

Illegal Downloading: the Wild West Comes to an End

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Canadian Internet users who illegally download music, movies or television series cannot hide behind the anonymity of the web to avoid lawsuits.

Canadian Internet users who illegally download music, movies or television series cannot hide behind the anonymity of the web to avoid lawsuits. The Federal Court reiterated this past February that Internet service providers could be forced to reveal, to copyright holders, the identity of people who are suspected of having illegally downloaded works that are protected by the Copyright Act¹ (the “Act”). The full judgement is available by following this link.

In this case, Voltage Pictures LLC (“Voltage”), an American film producer, was able to identify the IP addresses of several Internet users whom they suspected of illegally downloading the movie Dallas Buyer’s Club. However, since an IP address is not sufficient to identify a person, Voltage had to convince the court to force TekSavvy Solutions Inc. (“TekSavvy”), an Ontarian Internet service provider, to provide them with this information.

Since TekSavvy did not want to take position in the debate, the Canadian Internet Policy and Public Interest Clinic (“CIPPIC”) was authorized to intervene, and to oppose the arguments made by Voltage. To this effect, the CIPPIC referred particularly to sections 7 and 8 of the Canadian Charter of Rights and Freedoms² and alleged that TekSavvy should not reveal the requested information, since this would violate the right to privacy of its clients. Voltage in turn argued that receiving this information was essential in order to defend its copyright interests and to obtain compensation.

Balancing the rights of the parties

The court had to decide between Voltage’s rights and the constitutional rights of Internet users. To settle this issue, the court conducted a review of Canadian case law in the area, in addition to English and American case law. By applying the test in *BMG Canada Inc. c. Doe*³, the court determined that Voltage could benefit from a Norwich injunction order: an order by which the court obliges a third-party to provide essential information in order to allow the exercise of an action against another party.

The court stated that respecting Voltage’s copyright outweighed the Internet users’ right to privacy. However, it added that the violation of the Internet users’ rights to privacy had to be reasonable, and that it had to keep in mind the fact that Voltage had a reputation for abusing their copyright. The court also had to keep in mind that there was a risk that they would receive a large number of subsequent actions involving the targeted Internet users, and that the procedural costs were far greater than what Voltage was seeking, since this amount is limited by the Act.

The Court's Decision

In the end, the court ruled in favor of Voltage and required that TekSavvy reveal the contact information of the users suspected of having illegally downloaded the works in question. However, due to the fact that Voltage had the reputation of being a “copyright troll” (a company that abuses its rights to extort money through threatening law suits), the court ordered that Voltage had to send the court a copy of the letters that it intended to send to the targeted users. The court could then approve the content of the letters before Voltage would be able to send them. This ensured that the letters would not appear to be threatening and that they clearly mentioned that the targeted persons were not yet found guilty of the allegations and that they had no obligation to reach an out-of-court settlement with Voltage.

Conclusion

In summary, Canadian Internet users can no longer benefit from anonymity by hiding behind their IP addresses, since Internet service providers can now be forced to reveal the contact information associated with these addresses. However, anyone who makes such a request must demonstrate to the court that they have a bona fide claim and that the Internet service provider is the only source for the desired information. They must also demonstrate that this information is essential to the protection of their copyright.

Some may say that this judgement is a step backwards with respect the fundamental rights of Internet users; however the court's decision to impose restrictions on Voltage regarding the exercise of its rights is itself an important step forward to avoid abusive litigation. In fact, this decision is in line with recent legislative modifications which limits the amount of damages that can be awarded for copyright infringement. The legislator wished to ensure that copyright holders could not threaten exaggerated lawsuits in order to bully suspected Internet users into accepting an out-of-court settlement without having the opportunity to have a just and fair trial.

Nevertheless, given that the Act allows for damages between \$100 and \$5 000 for non-commercial usage, it is certainly more economical to subscribe to a legal online service!

1 LRC 1985, c C-42

2 The Constitutional Act, 1982, (UK) Part 1

3 2005, FCA 193