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ARTICLE

Notice Regime and Norwich Orders

Internet providers are entitled to their reasonable costs for disclosure of subscriber information

The Supreme Court of Canada released its decision in *Rogers Communications Inc. v. Voltage Pictures, LLC*, holding that internet service providers are entitled to their reasonable costs of compliance with Norwich orders for the disclosure of subscriber information.

The underlying facts relevant to this appeal are straightforward. The respondents, film production companies, alleged that their copyrights were infringed by unknown internet subscribers who shared their films using peer to peer file sharing networks. The respondents sued one of those unknown users – "John Doe" – alleging breach of copyright. The objective of suing this John Doe was to commence a so-called "reverse" class action against thousands of people whose identities were unknown but that the respondents said had similarly infringed its copyright. In pursuit of that action, the respondents brought a motion for a Norwich order compelling John Doe's internet service providers – the appellant, Rogers Communications Inc. – to disclose "any and all of John Doe's contact and personal information". The respondents also sought that the disclosure order be made without any fees disbursements payable to Rogers on the basis of the "notice and notice" provisions under the *Copyright Act*. Rogers took the position it was entitled to its reasonable costs of compliance with the Norwich order.

The "notice and notice" regime requires that internet services providers, upon receiving notice from a copyright owner that a person at a certain IP address has infringed copyright, forward that notice of infringement to the person to whom the IP address was assigned. Internet service providers are prohibited from charging a fee for complying with their obligations under regime.

The question thus became whether or not the scope of Rogers' obligations as an internet service provider under the notice and notice regime overlapped, to any extent, with their obligations under the Norwich order. The motion judge found that Rogers was entitled to its reasonable costs of compliance with the Norwich order because there was nothing under the notice regime that requires an ISP to disclose a subscriber's identity to a copyright owner. The Federal Court of Appeal agreed with this premise, but ordered that Rogers was only entitled to its costs of compliance with the Norwich order that did not overlap with the steps formed as part of Rogers' obligations under the notice regime.

The Supreme Court of Canada allowed the appeal, and held that internet service providers could recover their costs of compliance with a Norwich order. However, the Court noted that Rogers' recovery must be reasonable and arise from compliance with the order, and that where an internet service provider should have borne costs in connection with its statutory obligations under the notice and notice regime, those will not be recoverable. The Court also sent back the issue of the quantum of Rogers' recoverable fees to the motion judge.

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