORPORATION dba OTTAWA TEK COMMUNICATIONS
and RAHEEL RAFIQ**

Respondent Defendants

and

**ANDROID BROS INC.
*and others***

Non-Respondent Defendants

AMENDED JUDGMENT AND REASONS

I. Overview

[1] The Plaintiffs broadcast, or retransmit broadcasts of, a wide variety of television programming in Canada. The advent of pre-loaded set-top boxes and internet protocol television (or IPTV) services has facilitated unauthorized access by Canadian users to content, including the Plaintiffs' content, such as live television broadcasts, on-demand television programming, and live sporting events.

[2] The Respondent Defendants have advertised and sold pre-loaded set top boxes and IPTV services in Canada online and at brick-and-mortar locations, thus providing unauthorized access to the Plaintiffs' content.

[3] In 2016, the Plaintiffs commenced an action for copyright infringement and unlawful dealing in prohibited equipment against an initial group of defendants, to which the Respondent Defendants later were added or impleaded. To date, none of the Respondent Defendants has responded to or participated in any way in the action.

[4] The Plaintiffs thus seek default judgment against the Respondent Defendants, which I grant for the reasons and on the terms that follow.

II. Background

(1) The Parties

[5] The Plaintiffs, Bell Media, Rogers Media and TVA [together, Media Plaintiffs] are well-known Canadian broadcasters that own and operate television stations (such as, CTV, City, TVA, TSN, Discovery Channel, and Sportsnet) throughout Canada [Plaintiffs' Stations]. They broadcast a wide variety of television programming (such as Game of Thrones, Veep, SportsCentre, The Middle, Sportsnet Central, L'Impact cette semaine, and Le TVA Sports) for which they own the exclusive Canadian rights to communicate to the public by telecommunication via television and online broadcasts [Plaintiffs' Programs]. The Media Plaintiffs have invested substantial sums in producing and/or acquiring rights in the Plaintiffs' Programs – in excess of: \$1.7 billion in 2015 and \$2.4 billion in 2019.

[6] The Plaintiffs, Bell Canada and Bell ExpressVu, Rogers Cable and Vidéotron [together, Distribution Plaintiffs] are broadcast distribution undertakings [BDUs], under the *Broadcasting Act*, SC 1991, c 11. They receive television broadcasting signals from broadcasters located in Canada, the United States and elsewhere in the world, including from the Plaintiffs' Stations, and retransmit them to subscribers by telecommunication.

[7] The Plaintiffs, Bell Media and Vidéotron also directly broadcast television programming on CraveTV and Club illico, respectively, which are subscription-based, on-demand streaming services similar to Netflix.

[8] The Distribution Plaintiffs are among the largest BDUs in Canada. Together, they served approximately 6.3 million Canadian television subscribers in 2016, and accounted for about 56% of subscribers and 57% of subscriber revenue in 2018. The Distribution Plaintiffs distribute encrypted television programming, and subscribers are provided, under contractual conditions, with the means and authorization to decrypt the signal carrying the programming.

[9] The Respondent Defendants, INL3D, Morcor, Ottawa Tek, and Raheel Rafiq, the sole director of Ottawa Tek [together, Packagers], are a number of businesses and individual that have advertised, offered for sale and sold pre-loaded set-top boxes and IPTV services. Their activities and status, as investigated by the Plaintiffs, are described in greater detail below.

(2) Pre-loaded Set-top Boxes

[10] A set-top box can turn any standard television into a “smart” television. Once the user connects it to the television and the Internet, the software applications installed on the set-top box permit the user, for example, to browse the Internet, access emails or watch videos, displayed on their television. Users also can use set-top boxes to stream data content. In other words, they permit users to listen to or view content at the time of the transmission, resulting in only a temporary copy of the transmitted data file on the user’s hard drive: *Rogers*

Communications Inc v Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 35 [*Rogers*] at para 1.

[11] Using personal computers or set-top boxes, users can connect to file sharing websites or servers, known as streaming sites, and request a file, such as a television show or movie, from a

site's collection of multimedia files. The streaming site will transmit the requested file over the Internet to the user's personal computer or set-top box in a manner similar to broadcasting. A video file, or portions of it, will automatically be deleted from the set-top box as the user progresses through the content, has watched the video, or once the user has turned off the set-top box.

[12] Some streaming sites or services, such as Netflix, Amazon Video, Crave, and Club illico, provide legitimate access to video content on a subscription basis. The Internet is also home, however, to illegitimate streaming sites that obtain unauthorized or pirated copies of video content and provide public access to such content free of charge, without oversight or authorization from the affected rights holders.

[13] Many applications developed for set-top boxes have legal uses. Others, however, have been designed to access illicit streaming sites and make unauthorized content available to users. The installation and configuration of applications designed to access infringing content requires some skill to overcome technical barriers. Circumvention of those barriers has spawned an industry serviced by individuals and businesses known as "packagers" that sell to consumers preconfigured set-top boxes with applications and settings for accessing unauthorized content, that is, pre-loaded set-top boxes.

[14] Pre-loaded set-top boxes allow users to gain unauthorized access to a large amount of content on an on-demand or live basis. Depending on how the pre-loaded set-top boxes are configured, they can permit users to, among other things:

- install “add-ons” to access unauthorized content, including pre-recorded television programs, live television broadcasts, and movies, such as with a media player software application known as KODI;
- connect to private IPTV servers (without the need for an application like KODI and “add-ons”) that stream unauthorized broadcasts of television stations, including television programming, provided by a licensed BDU, and retransmit the broadcasts on the Internet without authorization; and
- access unauthorized streams of television programming and movies on an on-demand basis, including permanently downloading content, such as with a media player application known as Showbox that can be installed on set-top boxes with the “Android” operating system (much like the KODI application, but without the need for “add-ons”); the sole purpose of Showbox is to provide users with unauthorized on-demand access to infringing content and it is advertised on its website as being “free movies and TV shows streaming app for the Android” and as “one of the best free Android apps as it allows users to watch movies in HD for free.”

[15] The sale of pre-loaded set-top boxes and unauthorized IPTV services by packagers usually involves a monthly subscription, at a significantly lower cost than an average legitimate television subscription, while providing access to substantially more programs and stations than otherwise would be available.

(3) Respondent Defendants’ Activities and Status

[16] INL3D previously advertised, offered for sale, and sold online and through brick-and-mortar stores in Cambridge, Guelph and London, Ontario at least three models of pre-loaded set-top boxes, namely, “Spectra Quad Core,” “Intra Quad Core,” and “Ultra Quad Core.” In addition, INL3D provided demonstrations to customers of its pre-loaded set-top boxes at the stores and offered for sale an unauthorized IPTV service, including technical support, that it advertised as providing access to “[h]undreds of channels for LESS than the cost of Basic Cable!” and to more than 174 high-definition channels.

[17] The Plaintiffs' investigations disclosed that through the sale of the pre-loaded set-top boxes and unauthorized IPTV service, INL3D previously provided access to a selection of the Plaintiffs' Programs representing at least 386 individual works. To the Plaintiffs' knowledge, INL3D's stores and website appear to have closed or gone inactive, subsequent to being added to the Plaintiffs' action. INL3D maintains, however, an active corporate status.

[18] Ottawa Tek previously advertised, offered for sale, and sold online and through a brick-and-mortar store located in Ottawa, Ontario pre-loaded set-top boxes, including the "Amlogic M8S" Android model, and subscriptions to an unauthorized IPTV service. Ottawa Tek promoted its pre-loaded set-top boxes as "Unlimited TV Streaming Box" providing "Over 700 Live Channels, Free TV, Movie & Music." Raheel Rafiq had a declared address that corresponded with the store's office address at the Ottawa location. Mr. Rafiq responded to investigator's online inquiries, and was the only Ottawa Tek personnel in attendance at the store. The Plaintiffs are not aware of his current location or activities.

[19] The Plaintiffs' investigations disclosed that through the sale of pre-loaded set-top boxes and unauthorized IPTV service, Ottawa Tek and Mr. Rafiq provided access to a selection of the Plaintiffs' Programs representing at least 1,408 individual works. Subsequent to being impleaded in the action, Ottawa Tek was dissolved on October 11, 2019. The Plaintiffs, however, maintain their action against Ottawa Tek by reason of Rule 116 of the *Federal Courts Rules*, SOR/98-106 [FCR].

[20] Morcor previously advertised, offered for sale, and sold online and through a brick-and-mortar store located in St. Catharines, Ontario at least four models of pre-loaded set-top boxes, namely “Himedia H8 Lite,” “Himedia H8 Plus,” “Himedia Q5 Pro” and “Himedia Q10 Pro,” as well as subscriptions to an unauthorized IPTV service. It also provided demonstrations to customers of its pre-loaded set-top boxes, including how to use KODI add-ons pre-loaded on the devices, and technical support. Further, Morcor similarly promoted its pre-loaded set-top boxed and unauthorized IPTV services as providing “...over 300+ Channels Of Local and Specialty TV Channels,” including “CBC, CTV, Global, City..... As Well specialty channels such as TLC, DIY, DISCOVERY, HBO, MOVIE TIME and Much More.”

[21] The Plaintiffs’ investigations disclosed that through the sale of pre-loaded set-top boxes and unauthorized IPTV service, Morcor provided access to a selection of the Plaintiffs’ Programs representing at least 1,136 individual works. To the Plaintiffs’ knowledge, however, Morcor ceased openly offering to sell pre-loaded set-top boxes after it was added to the action, although it continues to maintain its corporate status and to operate its store.

[22] To obtain the above information about the Respondent Defendants, the Plaintiffs’ investigators, among other things, purchased pre-loaded set-top boxes from each of them to determine if the devices provided unauthorized access to the Plaintiffs’ Stations and Programs. The investigators tested the devices twice for the availability of on-demand content and live content, including the Plaintiffs’ Stations and Programs, and confirmed their accessibility.

[23] As established by the Plaintiffs' evidence, the investigations disclosed that substantially more of the Plaintiffs' programming is available through the pre-loaded set-top boxes. For practicality, however, the above estimates of the total number of individual works that could be accessed in each case - 386 in the case of INL3D; 1,408 in the case of Ottawa Tek and Mr. Rafiq; and 1,136 in the case of Morcor - were limited to the broadcast schedule of a given Plaintiffs' Program. These estimates also were limited to the period between the date of purchase of the relevant Respondent Defendant's device and the date when the Respondent Defendant was served with the Plaintiffs' claim, but not for the entire period of infringement, which is unknown to the Plaintiffs.

(4) Harm Caused by Respondent Defendants' Activities

[24] The Plaintiffs admit that it is difficult to quantify the impact on their respective businesses directly attributable to the Respondent Defendants' activities.

[25] The Plaintiffs assert unauthorized access to and distribution of television content on the Internet (i.e. "content piracy") can lead to changes in consumer behaviour and, hence, significant negative financial consequences for content owners and distributors, such as the Media Plaintiffs and the Distribution Plaintiffs respectively. They point to CRTC estimates that, between 2015 and 2018, subscriptions to television services in Canada declined by about 518,000 (equating to an average rate of decline of about 1.14%), with a resultant decrease in annual revenues of about \$528 million (equating to an average rate of decline of about 1.48% annually). Specialty and pay television services have seen average percentage declines of about double.

[26] The Plaintiffs further admit these declines in subscriptions result only partly from content piracy, such as that explicitly encouraged by the Respondent Defendants. In support, the Plaintiffs point to advertising involving the phrases and hashtags: “your ‘cable-cutting’ combination for LESS!” (by INL3D); “No More Cable Bills” (by Ottawa Tek); and “#freemovies” and “#freetv” (by Morcor).

III. Procedural History

[27] To say that the Plaintiffs, by their litigation, are playing a long game of “whack-a-mole” in attempting to address the infringements and the attendant harm to their respective businesses occasioned by the pre-loaded set-top box industry is an understatement.

[28] The Plaintiffs initiated this action on May 12, 2016 against a group of five (5) initial defendants. In their claim, the Plaintiffs alleged, among other things, that by selling pre-loaded set-top boxes and subscriptions to unauthorized IPTV services that made the Plaintiffs’ programming available to users without authorization, the defendants infringed the Plaintiffs’ copyright in their television programming, and unlawfully dealt in equipment contrary to the *Radiocommunication Act*, RSC 1985, c R-2.

[29] In parallel, the Plaintiffs also filed a motion for an interim and interlocutory injunction against the initial five defendants, seeking to enjoin them from configuring, advertising, offering for sale and selling pre-loaded set-top boxes and subscriptions to unauthorized IPTV services. Justice Tremblay-Lamer (as she then was) issued an interlocutory injunction [Interlocutory Injunction Order]: *Bell Canada v 1326030 Ontario Inc (iTVBox.net)*, 2016 FC 612 [*Bell Canada*

FC 2016]. The Interlocutory Injunction Order also provided a mechanism for impleading additional defendants and extending the injunction to newly added defendants, but subject to any new defendant's ability to seek a variation of the order. On appeal, the Federal Court of Appeal upheld the Interlocutory Injunction Order: *Wesley (Mtlfreetv.com) v Bell Canada*, 2017 FCA 55.

[30] Subsequent to the issuance of the interlocutory injunction order, the Plaintiffs have impleaded approximately 175 defendants involving ten amendments to the Statement of Claim, as of the filing of this default judgment motion, and have obtained consent judgment against some of the added defendants. The Plaintiffs' litigation also has involved related Anton Piller (*Bell Canada v Lackman*, 2018 FCA 42) and contempt proceedings (*Bell Canada v Vincent Wesley (MTL FreeTv.com)*, 2018 FC 66; *Bell Canada v Red Rhino Entertainment Inc*, 2019 FC 1460).

[31] The Plaintiffs now seek default judgment *ex parte*, as permitted by *FCR* Rule 210(2), against selected defendants that did not file a Statement of Defence, but not against all of them at this time. The Plaintiffs chose the Respondent Defendants because of their prominence on the Internet, their operation of brick-and-mortar locations, as well as their current or former status as incorporated commercial entities. INL3D was served with the First Amended Statement of Claim dated June 20, 2016, along with the Interlocutory Injunction Order, on June 21, 2016. Ottawa Tek and Raheel Rafiq, and Morcor, were served with the Sixth Amended Statement of Claim dated May 8, 2017 and the Interlocutory Injunction Order on May 10 and 12, 2017 respectively.

[32] I note that the Plaintiffs written representations on this motion are almost triple the allowable length, contrary to *FCR* Rule 70(4). Further, the Plaintiffs did not request a departure from or variance of this Rule. The 88-page submission thus constitutes an irregularity pursuant to *FCR* Rule 56. No party complained, however, about the length of the Plaintiffs' written representations: *FCR* Rule 58. This is not surprising because the Respondent Defendants have neither defended nor participated in some other manner in the action.

[33] In the circumstances, because of the complexity of the matter, including the number of defendants impleaded, and because the Plaintiffs intend to use this motion as a template or foundation for future motions for default judgment in this matter, I am prepared to accept the Plaintiffs' written representations, overlong as they are, further to *FCR* Rules 55 and 3.

[34] Nonetheless, I remind the Plaintiffs that, with respect to the *FCR* Rule 70, "[t]he 30 page limit and the thrice-repeated requirement of conciseness apply to even the most complex, high-stakes appeals on the merits": *Forestethics Advocacy Association v Canada (Attorney General)*, 2014 FCA 182 [*Forestethics*] at para 21. Further, "[t]he aim of Rule 70 is to have counsel advance only central and important points, not everything that can possibly be imagined": *Forestethics*, at para 22. The Court's expectation is that the Plaintiffs will comply with the thirty-page limit, where applicable to any future steps, and properly seek leave of the Court to exceed this page limit with justification, bearing in mind that such requests generally "are 'granted sparingly' and are exceptional": *Forestethics*, at para 24.

IV. Summary of Relief Sought

[35] The Plaintiffs seek several declarations including the subsistence of copyright in cinematographic works identified in Annex “A” below [Plaintiffs’ Works] and the Respondent Defendants’ infringement in the works in several respects of the Plaintiffs’ exclusive right to communicate those works to the public in Canada by telecommunication via television broadcast [Plaintiffs’ Copyright], as broken down by Respondent Defendant and relevant shows in Annex “B” below. Further, the Plaintiffs seek a declaration that the Respondent Defendants’ activities involving pre-loaded set-top boxes have contravened the *Radiocommunication Act*.

[36] The Plaintiffs also seek, against each of the Respondent Defendants, a permanent injunction, statutory damages (\$20,000 per work infringed), punitive damages (\$1,000,000), and lump-sum costs (\$50,000) for a portion of their solicitor-client fees.

V. Issues

[37] The main issue for the Court’s determination is whether the Plaintiffs have met their burden of satisfying the test for default judgment and, if yes, the relief to which they are entitled in the circumstances. This entails a consideration of the following subsidiary issues:

- (i) Are the Respondent Defendants in default;
- (ii) Does copyright subsist in the Plaintiffs’ Works and, if yes, do the Plaintiffs hold or are they entitled to exercise copyright in those works;
- (iii) Have the Respondent Defendants infringed the Media Plaintiffs’ copyright by making the Plaintiffs’ Programs available to the public by telecommunication, without the Plaintiffs’ consent;

- (iv) Have the Respondent Defendants authorized infringement of the Media Plaintiffs' copyright with respect to the streaming sites' communication of the Plaintiffs' Programs to the public by telecommunication, without the Plaintiffs' consent;
- (v) Did the Respondent Defendants knowingly induce infringement of the Media Plaintiffs' copyright in the Plaintiffs' Programs;
- (vi) Have the Plaintiffs established the personal liability of Raheel Rafiq, the sole director of Ottawa Tek; and
- (vii) Did the Respondent Defendants' dealings in the pre-loaded set-top boxes constitute an offence under the Radiocommunication Act, thus giving rise to a private cause of action against them by the Plaintiffs?

[38] Having regard to the relevant legal principles summarized below, I find all these questions answered affirmatively for the reasons that follow.

VI. Relevant Provisions

[39] See Annex "C" below.

VII. Analysis

[40] Having regard to the relevant legal principles and their application to this matter, I am satisfied that the Plaintiffs have met their burden and hence, default judgment is warranted against the Respondent Defendants. In the reasons below, I summarize the applicable legal principles and then address their applicability to the circumstances of this matter. Finally, I determine the relief to which the Plaintiffs are entitled.

(1) Relevant Legal Principles

[41] To succeed on a motion for default judgment, a plaintiff first must assure the Court (in the sense of show or establish) that the defendant indeed is in default (in the sense that the plaintiff has filed and served the defendant with the statement of claim and the defendant has failed to serve and file a statement of defence in the prescribed period of time for doing so or in any other time permitted by the Court). Although a defendant may be in technical default, default judgment nonetheless may not be appropriate if, for example, the parties have engaged in extensive discussions about the conduct of the litigation or, I add, possible settlement: *Saint Anna Bakery Ltd v Cheung's Bakery Products Ltd* (1992), 45 CPR (3d) 198, 58 FTR 85 (TD).

[42] More importantly, default judgment also may not be appropriate if the plaintiff's affidavit evidence filed in support of the motion, pursuant to the *FCR* Rule 210(3), does not establish the plaintiff's claim(s), on a balance of probabilities. Further, absent any admitted allegations of fact, the plaintiff's claims are deemed denied: *FCR* Rule 184; see also *Ragdoll Productions (UK) Ltd v Doe*, 2002 FCT 918, paras 23-23. In other words, where the defendant has not filed a Statement of Defence, every allegation in the Statement of Claim must be treated as denied: *Aquasmart Technologies Inc. v. Klassen*, 2011 FC 212 [*Aquasmart*] at para 45.

[43] In sum, the Plaintiffs here have the burden of showing and must lead evidence that establishes: (1) the Respondent Defendants are in default, and (2) the claims set out in their Statement of Claim, on a balance of probabilities, and (3) the Plaintiffs' entitlement to the relief they seek: *BBC Chartering Carriers GMBH & CO KG v Openhydro Technology Canada*

Limited, 2018 FC 1098 at para 15; *Teavana Corp v Teayama Inc*, 2014 FC 372 at para 4; *Aquasmart*, above at para 45; *Louis Vuitton Malletier SA v Yang*, 2007 FC 1179 at para 4.

(2) Application of the Principles

(i) *Are the Respondent Defendants in default?*

[44] The first step for succeeding on this motion is taken easily. The Plaintiffs have established, with affidavits of service, that the Respondent Defendants all were served several years ago with the Statement of Claim (as amended), along with the Interlocutory Injunction Order, and that they have not filed a Statement of Defence, within the 30-day time limit stipulated in the *FCR* Rule 204(a). Nor has any Respondent Defendant taken any other steps in the action, such as expressing an intention to defend themselves despite being put on notice of their default status and the possibility of default judgment proceedings.

(ii) *Does copyright subsist in the Plaintiffs' Works and, if yes, do the Plaintiffs hold or are they entitled to exercise copyright in those works?*

[45] Noting that registration is not a prerequisite to the subsistence of copyright in Canada, I am satisfied that, on a balance of probabilities, copyright subsists in the Plaintiffs' Works in the circumstances. I further am satisfied that, because the Plaintiffs either own the copyright or are the exclusive licensees, they are entitled to exercise copyright in the Plaintiffs' Works, including a right of action for infringement and the right to communicate the Plaintiffs' Programs to the public by telecommunication.

[46] The Plaintiffs submit that the Plaintiffs' Works listed in Annex "A" represent only a subset (that they practicably could assert), of the many cinematographic works in which they own rights in Canada. Annex "A" below divides the asserted works into two types:

- (a) those for which the Media Plaintiffs, being corporations headquartered in Canada, a Berne Convention country, allege they are the "maker/owner" of the works (typically, original works aired live on the Plaintiffs' Stations), and hence, own the subsisting copyright; or
- (b) those in which the Media Plaintiffs allege they have the exclusive Canadian rights, by reason of exclusive licences with the copyright owner, to communicate the programs to the public by telecommunication via television and online broadcasts.

[47] Copyright subsists in original literary, dramatic, musical and artistic works, and in respect of a cinematographic work (a subset of dramatic works), the maker had its headquarters in a treaty country (i.e. a Berne Convention country), where the maker is a corporation: *Copyright Act* section 5(1)(b)(i). In civil proceedings where the defendant puts the existence of copyright or the plaintiff's title in issue, copyright is presumed to subsist in the relevant works and the maker (in the case of cinematographic works) is presumed to be the copyright owner, unless the contrary is shown: *Copyright Act* section 34.1(1). In addition, the grant of an exclusive copyright licence includes a right of action for infringement: *Copyright Act* sections 13(6) and 13(7).

[48] Although the Respondent Defendants have not defended the action and, therefore, technically they have not put the subsistence of Plaintiffs' Copyright and their title in issue, nonetheless I find that subsection 34.1(1) acts in favour of the Plaintiffs in the circumstances because the Plaintiffs' claims are deemed denied by reason of the *FCR* Rule 184.

[49] In any event, I am satisfied that the following of the Plaintiffs' affidavits support the conclusion that the Media Plaintiffs are each a maker of original cinematographic works within the meaning of the term "maker" as defined in section 2 of the *Copyright Act*, (i.e. "in relation to a cinematographic work, the person by whom the arrangements necessary for the making of the work are undertaken"):

- Affidavit of Nikki Moffat, President of Radio and Local Television and Senior Vice President, Finance at Bell Media Inc., solemnly affirmed on July 15, 2019 [Moffat Affidavit];
- Affidavit of Michael Webber, Vice President, Legal Counsel of Rogers Communications Canada Inc., solemnly affirmed on May 6, 2016 [Webber Affidavit]; and
- Affidavit of Serge Fortin, Vice-President of TVA Nouvelles and TVA Sports at Groupe TVA Inc., solemnly affirmed on July 16, 2019 [Fortin Affidavit].

[50] More specifically, the making by the relevant Media Plaintiff, of those particular works listed in Annex "A" in respect of which the Plaintiffs allege they are the maker/owner, in my view is sufficiently described in the Moffat, Webber and Fortin Affidavits respectively to establish the latter allegation.

[51] Although the Plaintiffs' evidence could have been more explicit regarding the subsistence of copyright in those works for which the Plaintiffs allege they are exclusive licensees, I also am satisfied, on a balance of probabilities, that it does. The following of the Plaintiffs' affidavits support the conclusion that the Media Plaintiffs are exclusive licensees of the television programs they broadcast, the licences for which they acquired from the rights holders:

- Affidavit of Shawn Omstead, Vice President, Residential Products and Services at Bell Canada, solemnly affirmed on May 6, 2016 [Omstead Affidavit];
- Webber Affidavit; and

- Affidavit of Corinne Matte, paralegal employed by the firm of Smart & Biggar LLP, the solicitors of record for the Plaintiffs, solemnly affirmed on August 14, 2020 [Matte Affidavit].

[52] In addition to the statements about acquisition from the rights holders contained in the Omstead and Webber Affidavits, the Plaintiffs have provided, via the Matte Affidavit, copies of the original certificates of copyright registration issued by the Canadian Intellectual Property Office of confirmatory copyright licences for the applicable works, as well as copies of the confirmatory licences. A registration certificate is admissible evidence that the interest recorded on it has been granted and that the licensee registered is the holder of that interest: *Copyright Act* sections 53(2.2) and 53(3).

[53] I note the confirmatory licences identify the licensors (Home Box Office, Inc; Twentieth Century Fox Film Corporation; and Warner Bros International Television Distribution Inc, all with corporate offices in the United States of America, a Berne Convention country) as the owners of copyright in the works or television programs specified in the licences. In addition, the licences grant Bell Media (in the case of HBO) and Rogers Media (in the case of Twentieth Century Fox and Warner Bros) respectively with the exclusive right in Canada to communicate the specified works or television programs, or to make them available, to the public by telecommunication including via Internet and television broadcast, whether streamed or on demand.

[54] Both the certificates of registration and the confirmatory licences list those particular works that in turn are listed in Annex “A” and in respect of which the Plaintiffs allege they are exclusive Canadian licensee.

[55] The right to communicate a work in which copyright subsists to the public by telecommunication is one of the bundle of rights a copyright owner in Canada holds (i.e. that can be licensed or assigned individually or with other rights): *Copyright Act* section 3(1)(f). The Supreme Court of Canada has confirmed that the right to communicate a work to the public by telecommunication includes streaming of the work over the Internet: *Rogers*, above at para 56. The right to communicate a work to the public by telecommunication also includes making it available in a way that permits a person to access it from a place and time of their choosing (i.e. on demand): *Copyright Act* section 2.4(1.1).

(iii) *Have the Respondent Defendants infringed the Media Plaintiffs' copyright by making the Plaintiffs' Programs available to the public by telecommunication, without the Plaintiffs' consent?*

[56] I find that because only the Media Plaintiffs have rights in Canada to communicate the Plaintiffs' Programs or Works to the public by telecommunication, and because the Respondent Defendants have made those works available to the public without the Plaintiffs' permission, the Respondent Defendants thus have infringed the Media Plaintiffs' copyright: *Copyright Act* sections 3(1)(f) and 13(7), 2.4(1.1), 27(1). As held by the Supreme Court, “[i]t is an infringement for anyone to do, without the consent of the copyright owner, ‘anything that, by this Act, only the owner of the copyright has the right to do’ (s. 27(1)), including, ... the right ‘to communicate the work to the public by telecommunication . . . and to authorize any such acts’ (s. 3(1)(f). . . .)” [emphasis in original]: *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45 at para 42.

[57] The Plaintiffs acknowledge that the streaming sites and IPTV service operators are the persons engaged in communicating the Plaintiffs' Programs to the public by telecommunication, by hosting and transmitting the Plaintiffs' Programs from their websites or servers to users who individually initiate the request for streamed works, in a point-to-point manner: *Rogers*, above at paras 34. The communication by a streaming site is initiated by a user in the form of an interactive communication, involving "pull" technologies, as contrasted with the more traditional "pushing" of a broadcast to viewers by the broadcaster: *Rogers*, above at para 34. The Supreme Court noted, however, that the element of interactivity in the communication is not a limit on the applicability of the *Copyright Act* section 3(1)(f): *Rogers*, above at para 35.

[58] Further, the pre-loaded set-top boxes are configured for the intended purpose of connecting users to unauthorized content or streams of the Plaintiffs' Programs by providing the technical means to: browse, search, or otherwise navigate infringing content; receive a user's request to access specific programs; search for and connect a user to available streams for viewing infringing content on an on-demand basis, receive the stream, and display it to the user (i.e. in response to the user's request). In other words, the pre-loaded set-top boxes allow users to gain unauthorized access to a large amount of television programming on a live or an on-demand basis. More specifically, they permit users to, among other things:

- Install "add-ons" to gain access to unauthorized content, including streaming of a large number of live television broadcasts;
- Connect to private IPTV services, that provide access to hundreds of television stations in various categories, and use a remote control to change stations or categories, as users otherwise could do by subscribing to legitimate television programming provided by a licensed BDU; and
- Access content sourced from streaming sites, including permanently downloading content.

[59] The Plaintiffs argue that most of the Respondent Defendants customers would not be able to access infringing content but for their purchase of a pre-loaded set-top box, as opposed to a standard set-top box or similar electronic device that has not been pre-loaded or configured with applications such as KODI or Showbox. The Plaintiffs' evidence establishes that to configure a set-top box, that then would permit the user to gain access to infringing content in the same or similar manner as an immediately functional, user-friendly pre-loaded set-top box, the user would have to possess the necessary technical aptitude and motivation to carry out a number of steps that could take some time. These steps include locating, obtaining and installing or configuring relevant applications and add-ons or IPTV services, and attempting to access infringing content.

[60] According to the Plaintiffs' evidence, this is not a straightforward feat. For example, add-ons that facilitate access to infringing content are not hosted on the official KODI add-on repository. This means that users who wish to install them not only must locate them somewhere else on the Internet but also must decipher installation instructions that seemingly are not user-friendly. For a computer engineer, these tasks took approximately 15 minutes. I am prepared to infer it could take someone with less skill and aptitude longer. Further, inherent in a market for pre-loaded set-top boxes are customers who, in my view, prefer the convenience of these devices in accessing infringing content immediately on purchase and activation, not to mention the low cost.

[61] I thus agree with the Plaintiffs that the Respondent Defendants' pre-loaded set-top boxes play an integral role in making infringing content available to users (i.e. the public) by telecommunication, as contemplated by subsection 2.4(1.1) of the *Copyright Act*.

[62] The Plaintiffs' investigators confirmed that the Respondent Defendants' pre-loaded set-top boxes have made the Plaintiffs' Programs accessible, broken down by Respondent Defendant in Annex "B" below. As Justice Tremblay-Lamer noted, "the only reason why many users have access to infringing content is because set-top boxes pre-loaded with KODI (and the proper add-ons), Showbox or a private IPTV service make it extremely easy to do so. ...[t]he Defendants market themselves to consumers specifically on the basis that their 'plug-and-play' set-top boxes make it easy to eliminate the need for a cable subscription": *Bell Canada FC 2016*, above at para 24.

[63] Further, Justice de Montigny noted in related litigation that the hosting and distribution of add-ons essentially make the Plaintiffs' Programs and Stations available to the public by telecommunication: *Bell Canada v Lackman*, 2018 FCA 42 [*Bell Canada FCA 2018*] at para 22. In my view, providing users with the ability to access and install add-ons via the pre-loaded set-top boxes accomplishes the same thing and, thus, similarly makes the Plaintiff's Programs or Works available to the public by telecommunication.

[64] In light of the Respondent Defendants' apparent business model (i.e. the promotion, offering for sale and selling of pre-loaded set-top boxes configured as described above), I also agree with the Plaintiffs that the possible limitation of liability under the *Copyright Act* section

2.4(1)(b), in relation to the kind of infringement described in subsection 31.1(1), likely would not have been available to the Respondent Defendants had they participated in the proceeding. The former provision applies to those who only provide a neutral means of communicating a work to the public by telecommunication (that is, where the provider's participation is "content neutral"): *Society of Composers, Authors and Music Publishers of Canada v Canadian Assn of Internet Providers*, 2004 SCC 45 at para 92; *Bell Canada FC 2016*, above at para 22; *Bell Canada FCA 2018*, above at paras 32 and 36.

[65] While I might consider a standard set-top to be a neutral means of communication, I find that pre-loaded set-top boxes are not technologically neutral. As well, the Respondent Defendants' participation in their chosen industry, and the acts in which they engage in furtherance, cannot be described in any way, in my view, as "content neutral."

(iv) *Have the Respondent Defendants authorized infringement of the Media Plaintiffs' copyright with respect to the streaming sites' communication of the Plaintiffs' Programs to the public by telecommunication, without the Plaintiffs' consent?*

[66] I find that the Plaintiffs have established the Respondent Defendants authorized copyright infringement in respect of the communication by the streaming sites of the Plaintiffs' Programs to the public by telecommunication, without their consent.

[67] Authorizing others to infringe copyright, in itself, is an act of infringement: *Copyright Act* sections 3(1) (last five words) and 27(1). Authorizing means to "sanction, approve and

countenance” and can be inferred from indirect acts that are less than positive: *CCH Canadian Ltd v Law Society of Upper Canada*, 2004 SCC 13 [*CCH*] at para 38.

[68] Authorizing the use of equipment, such as standard set-top boxes, that in turn could be used to infringe copyright, in itself, does not constitute authorizing infringement. Further, there is a presumption that an activity authorized by a person was done so in accordance with the law. This presumption may be rebutted, however, if it is shown that there was a certain relationship or degree of control between the alleged authorizer and the person(s) who committed the copyright infringement: *CCH*, above at para 38.

[69] By reason of their activities in locating, selecting and preinstalling applications found in the pre-loaded set-top boxes, and advertising, offering for sale and selling these devices, the Respondent Defendants are directly engaged, as Packagers, in the selection of content to which users will have access. Further, by promoting free access to hundreds of programs, the Respondent Defendants deliberately encourage consumers and potential customers to bypass legitimate ways of accessing content: *Bell Canada FC 2016*, above at para 22.

[70] In addition, the Respondent Defendants do more than simply offer for sale and sell subscriptions to unauthorized IPTV services. For example, the Respondent Defendants register the purchaser’s information with the service, activate the subscription on the pre-loaded set-top box and provide some instruction or technical support for accessing infringing content. I find in the circumstances, the Plaintiffs have established a sufficient relationship or degree of control, as

contemplated by *CCH*, to conclude the Respondent Defendants have authorized infringement of the Media Plaintiffs' copyright.

(v) *Did the Respondent Defendants knowingly induce infringement of the Media Plaintiffs' copyright in the Plaintiffs' Programs*

[71] In addition to the statutory causes of action available to the Plaintiffs in this matter, I am satisfied that the common law cause of inducement also is available to them in the circumstances and further, that the Respondent Defendants knowingly induced infringement of the Media Plaintiffs' copyright in the Plaintiffs' Programs by offering for sale and selling pre-loaded set-top boxes that facilitate the infringement by the users and the streaming sites.

[72] Inducement occurs when someone does something that leads another person to infringe an intellectual property right. In other words, someone (i) knowingly (ii) induces or procures (such as by offering for sale and selling a product, the use of which by the purchaser would be an infringement), and (iii) another to infringe the intellectual property right: *Hanson International Inc v Whirley Industries Inc*, 2002 FCT 1045 [*Hanson*] at para 17. The Court articulated this test in the context of a motion to strike a claim alleging industrial design infringement, as well as procurement and inducement of industrial design infringement.

[73] A similar test was described in a proceeding involving patent infringement and infringement by inducement as follows: (i) the act of infringement was completed by a direct infringer; (ii) completion of the act of infringement was influenced by the acts of the inducer, without which influence the infringement otherwise would not have taken place; (iii) the inducer

seller knowingly exercised the influence; that is, the seller knew their influence would result in the completion of the act of infringement: *MacLennan v Produits Gilbert Inc.*, 2006 FCA 204 at para 22.

[74] Although *Hanson*, in respect of the motion to strike, did not consider the applicability *per se* of the principle of inducement to industrial designs, I see no reason why this principle should be restricted to any particular type of intellectual property rights, such as patents (in the case of *MacLennan*). Thus, considering the test here, I find that first, the streaming sites that host and distribute the Plaintiffs Programs, **in response to users requests**, unlawfully infringe the Media Plaintiffs' exclusive right to communicate those programs to public by telecommunication.

[75] Second, the pre-loaded set-top boxes offered for sale and sold by the Respondent Defendants provide the means to enable substantial infringement by providing a user-friendly interface and curated sets of preinstalled applications that facilitate or encourage users to request and receive streams of infringing content. In other words, the infringement was influenced by, and otherwise would not have taken place without, the actions of the Respondent Defendants.

[76] Third, based on the Plaintiffs' evidence regarding the activities of the Respondent Defendants summarized above, and absent their participation in this proceeding, I am prepared to infer that the Respondent Defendants knew their activities would result in infringement of the Media Plaintiffs' copyright. In the words of Justice Tremblay-Lamer, the Respondent Defendants "deliberately encourage consumers and potential clients to circumvent authorized ways of accessing content... [and] market themselves to consumers specifically on the basis that

their “plug-and-play” set-top boxes make it easy to eliminate the need for a cable subscription”: *Bell Canada FC 2016* at paras 22-24.

[77] In my view, therefore, the test has been met here.

(vi) *Have the Plaintiffs established the personal liability of Raheel Rafiq, the sole director of Ottawa Tek?*

[78] In my view, the Plaintiffs have established Mr. Rafiq’s personal liability in the circumstances.

[79] My analysis of this issue begins with the premise that the “particular direction or authorisation [required] for personal liability [will] not be inferred merely from the fact of close control of a corporation [and] will not be inferred from the general direction which those in control must necessarily impart to its affairs”: *Mentmore Manufacturing Co, Ltd. et al v National Merchandising Manufacturing Co Inc et al*, (1978) 89 DLR (3d) 195 [*Mentmore*] at 203.

[80] The applicable test, however, as formulated by the Federal Court of Canada – Appeal Division (as it then was) in *Mentmore*, is this: “there must be circumstances from which it is reasonable to conclude that the purpose of the director or officer was not the direction of the manufacturing and selling activity of the company in the ordinary course of his relationship to it but the deliberate, wilful and knowing pursuit of a course of conduct that was likely to constitute infringement or reflected an indifference to the risk of it”: *Mentmore*, above at 204-205.

[81] Based on the Plaintiffs' evidence, and my factual findings above, regarding the activities of Ottawa Tek and Mr. Rafiq, the inescapable conclusion in my view is that he deliberately, wilfully, and knowingly pursued a course of conduct, involving the sale of pre-loaded set-top boxes, that was likely to constitute infringement or, at the very least, exhibited indifference to its risk. The industry itself is built on the concept of providing access to low or no cost television programming by wholesale copyright infringement.

(vii) *Did the Respondent Defendants' dealings in the pre-loaded set-top boxes constitute an offence under the Radiocommunication Act, thus giving rise to a private cause of action against them by the Plaintiffs?*

[82] I am persuaded that the Plaintiffs are entitled to relief under the *Radiocommunication Act* by reason of the Respondent Defendants' activities in contravention of this Act.

[83] The *Radiocommunication Act* makes it an offence to, among other things, offer for sale or sell, any equipment or device used or intended to be used to decode an encrypted subscription programming signal or encrypted network feed without authorization from the lawful distributor of the signal or feed, or to operate radio apparatus to receive encrypted signals or feeds that have been decoded without authorization: paragraphs 9(1)(c), 9(1)(d) and 10(1)(b).

[84] The Plaintiffs' evidence establishes that a pre-loaded set-top box typically is designed to connect to the Internet through an Ethernet cable or a Wi-Fi wireless network, the latter having a standard frequency in the range of 2 GHz to 6 GHz. Having regard to the definitions of "radio apparatus" and "radiocommunication or radio" in section 2 the *Radiocommunication Act*, I agree

with the Plaintiffs that a pre-loaded set-top box is a type of radio apparatus and, thus, falls within the prohibition contemplated by paragraph 9(1)(d) of this Act.

[85] The *Radiocommunication Act* also provides a civil right of action to those who hold copyright or a copyright licence in the content of the subscription programming signal or network feed or are permitted by a lawful distributor to communicate the signal or feed to the public: paragraphs 18(1)(a) and 18(1)(b). Further, the Federal Court is the court of competent jurisdiction: subsection 18(4).

[86] The Plaintiffs have established that the Media Plaintiffs are broadcasters who own and operate the Plaintiffs' Stations and hold either copyright or exclusive copyright licences in the Plaintiffs' Programs, and the Distribution Plaintiffs are broadcasting undertakings authorized to distribute the Plaintiffs' Stations and Programs. Each Plaintiff thus is entitled to seek and obtain remedies by way of damages, an accounting of profits and injunctive relief against the Respondent Defendants.

(3) To what relief are the Plaintiffs entitled?

[87] Subsection 34(1) of the *Copyright Act* and subsection 18(1) of the *Radiocommunication Act*, respectively, govern the types of relief the Plaintiffs may obtain in this case. As mentioned above, and pursuant to these provisions, the Plaintiffs seek declarations confirming the subsistence and infringement of copyright, and request a permanent injunction against the Respondent Defendants from engaging in further infringing activities. The Plaintiffs also seek statutory damages, punitive damages, costs, and pre- and post-judgment interest.

[88] The Plaintiffs also submit that the Respondent Defendants, Ottawa Tek and Raheel Rafiq should be held jointly and severally liable for copyright infringement. I agree, based on my applicable findings above.

[89] In the reasons below, I deal with each form of relief sought.

(i) *Declarations*

[90] Based on my findings in this matter, the Plaintiffs are entitled to the following declarations, and I so declare, that:

1. copyright subsists in the Plaintiffs' Works, consisting of the cinematographic works listed in Annex "A," and that the Plaintiffs hold exclusive rights to communicate those works in Canada by telecommunication, including via Internet and television broadcast, whether streamed or on demand;
2. by advertising, offering for sale and selling pre-loaded set-top boxes (containing software or which have been configured otherwise for accessing unauthorized television content, such as with add-ons and/or unauthorized IPTV services), including the "Spectra Quad Core," "Intra Quad Core," and "Ultra Quad Core" models in the case of INL3D, the "Amlogic M8S" Android model in the case of Ottawa Tek and Mr. Rafiq, and the "Himedia H8 Lite," "Himedia H8 Plus," "Himedia Q5 Pro" and "Himedia Q10 Pro" models in the case of Morcor, the Respondent Defendants have made the Plaintiffs' Works, as specified in Annex "B" available in a way that allows users of the pre-loaded set-top boxes to access those works by telecommunication from a place and a time individually chosen by the user, thus infringing Plaintiffs' Copyright, contrary to the *Copyright Act* sections 2.4(1.1), 3(1)(f) and 27(1);
3. by their acts described above, the Respondent Defendants have authorized the communication of the Plaintiffs' Works, as specified in Annex "B," to the public by telecommunication in Canada, contrary to the *Copyright Act* sections 2.4(1.1), 3(1)(f) and 27(1);
4. by their acts described above, the Respondent Defendants have knowingly induced users of pre-loaded set-top boxes to initiate acts of infringement of the Plaintiffs' Copyright, contrary to the *Copyright Act* sections 2.4(1.1), 3(1)(f) and 27(1); and
5. by their acts described above, the Respondent Defendants have distributed, offered for sale, sold, operated and possessed equipment and devices used or intended to be used as

radio apparatus for the purpose of receiving the Plaintiffs' encrypted subscription programming signals after they had been decoded otherwise than under and in accordance with an authorization from the corresponding Plaintiff, contrary to the *Radiocommunication Act* section 10(1)(b).

(ii) *Permanent Injunction*

[91] Jurisprudence confirms that where copyright infringement has been established, as I have found in this case, the copyright owner is entitled to an injunction restraining further infringement: *Trimble Solutions Corporation v Quantum Dynamics Inc*, 2021 FC 63 at para 66. I therefore order that the Respondent Defendants, by themselves or their shareholders, directors, officers, 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, are permanently enjoined and restrained from directly or indirectly:

1. manufacturing, importing, distributing, leasing, offering for sale, selling, installing, modifying, operating and/or possessing pre-loaded set-top boxes that are used or intended to be used to receive the Plaintiffs' subscription programming signals after they have been decoded otherwise than under and in accordance with an authorization from the respective Plaintiff;
2. authorizing or inducing anyone to initiate acts of infringement of the Plaintiffs' Copyright, including by configuring, advertising, offering for sale or selling pre-loaded set-top boxes ; and
3. advertising, offering for sale or selling subscriptions to third-party services, or other providers, that stream unauthorized retransmissions of the Plaintiffs' subscription programming signals for the Plaintiffs' Works over the Internet.

(iii) *Statutory Damages*

[92] In my view, it makes sense to pursue statutory damages in a case like this, as the Plaintiffs have done, where (i) it would require a substantial effort to try to estimate the actual

damages caused by the Respondent Defendants’ infringing activities, and (ii) the Respondent Defendants have not participated in the proceedings. Consequently, the Respondent Defendants’ unlawful profits, to which the Plaintiffs otherwise would be entitled under section 35 of the *Copyright Act* and subsection 18(1) of the *Radiocommunication Act*, cannot be ascertained.

[93] I note that the remedies to which the Plaintiffs are entitled under the *Radiocommunication Act* are not affected by those available to them under the *Copyright Act*: *Radiocommunication Act* section 18(6). That said, in light of the sizable statutory damages sought by the Plaintiffs under the *Copyright Act*, I believe that it would be tantamount to double recovery to award damages to the Plaintiffs by reason of the Respondent Defendants’ breach of the *Radiocommunication Act*, in addition to statutory damages: *Telewizja Polsat SA v Radiopol Inc*, 2006 FC 584 at para 53. I further note, however, that in any event the Plaintiffs propose to limit their claimed damages to those statutory damages awarded for infringement of the Plaintiffs’ Copyright.

[94] I thus focus instead on the following statutory damages that the Plaintiffs claim pursuant to section 38.1 of the *Copyright Act*, totaling \$58,600,000:

Defendant	Statutory Max: para 38.1(1)(a)	Total Infringed Works: Annex “B”	Total Damages
INL3D	\$20,000	386	\$7,720,000
Ottawa Tek & Raheel Rafiq	\$20,000	1,408	\$28,160,000
Morcor	\$20,000	1,136	\$22,720,000

[95] Statutory damages are assessed on the basis of “all infringements... for each work” and the copyright owner is entitled to an amount in the range of \$500 and \$20,000 per work, if the

infringements are for a commercial purpose: *Copyright Act* section 38.1(1)(a). There is no question that the infringements, about which the Plaintiffs complain in this case, were for a commercial purpose.

[96] As I previously have held, “statutory damages involve a case by case assessment of all relevant circumstances in order to achieve a just result”: *Rallysport Direct LLC v 2424508 Ontario Ltd*, 2020 FC 794 [*Rallysport*], at para 6. Further, “[e]vidence demonstrating the ease with which copyright infringement can be accomplished using modern technology may compel the need to deter further infringements”: *Rallysport*, above at para 6. In my view, plug and play devices such as pre-loaded set-top boxes make it easy for the Respondent Defendants and others (i.e. streaming sites) to infringe the Plaintiffs’ Copyright.

[97] In addition, “[t]he prescribed range of \$500 ... to \$20,000 ... per work for commercial infringements can be reduced ‘where there is more than one work in a single medium **and** where awarding [even] the minimum per work would yield a total award that is grossly out of proportion to the infringement’” [emphasis in original]: *Rallysport*, above at para 7. A summary of other principles applicable to the assessment of statutory damages can be found in *Rallysport*, above at paras 6-13.

[98] The following chart (an earlier version of which can be found in found in *Rallysport*, above at para 22) illustrates some of this Court’s previous statutory damages awards:

Decision	# and Types of Works	Amount/Work	Total Award
<i>Wing v Velthuisen, 2000 CanLII 16609 (FC)</i>	1 Diary	\$10,000	\$10,000
<i>Telewizja Polsat SA v Radiopol Inc, 2006 FC 584</i>	2009 TV Shows	\$150	\$301,350
<i>Microsoft Corporation v 9038-3746 Quebec Inc, 2006 FC 1509</i>	25 CDs (containing computer software programs)	\$20,000	\$500,000
<i>Louis Vuitton Malletier SA v Yang, 2007 FC 1179</i>	2 Multicoloured Monogram Prints	\$20,000	\$40,000
<i>Trader v CarGurus, 2017 ONSC 1841</i>	152,532 Car Photos	\$2	\$305,064
<i>Collett v Northland Art Company Canada Inc, 2018 FC 269</i>	6 Photos and the Website home page	\$7500	\$45,000
<i>Century 21 Canada Limited Partnership v Rogers Communications Inc, 2011 BCSC 1196</i>	99 Photographs, 29 Real Property Descriptions	\$250	\$32,000
<i>Ritchie v Sawmill Creek Golf & Country Club Ltd, 2003 CanLII 24511</i>	9 Photographs, 5 Enlargements	\$200	\$2,800
<i>Royal Conservatory of Music v Macintosh (Novus Via Music Group Inc), 2016 FC 929</i>	21 Musical Works	\$500	\$10,500
<i>Nintendo of America Inc v King, 2017 FC 246 [Nintendo]</i>	585 Games	\$20,000	\$11,700,000
<i>Thomson v Afterlife Network Inc, 2019 FC 545 [Thomson]</i>	1,141,790 Obituaries	\$8.76	\$10,000,000
<i>Young v Thakur, 2019 FC 835</i>	2 Songs	\$1,000	\$2,000
<i>Louis Vuitton Malletier SA v Wang, 2019 FC 1389</i>	2 Multicolored Monogram Prints	\$20,000	\$40,000
<i>Rallysport Direct LLC v 2424508 Ontario Ltd, 2020 FC 794</i>	1430 Photos	\$250	\$357,500

[99] In determining the appropriate award of statutory damages, subsection 38.1(5) of the *Copyright Act* provides that the Court shall consider all relevant factors including the following: (i) the good faith or bad faith of the defendant; (ii) the conduct of the parties before and during the proceedings; and (iii) the need to deter other infringements of the copyright in question. I address each of these factors in turn below, as well as whether the maximum statutory damages claimed by the Plaintiffs are “grossly out of proportion to the infringement.”

(a) Good or Bad Faith of the Respondent Defendants

[100] I agree with the Plaintiffs that the Respondent Defendants knowingly and deliberately authorized and induced unlawful (re)broadcasts of the Plaintiffs’ Programs and the Plaintiffs’ Stations. Further, the Respondent Defendants have ignored this Court’s process by failing to provide any response to the Court or the Plaintiffs, despite having been served personally with the Plaintiffs’ Statement of Claim (as amended) and the Interlocutory Injunction Order, and having been put on notice of their default status.

[101] I also agree that the Respondent Defendants’ activities have caused, and continue to cause, serious and enduring harm to the Plaintiffs because the use of sold pre-loaded set-top boxes results in illegal distribution of the Plaintiff’s programming, not only at the time of first use following the user’s purchase, but also with each use afterward, thus authorizing broadcasts of programming that is growing and potentially unlimited. To some extent, the Plaintiffs’ impleading of numerous defendants in these proceedings, now totaling about 175, reflects the growth of this illicit industry. In addition, low cost offerings of the Respondent Defendants’ and others like them, at the very least, provide an incentive for subscribers or potential subscribers of

the Plaintiffs' programming to cancel their subscriptions or to not become subscribers in the first place: *Bell Canada FC 2016*, at para 31.

[102] In my view, the Respondent Defendants knew or ought to have known the extent of and enduring harm caused by their infringing activities summarized above. I thus find that, by having sold and continuing to sell pre-loaded set-top boxes, the Respondent Defendants have acted in bad faith, and that this factor favours the Plaintiffs.

(b) Conduct of Parties Before and During the Proceedings

[103] The Plaintiffs have expended significant resources in conducting investigations including hiring private investigators to confirm the Respondent Defendants' infringing activities. Despite being served with the Statement of Claim and being notified about their default, the Respondent Defendants have not responded in any manner. I therefore conclude that this factor favours the Plaintiffs.

(c) Need to Deter Infringement

[104] In my view, the growth of the illicit pre-loaded set-top box industry underscores the need to deter infringement. Such growth is exemplified by at least two considerations. The first is the number of defendants now impleaded in this matter - about 175. The second is the potential number of Plaintiffs' Programs or Works involved in the infringing activity. The Plaintiff's evidence establishes that the number of Plaintiff's Works claimed above - 2,930 (particularized

in Annex “B”) - represent but a subset of the total infringements (that would require a substantial effort to attempt to quantify). I thus conclude that this factor strongly favours the Plaintiffs.

(d) Grossly Out of Proportion to the Infringement?

[105] The maximum statutory damages claimed by the Plaintiffs in this case are substantial, in part because of the number of infringements. In considering whether they are grossly disproportionate, I note that the Plaintiffs have obtained consent judgment against Defendant 2460269 Ontario Inc. dba Infinity TV; on March 20, 2019, Justice Gascon ordered that the Defendant pay the Plaintiffs the sizable lump sum of \$5,000,000 for damages, profits, punitive and exemplary damages, and costs. I also note this Court’s more recent awards of statutory damages have fallen in the range of \$10,000,000 to \$12,000,000: *Nintendo* and *Thomson* above. I thus find an approximately midpoint amount of \$10,000 to be more proportionate, especially given the Plaintiffs’ intention to pursue default judgment against more defendants in this matter and in light of the Plaintiffs’ admission that declines in subscriptions result only partly from content piracy.

(e) Amount of Statutory Damages Awarded

[106] Based on the above, I therefore award the Plaintiffs statutory damages in the total amount of \$29,300,000 (in Canadian dollars), with the breakdown and calculation for each of the

Respondent Defendants (with Ottawa Tek and Raheel Rafiq having joint and several liability) as provided in the following chart:

Defendant	Statutory Max: para 38.1(1)(a)	Total Infringed Works: Annex “B”	Total Damages
INL3D	\$10,000	386	\$3,860,000
Ottawa Tek & Raheel Rafiq	\$10,000	1,408	\$14,080,000
Morcor	\$10,000	1,136	\$11,360,000

(iv) *Punitive Damages*

[107] Given the applicable legal principles summarized below, and having considered subsection 38.1(7) of the *Copyright Act*, I find a punitive damages award of \$100,000 for each of INL3D, Ottawa Tek and Raheel Rafiq (jointly and severally), and Morcor, for a total award of \$300,000, is appropriate in this case. Having chosen to operate in an industry that inherently and blatantly disregards the Plaintiffs’ rights, the Respondent Defendants have engaged, in my view, in egregious conduct warranting denunciation and the additional sanction of punitive damages.

[108] I start from the premise that “[p]unitive damages ‘are very much the exception rather than the rule’”: *Bauer Hockey Corp v Sport Masko Inc (Reebok-CCM Hockey)*, 2014 FCA 158 [*Bauer*] at para 26, citing *Whiten v Pilot Insurance Co*, 2002 SCC 18 [*Whiten*] at para 94. Further, punitive damages “should be resorted to only in exceptional cases and with restraint”: *Whiten*, above at para 69. The question for the Court to determine is whether the circumstances warrant the addition of punishment to compensation: *Whiten*, above at para 67. Here, I answer this question affirmatively.

[109] Previous punitive damages awards by this Court have ranged roughly from \$10,000 to \$100,000 based on the particular circumstances: *Microsoft Corporation v Liu*, 2016 FC 950, at para 28; *Entral Group International Inc v MCUE Enterprises Corp (Di Da Di Karaoke Company)*, 2010 FC 606 at para 55; *Young v Thakur*, 2019 FC 835 at para 48, but have reached far greater heights (\$500,000 to \$1.14 million) in the following cases: *Twentieth Century Fox Film Corporation v Hernandez*, Federal Court File T-1618-13; *Nintendo*, above; *Columbia Pictures Industries, Inc, et al v Samuel Horkoff dba Mr Blamo*, Federal Court File T-1633-18. I thus find the total sum of \$300,000 justified in the circumstances.

(v) *Costs*

[110] The Plaintiffs seek their costs. I see no reason to depart from the usual principle of costs following the cause. Exercising my discretion under *FCR* Rule 400, I award the Plaintiffs an all-inclusive, lump sum of \$75,000, comprising \$25,000 against each of the Respondent Defendants, INL3D, Ottawa Tek and Raheel Rafiq (jointly and severally), and Morcor.

[111] The above lump sum represents essentially half of the Plaintiffs' actual legal fees for the preparation of their motion for default judgment, but not costs associated with impleading the Respondent Defendants, such as investigations to obtain and test the Respondent Defendants' pre-loaded set-top boxes to confirm that they provide on-demand and unauthorized access to the Plaintiffs' Programs. As the Plaintiffs noted in their written representations, lump sum awards tend to fall in the range of 25% to 50% of actual fees, although there may be cases where a higher or lower percentage is warranted: *Teva Canada Limited v Janssen Inc*, 2018 FC 1175 at

para 6. In my view, and exercising my discretion under the *FCR* Rule 400, a costs award of roughly 50% of actual fees is appropriate in the circumstances.

(vi) *Pre- and Post-judgment Interest*

[112] The Plaintiffs have claimed pre- and post-judgment interest in their Statement of Claim, including the applicable amendments. Pursuant to subsection 36(4) of the *Federal Courts Act*, RSC 1985, c F-7 [*FCA*], pre-judgment interest does not apply to punitive damages or costs. Here, pre-judgment interest would apply only to the statutory damages awarded to the Plaintiffs. Because the Plaintiffs did not pursue pre-judgment interest in their default judgment motion, I decline to award pre-judgment interest further to the *FCA* section 36(5).

[113] The Plaintiffs are entitled, however, to post-judgment interest on all amounts owed by the Respondent Defendants. The rate of 2% per annum, not compounded, will apply from the date of the Court's Judgment until payment in full.

VIII. Conclusion

[114] Based on the above analysis, I find that the Respondent Defendants have infringed subsisting copyright in the Plaintiffs' Programs or Plaintiffs' Works and failed to respond when served with (an amended) Statement of Claim and the Interlocutory Injunction Order. The Respondent Defendants thus are in default. I further find that the Plaintiffs have met their burden of establishing their claims.

[115] I therefore declare that copyright subsists in the Plaintiffs' Programs or Works and has been infringed, and grant a permanent injunction against the Respondent Defendants. I also award statutory damages in the amount of \$29,300,000, as well as punitive damages in the amount of \$300,000 and a lump-sum amount of \$75,000 for costs, with the latter two amounts apportioned among the Respondent Defendants. The Respondent Defendants shall pay post-judgment interest on all of these amounts, at a rate of 2%, not compounded, until the amounts owed are paid in full, having regard to the *FCA* section 37(1) and the post-judgment interest rate currently applicable in the province of Ontario where the causes of action involving the Respondent Defendants arose.

JUDGMENT in T-759-16

THIS COURT ADJUDGES, DECLARES AND ORDERS that:

1. The Plaintiffs' motion for default judgment is granted;
2. Copyright subsists in the Plaintiffs' Works, consisting of the cinematographic works listed in Annex "A," and that the Plaintiffs hold exclusive rights to communicate those works in Canada by telecommunication, including via Internet and television broadcast, whether streamed or on demand;
3. By advertising, offering for sale and selling pre-loaded set-top boxes (containing software or which have been configured otherwise for accessing unauthorized television content, such as with add-ons and/or unauthorized IPTV services), including the "Spectra Quad Core," "Intra Quad Core," and "Ultra Quad Core" models in the case of INL3D, the "Amlogic M8S" Android model in the case of Ottawa Tek and Mr. Rafiq, and the "Himedia H8 Lite," "Himedia H8 Plus," "Himedia Q5 Pro" and "Himedia Q10 Pro" models in the case of Morcor, the Respondent Defendants have made the Plaintiffs' Works, as specified in Annex "B" available in a way that allows users of the pre-loaded set-top boxes to access those works by telecommunication from a place and a time individually chosen by the user, thus infringing Plaintiffs' Copyright, contrary to the *Copyright Act* sections 2.4(1.1), 3(1)(f) and 27(1);
4. By their acts described above, the Respondent Defendants have authorized the communication of the Plaintiffs' Works, as specified in Annex "B," to the public by telecommunication in Canada, contrary to the *Copyright Act* sections 2.4(1.1), 3(1)(f) and 27(1);

5. By their acts described above, the Respondent Defendants have knowingly induced users of pre-loaded set-top boxes to initiate acts of infringement of the Plaintiffs' Copyright, contrary to the *Copyright Act* sections 2.4(1.1), 3(1)(f) and 27(1);
6. By their acts described above, the Respondent Defendants have distributed, offered for sale, sold, operated and possessed equipment and devices used or intended to be used as radio apparatus for the purpose of receiving the Plaintiffs' encrypted subscription programming signals after they had been decoded otherwise than under and in accordance with an authorization from the corresponding Plaintiff, contrary to the *Radiocommunication Act* section 10(1)(b);
7. The Respondent Defendants, by themselves or their shareholders, directors, officers, 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, are permanently enjoined and restrained from directly or indirectly:
 - (i) manufacturing, importing, distributing, leasing, offering for sale, selling, installing, modifying, operating and/or possessing pre-loaded set-top boxes that are used or intended to be used to receive the Plaintiffs' subscription programming signals after they have been decoded otherwise than under and in accordance with an authorization from the respective Plaintiff;
 - (ii) authorizing or inducing anyone to initiate acts of infringement of the Plaintiffs' Copyright, including by configuring, advertising, offering for sale or selling pre-loaded set-top boxes; and
 - (iii) advertising, offering for sale or selling subscriptions to third-party services, or other providers, that stream unauthorized retransmissions of the Plaintiffs' subscription programming signals for the Plaintiffs' Works over the Internet;
8. The Respondent Defendant INL3D shall pay forthwith to the Plaintiffs: (i) statutory damages in the amount of \$3,860,000 pursuant to section 38.1 of the *Copyright Act* in respect of infringement of the Plaintiffs' Works; (ii) punitive damages in the amount of

\$100,000; and (iii) a one-third portion of Plaintiffs' costs (of \$75,000) in the amount of ~~\$50,000~~ \$25,000;

9. The Respondent Defendants Ottawa Tek and Mr. Rafiq, jointly and severally, shall pay forthwith to the Plaintiffs: (i) statutory damages in the amount of \$14,080,000 pursuant to section 38.1 of the *Copyright Act* in respect of infringement of the Plaintiffs' Works; (ii) punitive damages in the amount of \$100,000; and (iii) a one-third portion of Plaintiffs' costs (of \$75,000) in the amount of \$25,000;
10. The Respondent Defendant Morcor shall pay forthwith to the Plaintiffs: (i) statutory damages in the amount of \$11,360,000 pursuant to section 38.1 of the *Copyright Act* in respect of infringement of the Plaintiffs' Works; (ii) punitive damages in the amount of \$100,000; and (iii) a one-third portion of Plaintiffs' costs (of \$75,000) in the amount of \$25,000;
11. The Respondent Defendants shall pay the Plaintiffs' post-judgment interest on all amounts owed at the rate of 2% per annum, not compounded, from the date of this Judgment until the date of payment in full.

"Janet M. Fuhrer"

Judge

Annex “A”: List of Plaintiffs’ Works

Plaintiff	Program Title	Type	No. Episodes / Frequency	Entitlement
Bell Media	Game of Thrones	TV Episodic	67 episodes: S01E01 to S07E07	Exclusive Canadian Licensee
	Silicon Valley	TV Episodic	38 episodes: S01E01 to S04E10	Exclusive Canadian Licensee
	Veep	TV Episodic	58 episodes: S01E01 to S06E10	Exclusive Canadian Licensee
	Boardwalk Empire	TV Episodic	56 episodes: S01E01 to S05E08	Exclusive Canadian Licensee
	Girls	TV Episodic	62 episodes: S01E01 to S06E10	Exclusive Canadian Licensee
	Big Love	TV Episodic	53 episodes: S01E01 to S05E10	Exclusive Canadian Licensee
	Entourage	TV Episodic	96 episodes: S01E01 to S08E08	Exclusive Canadian Licensee
	Sopranos	TV Episodic	86 episodes: S01E01 to S06E21	Exclusive Canadian Licensee
	SportsCentre	Daily Program	4 broadcasts x 365 days/year ¹	Maker/owner
	Sports 30	Daily Program	365 days/year ²	Maker/owner
	CTV National News	Daily Program	2 broadcasts x 365 days/year ³	Maker/owner

¹ Four (4) original SportsCentre broadcasts, and subsequent rebroadcasts of those, air on TSN television stations consistently every day of the week, 365 days of the year.

² Original Sports 30 broadcasts air on the RDS television station consistently every night of the week, 365 days of the year.

³ Two (2) original CTV National News broadcasts, and several subsequent rebroadcasts air on local CTV stations and on the CTV News Channel consistently every night of the week, 365 days of the year.

Plaintiff	Program Title	Type	No. Episodes / Frequency	Entitlement
Rogers Media	Modern Family	TV Episodic	210 episodes: S01E01 to S09E22	Exclusive Canadian Licensee
	2 Broke Girls	TV Episodic	138 episodes: S01E01 to S06E22	Exclusive Canadian Licensee
	The Bachelor	TV Episodic	62 episodes: S18E01 to S22E13	Exclusive Canadian Licensee
	The Bachelorette	TV Episodic	50 episodes: S10E01 to S13E12	Exclusive Canadian Licensee
	Bachelor in Paradise	TV Episodic	39 episodes: S01E01 to S04E09	Exclusive Canadian Licensee
	Mom	TV Episodic	110 episodes: S01E01 to S05E22	Exclusive Canadian Licensee
	The Middle	TV Episodic	167 episodes: S03E01 to S09E24	Exclusive Canadian Licensee
	Sportsnet Central	Daily Program	2 broadcasts x 365 days/year ⁴	Maker/Owner
	Tim & Sid	Weekday Program	260 episodes/year ⁵	Maker/Owner

⁴ Two (2) original Sportsnet Central broadcasts, and several subsequent rebroadcasts air on the Sportsnet Ontario station consistently every night of the week, 365 days of the year.

⁵ Tim & Sid aired on the Sportsnet Ontario station consistently every weekday, 260 days of the year.

Plaintiff	Program Title	Type	No. Episodes / Frequency	Entitlement
TVA	Top 25 Insolite	Weekly Program	~52 episodes/year ⁶	Maker/owner
	L'Impact cette semaine	Weekly Program	~32 episodes/year ⁷	Maker/owner
	L'Avant-match de l'Impact	Weekly Program	~34 episodes/year ⁸	Maker/owner
	Dave Morissette en direct	Weekday Program	200 episodes/year ⁹	Maker/owner
	Le TVA Sports	Daily Program	365 days/year ¹⁰	Maker/owner

⁶ Original Top 25 Insolite broadcasts air on the TVA Sports television station consistently at least once every week, 52 weeks of the year.

⁷ Original L'Impact cette semaine broadcasts air on the TVA Sports television station consistently every week during the Montreal Impact Major League Soccer Season, from March to October, 32 days of the year.

⁸ Original L'Avant-match de l'Impact broadcasts air on the TVA Sports television station consistently every week prior to each Montreal Impact Major League Soccer game, 34 days of the year.

⁹ Original Dave Morissette en direct broadcasts air on the TVA Sports station consistently, at least every weekday from September to June, 200 days of the year.

¹⁰ Original Le TVA Sports broadcasts, and subsequent rebroadcasts, air on the TVA Sports television station consistently every day of the week, 365 days of the year

Annex “B”: List of Plaintiffs’ Works Infringed by Each Respondent Defendant***L3D Distributing Inc. dba INL3D:***

Program	No. original works (episodes/original live broadcasts) infringed
Game of Thrones	59 episodes
Veep	47 episodes
Modern Family	166 episodes
SportsCentre [TSN]	68 live broadcasts
Sportsnet Central [Sportsnet Ontario]	34 live broadcasts
Tim & Sid [Sportsnet Ontario]	12 live broadcasts

Total: 386 works infringed

Ottawa Tek Corporation dba Ottawa Tek Communications and Mr. Raheel Rafiq:

Program	No. original works (episodes/original live broadcasts) infringed
The Bachelor	50 episodes
The Bachelorette	49 episodes
Bachelor in Paradise	39 episodes
2 Broke Girls	138 episodes
Mom	88 episodes
The Middle	147 episodes
Modern Family	193 episodes
Silicon Valley	38 episodes

Program	No. original works (episodes/original live broadcasts) infringed
Game of Thrones	67 episodes
SportsCentre [TSN]	260 live broadcasts
Sports30 [RDS]	65 live broadcasts
CTV National News [CTV News]	130 live broadcasts
Top 25 Insolite [TVA Sports]	10 live broadcasts
L'Impact cette semaine [TVA Sports]	9 live broadcasts
L'Avant-match de l'Impact [TVA Sports]	8 live broadcasts
Dave Morissette en direct [TVA Sports]	52 live broadcasts
Le TVA Sports [TVA Sports]	65 live broadcasts

Total: 1,408 works infringed

Morcor Computers 2000 Ltd.:

Program	No. original works (episodes/original live broadcasts) infringed
Game of Thrones	60 episodes
Silicon Valley	28 episodes
Veep	48 episodes
Boardwalk Empire	56 episodes
Girls	55 episodes
Big Love	53 episodes
Entourage	96 episodes
Sopranos	86 episodes

Program	No. original works (episodes/original live broadcasts) infringed
The Bachelor	46 episodes
The Bachelorette	38 episodes
Bachelor in Paradise	30 episodes
Modern Family	181 episodes
Mom	81 episodes
The Middle	135 episodes
2 Broke Girls	134 episodes

Total: 1,136 works infringed

Annex “C”: Relevant Provisions***Federal Courts Rules, SOR/98-106***

<p>Interpretation General principle</p> <p>3 These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.</p> <p>Varying rule and dispensing with compliance</p> <p>55 In special circumstances, in a proceeding, the Court may vary a rule or dispense with compliance with a rule.</p> <p>Failure to Comply with Rules Effect of non-compliance</p> <p>56 Non-compliance with any of these Rules does not render a proceeding, a step in a proceeding or an order void, but instead constitutes an irregularity, which may be addressed under rules 58 to 60.</p> <p>Motion to attack irregularity</p> <p>58 (1) A party may by motion challenge any step taken by another party for non-compliance with these Rules.</p> <p>When motion to be brought</p> <p>(2) A motion under subsection (1) shall be brought as soon as practicable after the moving party obtains knowledge of the irregularity.</p> <p>Default Proceedings Motion for default judgment</p>	<p>Définitions et interprétation Principe général</p> <p>3 Les présentes règles sont interprétées et appliquées de façon à permettre d’apporter une solution au litige qui soit juste et la plus expéditive et économique possible.</p> <p>Modification de règles et exemption d’application</p> <p>55 Dans des circonstances spéciales, la Cour peut, dans une instance, modifier une règle ou exempter une partie ou une personne de son application.</p> <p>Inobservation des règles Effet de l’inobservation</p> <p>56 L’inobservation d’une disposition des présentes règles n’entache pas de nullité l’instance, une mesure prise dans l’instance ou l’ordonnance en cause. Elle constitue une irrégularité régie par les règles 58 à 60.</p> <p>Requête en contestation d’irrégularités</p> <p>58 (1) Une partie peut, par requête, contester toute mesure prise par une autre partie en invoquant l’inobservation d’une disposition des présentes règles.</p> <p>Exception</p> <p>(2) La partie doit présenter sa requête aux termes du paragraphe (1) le plus tôt possible après avoir pris connaissance de l’irrégularité.</p> <p>Procédure par défaut Cas d’ouverture</p>
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<p>210 (1) Where a defendant fails to serve and file a statement of defence within the time set out in rule 204 or any other time fixed by an order of the Court, the plaintiff may bring a motion for judgment against the defendant on the statement of claim.</p> <p>Motion in writing</p> <p>(2) Subject to section 25 of the Crown Liability and Proceedings Act, a motion under subsection (1) may be brought ex parte and in accordance with rule 369.</p> <p>Affidavit evidence</p> <p>(3) A motion under subsection (1) shall be supported by affidavit evidence.</p> <p>Disposition of motion</p> <p>(4) On a motion under subsection (1), the Court may</p> <ul style="list-style-type: none"> (a) grant judgment; (b) dismiss the action; or (c) order that the action proceed to trial and that the plaintiff prove its case in such a manner as the Court may direct. 	<p>210 (1) Lorsqu'un défendeur ne signifie ni ne dépose sa défense dans le délai prévu à la règle 204 ou dans tout autre délai fixé par ordonnance de la Cour, le demandeur peut, par voie de requête, demander un jugement contre le défendeur à l'égard de sa déclaration.</p> <p>Requête écrite</p> <p>(2) Sous réserve de l'article 25 de la Loi sur la responsabilité civile de l'État et le contentieux administratif, la requête visée au paragraphe (1) peut être présentée ex parte et selon la règle 369.</p> <p>Preuve</p> <p>(3) La preuve fournie à l'appui de la requête visée au paragraphe (1) est établie par affidavit.</p> <p>Pouvoirs de la Cour</p> <p>(4) Sur réception de la requête visée au paragraphe (1), la Cour peut :</p> <ul style="list-style-type: none"> a) accorder le jugement demandé; b) rejeter l'action; c) ordonner que l'action soit instruite et que le demandeur présente sa preuve comme elle l'indique.
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Broadcasting Act, SC 1991, c 11

<p>Definitions</p> <p>2 (1) In this Act,</p> <p><i>distribution undertaking</i> means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking; (entreprise de distribution)</p>	<p>Définitions</p> <p>2 (1) Les définitions qui suivent s'appliquent à la présente loi.</p> <p><i>entreprise de radiodiffusion</i> S'entend notamment d'une entreprise de distribution ou de programmation, ou d'un réseau. (broadcasting undertaking)</p>
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Radiocommunication Act, RSC 1985, c R-2

<p>Interpretation Definitions</p> <p><i>radio apparatus</i> means a device or combination of devices intended for, or capable of being used for, radiocommunication; (appareil radio)</p> <p><i>radiocommunication or radio</i> means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3 000 GHz propagated in space without artificial guide; (radiocommunication ou radio)</p> <p>Offences and Punishment Prohibitions</p> <p>9 (1) No person shall</p> <p style="padding-left: 40px;">(a) knowingly send, transmit or cause to be sent or transmitted any false or fraudulent distress signal, message, call or radiogram of any kind;</p> <p style="padding-left: 40px;">(b) without lawful excuse, interfere with or obstruct any radiocommunication;</p> <p style="padding-left: 40px;">(c) decode an encrypted subscription programming signal or encrypted network feed otherwise than under and in accordance with an authorization from the lawful distributor of the signal or feed;</p> <p style="padding-left: 40px;">(d) operate a radio apparatus so as to receive an encrypted subscription programming signal or encrypted network feed that has been decoded in contravention of paragraph (c); or</p> <p style="padding-left: 40px;">(e) retransmit to the public an encrypted subscription programming signal or encrypted network feed that</p>	<p>Définitions Définitions</p> <p><i>appareil radio</i> Dispositif ou assemblage de dispositifs destiné ou pouvant servir à la radiocommunication. (radio apparatus)</p> <p>radiocommunication ou radio Toute transmission, émission ou réception de signes, de signaux, d'écrits, d'images, de sons ou de renseignements de toute nature, au moyen d'ondes électromagnétiques de fréquences inférieures à 3 000 GHz transmises dans l'espace sans guide artificiel. (radiocommunication ou radio)</p> <p>Infractions et peines Interdictions</p> <p>9 (1) Il est interdit :</p> <p style="padding-left: 40px;">a) d'envoyer, d'émettre ou de faire envoyer ou émettre, sciemment, un signal de détresse ou un message, appel ou radiogramme de quelque nature, faux ou frauduleux;</p> <p style="padding-left: 40px;">b) sans excuse légitime, de gêner ou d'entraver la radiocommunication;</p> <p style="padding-left: 40px;">c) de décoder, sans l'autorisation de leur distributeur légitime ou en contravention avec celle-ci, un signal d'abonnement ou une alimentation réseau;</p> <p style="padding-left: 40px;">d) d'utiliser un appareil radio de façon à recevoir un signal d'abonnement ou une alimentation réseau ainsi décodé;</p> <p style="padding-left: 40px;">e) de transmettre au public un signal d'abonnement ou une alimentation réseau ainsi décodé.</p>
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<p>has been decoded in contravention of paragraph (c).</p> <p>Offences</p> <p>10 (1) Every person who</p> <p>(b) without lawful excuse, manufactures, imports, distributes, leases, offers for sale, sells, installs, modifies, operates or possesses any equipment or device, or any component thereof, under circumstances that give rise to a reasonable inference that the equipment, device or component has been used, or is or was intended to be used, for the purpose of contravening section 9,</p> <p>is guilty of an offence punishable on summary conviction and is liable, in the case of an individual, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, or, in the case of a corporation, to a fine not exceeding twenty-five thousand dollars.</p> <p>Civil Action Right of civil action</p> <p>18 (1) Any person who</p> <p>(a) holds an interest in the content of a subscription programming signal or network feed, by virtue of copyright</p>	<p>Infractions</p> <p>10 (1) Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, dans le cas d'une personne physique, une amende maximale de cinq mille dollars et un emprisonnement maximal d'un an, ou l'une de ces peines, ou, dans le cas d'une personne morale, une amende maximale de vingt-cinq mille dollars quiconque, selon le cas :</p> <p>b) sans excuse légitime, fabrique, importe, distribue, loue, met en vente, vend, installe, modifie, exploite ou possède tout matériel ou dispositif, ou composante de celui-ci, dans des circonstances donnant à penser que l'un ou l'autre est utilisé en vue d'enfreindre l'article 9, l'a été ou est destiné à l'être;</p> <p>Recours civil Recours civil</p> <p>18 (1) Peut former, devant tout tribunal compétent, un recours civil à l'encontre du contrevenant quiconque a subi une perte ou des dommages par suite d'une contravention aux alinéas 9(1)c), d) ou e) ou 10(1)b) et :</p> <p>a) soit détient, à titre de titulaire du droit d'auteur ou d'une licence accordée par ce dernier, un droit dans</p>
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<p>ownership or a licence granted by a copyright owner,</p> <p>(b) is authorized by the lawful distributor of a subscription programming signal or network feed to communicate the signal or feed to the public,</p> <p>(c) holds a licence to carry on a broadcasting undertaking issued by the Canadian Radio-television and Telecommunications Commission under the Broadcasting Act, or</p> <p>(d) develops a system or technology, or manufactures or supplies to a lawful distributor equipment, for the purpose of encrypting a subscription programming signal or network feed, or manufactures, supplies or sells decoders, to enable authorized persons to decode an encrypted subscription programming signal or encrypted network feed</p> <p>may, where the person has suffered loss or damage as a result of conduct that is contrary to paragraph 9(1)(c), (d) or (e) or 10(1)(b), in any court of competent jurisdiction, sue for and recover damages from the person who engaged in the conduct, or obtain such other remedy, by way of injunction, accounting or otherwise, as the court considers appropriate.</p> <p>Rules applicable</p> <p>(2) In an action under subsection (1) against a person,</p>	<p>le contenu d'un signal d'abonnement ou d'une alimentation réseau;</p> <p>b) soit est autorisé, par le distributeur légitime de celui-ci, à le communiquer au public;</p> <p>c) soit est titulaire d'une licence attribuée, au titre de la Loi sur la radiodiffusion, par le Conseil de la radiodiffusion et des télécommunications canadiennes et l'autorisant à exploiter une entreprise de radiodiffusion;</p> <p>d) soit encore élabore un système ou une technique ou fabrique un équipement destinés à l'encodage de signaux d'abonnement ou d'alimentations réseau, les fournit à un distributeur légitime, ou fabrique, vend ou fournit des décodeurs permettant à des personnes autorisées à cet effet de décoder de tels signaux ou alimentations.</p> <p>Cette personne est admise à exercer tous recours, notamment par voie de dommages-intérêts, d'injonction ou de reddition de compte, selon ce que le tribunal estime indiqué.</p> <p>Règles applicables</p> <p>(2) Le plafond des dommages-intérêts accordés, au terme d'un tel recours, à l'encontre d'une personne physique n'ayant pas contrevenu aux alinéas 9(1)e) ou 10(1)b) et n'ayant pas posé les actes en cause dans un but lucratif est de mille dollars; les frais des parties sont laissés à la discrétion du tribunal.</p>
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<p>(a) a monetary judgment may not exceed one thousand dollars where the person is an individual and the conduct engaged in by the person is neither contrary to paragraph 9(1)(e) or 10(1)(b) nor engaged in for commercial gain; and</p> <p>(b) the costs of the parties are in the discretion of the court.</p> <p>Evidence of prior proceedings</p> <p>(3) In an action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under paragraph 9(1)(c), (d) or (e) or 10(1)(b) is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to that paragraph, and any evidence given in those proceedings as to the effect of that conduct on the person bringing the action is evidence thereof in the action.</p> <p>Jurisdiction of Federal Court</p> <p>(4) For the purposes of an action under subsection (1), the Federal Court is a court of competent jurisdiction.</p> <p>Limitation</p> <p>(5) An action under subsection (1) may be commenced within, but not after, three years after the conduct giving rise to the action was engaged in.</p> <p>Copyright Act</p> <p>(6) Nothing in this section affects any right or remedy that an aggrieved person may have under the <i>Copyright Act</i>.</p>	<p>Preuve de procédures antérieures</p> <p>(3) Dans tout recours visé au paragraphe (1) et intenté contre une personne, les procès-verbaux relatifs aux procédures engagées devant tout tribunal qui a déclaré celle-ci coupable d'une infraction aux alinéas 9(1)c), d) ou e) ou 10(1)b) constituent, sauf preuve contraire, la preuve que cette personne a eu un comportement allant à l'encontre de ces dispositions; toute preuve fournie lors de ces procédures quant à l'effet de l'infraction sur la personne qui intente le recours constitue une preuve à cet égard.</p> <p>Cour fédérale</p> <p>(4) La Cour fédérale est, pour l'application du paragraphe (1), un tribunal compétent.</p> <p>Prescription</p> <p>(5) Les recours visés au paragraphe (1) se prescrivent dans les trois ans suivant la date de l'infraction en cause.</p> <p>Loi sur le droit d'auteur</p> <p>(6) Le présent article ne porte pas atteinte aux droits ou aux recours prévus par la <i>Loi sur le droit d'auteur</i>.</p>
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Copyright Act, RSC 1985, c C-42

<p>Interpretation Definitions</p> <p>2 In this Act,</p> <p><i>Berne Convention country</i> means a country that is a party to the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, or any one of its revisions, including the Paris Act of 1971; (pays partie à la Convention de Berne)</p> <p><i>cinematographic work</i> includes any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack; (œuvre cinématographique)</p> <p><i>dramatic work</i> includes</p> <p>(a) any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise,</p> <p>(b) any cinematographic work, and</p> <p>(c) any compilation of dramatic works; (œuvre dramatique)</p> <p><i>maker</i> means</p> <p>(a) in relation to a cinematographic work, the person by whom the arrangements necessary for the making of the work are undertaken, or</p>	<p>Définitions et dispositions interprétatives Définitions</p> <p>2 Les définitions qui suivent s'appliquent à la présente loi.</p> <p><i>pays partie à la Convention de Berne</i> Pays partie à la Convention pour la protection des œuvres littéraires et artistiques, conclue à Berne le 9 septembre 1886, ou à l'une de ses versions révisées, notamment celle de l'Acte de Paris de 1971. (Berne Convention country)</p> <p><i>œuvre cinématographique</i> Y est assimilée toute œuvre exprimée par un procédé analogue à la cinématographie, qu'elle soit accompagnée ou non d'une bande sonore. (cinematographic work)</p> <p><i>œuvre dramatique</i> Y sont assimilées les pièces pouvant être récitées, les œuvres chorégraphiques ou les pantomimes dont l'arrangement scénique ou la mise en scène est fixé par écrit ou autrement, les œuvres cinématographiques et les compilations d'œuvres dramatiques. (dramatic work)</p> <p><i>producteur</i> La personne qui effectue les opérations nécessaires à la confection d'une œuvre cinématographique, ou à la première fixation de sons dans le cas d'un enregistrement sonore. (maker)</p>
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<p>(b) in relation to a sound recording, the person by whom the arrangements necessary for the first fixation of the sounds are undertaken; (producteur)</p> <p><i>treaty country</i> means a Berne Convention country, UCC country, WCT country or WTO Member; (pays signataire)</p> <p>Communication to the public by telecommunication</p> <p>2.4 (1) For the purposes of communication to the public by telecommunication,</p> <p>(b) a person whose only act in respect of the communication of a work or other subject-matter to the public consists of providing the means of telecommunication necessary for another person to so communicate the work or other subject-matter does not communicate that work or other subject-matter to the public; and</p> <p>2.4 (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.</p> <p>Copyright in works</p> <p>3 (1) For the purposes of this Act, copyright, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right</p>	<p><i>pays signataire</i> Pays partie à la Convention de Berne, à la Convention universelle ou au traité de l'ODA, ou membre de l'OMC. (treaty country)</p> <p>Communication au public par télécommunication</p> <p>2.4 (1) Les règles qui suivent s'appliquent dans les cas de communication au public par télécommunication :</p> <p>(b) n'effectue pas une communication au public la personne qui ne fait que fournir à un tiers les moyens de télécommunication nécessaires pour que celui-ci l'effectue;</p> <p>2.4 (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</p> <p>Droit d'auteur sur l'œuvre</p> <p>3 (1) Le droit d'auteur sur l'œuvre comporte le droit exclusif de produire ou reproduire la totalité ou une partie importante de l'œuvre, sous une forme matérielle quelconque, d'en exécuter ou d'en représenter la totalité ou une partie importante en public et, si l'œuvre n'est pas publiée, d'en publier la totalité ou une partie importante; ce droit comporte, en outre, le droit exclusif:</p>
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<p>(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,</p> <p>Works in which Copyright may Subsist</p> <p>Conditions for subsistence of copyright</p> <p>5 (1) Subject to this Act, copyright shall subsist in Canada, for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work if any one of the following conditions is met:</p> <p>(b) in the case of a cinematographic work, whether published or unpublished, the maker, at the date of the making of the cinematographic work,</p> <p>(i) if a corporation, had its headquarters in a treaty country, or</p> <p>(ii) if a natural person, was a citizen or subject of, or a person ordinarily resident in, a treaty country; or</p> <p>Ownership of Copyright</p> <p>13 (1) Subject to this Act, the author of a work shall be the first owner of the copyright therein.</p> <p>Assignment of right of action</p> <p>(6) For greater certainty, it is deemed always to have been the law that a right of action for infringement of copyright may be assigned in association with the assignment of the copyright or the grant of an interest in the copyright by licence.</p> <p>Exclusive licence</p> <p>(7) For greater certainty, it is deemed always to have been the law that a grant of an exclusive licence in a copyright constitutes</p>	<p>(f) de communiquer au public, par télécommunication, une œuvre littéraire, dramatique, musicale ou artistique;</p> <p>Œuvres susceptibles de faire l'objet d'un droit d'auteur</p> <p>Conditions d'obtention du droit d'auteur</p> <p>5 (1) Sous réserve des autres dispositions de la présente loi, le droit d'auteur existe au Canada, pendant la durée mentionnée ci-après, sur toute œuvre littéraire, dramatique, musicale ou artistique originale si l'une des conditions suivantes est réalisée :</p> <p>(b) dans le cas d'une œuvre cinématographique — publiée ou non — , à la date de sa création, le producteur était citoyen, sujet ou résident habituel d'un pays signataire ou avait son siège social dans un tel pays;</p> <p>Possession du droit d'auteur</p> <p>13 (1) Sous réserve des autres dispositions de la présente loi, l'auteur d'une œuvre est le premier titulaire du droit d'auteur sur cette œuvre.</p> <p>Cession d'un droit de recours</p> <p>(6) Il est entendu que la cession du droit d'action pour violation du droit d'auteur est réputée avoir toujours pu se faire en relation avec la cession du droit d'auteur ou la concession par licence de l'intérêt dans celui-ci.</p> <p>Licence exclusive</p> <p>(7) Il est entendu que la concession d'une licence exclusive sur un droit d'auteur est</p>
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the grant of an interest in the copyright by licence.

Infringement of Copyright **Infringement generally**

27 (1) It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do.

Network Services

31.1 (1) A person who, in providing services related to the operation of the Internet or another digital network, provides any means for the telecommunication or the reproduction of a work or other subject-matter through the Internet or that other network does not, solely by reason of providing those means, infringe copyright in that work or other subject-matter.

Civil Remedies

Presumptions respecting copyright and ownership

34.1 (1) In any civil proceedings taken under this Act in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff to it,

(b) the author, performer, maker or broadcaster, as the case may be, shall, unless the contrary is proved, be presumed to be the owner of the copyright.

Statutory damages

38.1 (1) Subject to this section, a copyright owner may elect, at any time before final judgment is rendered, to recover, instead of damages and profits referred to in subsection 35(1), an award of statutory damages for which any one infringer is liable

réputée toujours avoir valu concession par licence d'un intérêt dans ce droit d'auteur.

Violation du droit d'auteur **Règle générale**

27 (1) Constitue une violation du droit d'auteur l'accomplissement, sans le consentement du titulaire de ce droit, d'un acte qu'en vertu de la présente loi seul ce titulaire a la faculté d'accomplir.

Services réseau

31.1 (1) La personne qui, dans le cadre de la prestation de services liés à l'exploitation d'Internet ou d'un autre réseau numérique, fournit des moyens permettant la télécommunication ou la reproduction d'une œuvre ou de tout autre objet du droit d'auteur par l'intermédiaire d'Internet ou d'un autre réseau ne viole pas le droit d'auteur sur l'œuvre ou l'autre objet du seul fait qu'elle fournit ces moyens.

Présomption de propriété

34.1 (1) Dans toute procédure civile engagée en vertu de la présente loi où le défendeur conteste l'existence du droit d'auteur ou la qualité du demandeur :

b) l'auteur, l'artiste-interprète, le producteur ou le radiodiffuseur, selon le cas, est, jusqu'à preuve contraire, réputé être titulaire de ce droit d'auteur.

Domages-intérêts préétablis

38.1 (1) Sous réserve des autres dispositions du présent article, le titulaire du droit d'auteur, en sa qualité de demandeur, peut, avant le jugement ou l'ordonnance qui met fin au litige, choisir de recouvrer, au lieu des dommages-intérêts et des profits visés au paragraphe 35(1), les dommages-intérêts préétablis ci-après pour les violations

individually, or for which any two or more infringers are liable jointly and severally,

(a) in a sum of not less than \$500 and not more than \$20,000 that the court considers just, with respect to all infringements involved in the proceedings for each work or other subject-matter, if the infringements are for commercial purposes; and

(b) in a sum of not less than \$100 and not more than \$5,000 that the court considers just, with respect to all infringements involved in the proceedings for all works or other subject-matter, if the infringements are for non-commercial purposes.

Factors to consider

(5) In exercising its discretion under subsections (1) to (4), the court shall consider all relevant factors, including

(a) the good faith or bad faith of the defendant;

(b) the conduct of the parties before and during the proceedings;

(c) the need to deter other infringements of the copyright in question; and

(d) in the case of infringements for non-commercial purposes, the need for an award to be proportionate to the infringements, in consideration of the hardship the award may cause to the defendant, whether the infringement was for private purposes or not, and the impact of the infringements on the plaintiff.

reprochées en l'instance à un même défendeur ou à plusieurs défendeurs solidairement responsables :

a) dans le cas des violations commises à des fins commerciales, pour toutes les violations — relatives à une œuvre donnée ou à un autre objet donné du droit d'auteur —, des dommages-intérêts dont le montant, d'au moins 500 \$ et d'au plus 20 000 \$, est déterminé selon ce que le tribunal estime équitable en l'occurrence;

b) dans le cas des violations commises à des fins non commerciales, pour toutes les violations — relatives à toutes les œuvres données ou tous les autres objets donnés du droit d'auteur —, des dommages-intérêts, d'au moins 100 \$ et d'au plus 5 000 \$, dont le montant est déterminé selon ce que le tribunal estime équitable en l'occurrence.

Facteurs

(5) Lorsqu'il rend une décision relativement aux paragraphes (1) à (4), le tribunal tient compte notamment des facteurs suivants :

a) la bonne ou mauvaise foi du défendeur;

b) le comportement des parties avant l'instance et au cours de celle-ci;

c) la nécessité de créer un effet dissuasif à l'égard de violations éventuelles du droit d'auteur en question;

d) dans le cas d'une violation qui est commise à des fins non commerciales, la nécessité d'octroyer des dommages-intérêts dont le montant soit proportionnel à la violation et tienne compte des difficultés qui en résulteront pour le défendeur, du fait que la violation a été commise à des fins privées ou non et de son effet sur le demandeur.

<p>Exemplary or punitive damages not affected</p> <p>(7) An election under subsection (1) does not affect any right that the copyright owner may have to exemplary or punitive damages.</p> <p>Copyright Office Register to be evidence</p> <p>53 (1) The Register of Copyrights is evidence of the particulars entered in it, and a copy of an entry in the Register is evidence of the particulars of the entry if it is certified by the Commissioner of Patents, the Registrar of Copyrights or an officer, clerk or employee of the Copyright Office as a true copy.</p> <p>Owner of copyright</p> <p>(2) A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright.</p> <p>Assignee</p> <p>(2.1) A certificate of registration of an assignment of copyright is evidence that the right recorded on the certificate has been assigned and that the assignee registered is the owner of that right.</p> <p>Licensee</p> <p>(2.2) A certificate of registration of a licence granting an interest in a copyright is evidence that the interest recorded on the certificate has been granted and that the licensee registered is the holder of that interest.</p> <p>Admissibility</p> <p>(3) A certified copy or certificate appearing to have been issued under this section is admissible in all courts without proof of the</p>	<p>Dommages-intérêts exemplaires</p> <p>(7) Le choix fait par le demandeur en vertu du paragraphe (1) n'a pas pour effet de supprimer le droit de celui-ci, le cas échéant, à des dommages-intérêts exemplaires ou punitifs.</p> <p>Bureau du droit d'auteur Preuve</p> <p>53 (1) Le registre des droits d'auteur, de même que la copie d'inscriptions faites dans ce registre, certifiée conforme par le commissaire aux brevets, le registraire des droits d'auteur ou tout membre du personnel du Bureau du droit d'auteur, fait foi de son contenu.</p> <p>Titulaire du droit d'auteur</p> <p>(2) Le certificat d'enregistrement du droit d'auteur constitue la preuve de l'existence du droit d'auteur et du fait que la personne figurant à l'enregistrement en est le titulaire.</p> <p>Cessionnaire</p> <p>(2.1) Le certificat d'enregistrement de la cession d'un droit d'auteur constitue la preuve que le droit qui y est inscrit a été cédé et que le cessionnaire figurant à l'enregistrement en est le titulaire.</p> <p>Titulaire de licence</p> <p>(2.2) Le certificat d'enregistrement de la licence accordant un intérêt dans un droit d'auteur constitue la preuve que l'intérêt qui y est inscrit a été concédé par licence et que le titulaire de la licence figurant au certificat d'enregistrement détient cet intérêt.</p> <p>Admissibilité en preuve</p> <p>(3) Les copies certifiées conformes et les certificats censés être délivrés selon les paragraphes (1) ou (2) sont admissibles en</p>
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<p>signature or official character of the person appearing to have signed it.</p>	<p>preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.</p>
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-759-16

STYLE OF CAUSE: BELL CANADA BELL EXPRESSVU LIMITED
PARTNERSHIP BELL MEDIA INC. VIDÉOTRON
LTD. GROUPE TVA INC. ROGERS
COMMUNICATIONS CANADA INC. and ROGERS
MEDIA INC. v L3D DISTRIBUTING INC. dba INL3D
MORCOR COMPUTERS 2000 LTD. OTTAWA TEK
CORPORATION dba OTTAWA TEK
COMMUNICATIONS and RAHEEL RAFIQ v
ANDROID BROS INC. *and others*

PLACE OF HEARING: TORONTO, ONTARIO (VIA VIDEOCONFERENCE)

DATE OF HEARING: NOVEMBER 10, 2020

JUDGMENT AND REASONS: FUHRER J.

DATED: AUGUST 10, 2021

AMENDED **FEBRUARY 24, 2022**

APPEARANCES:

François Guay
Ryan Evans
Guillaume Lavoie Ste-Marie

FOR THE PLAINTIFFS

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