Canadian ISPs Subject to Site-Blocking Order

December 20, 2019

Canadian copyright owners now have a new and fairly powerful weapon in their arsenal for protecting their copyrighted content following a recent landmark decision from the Federal Court of Canada (Court). In *Bell Media Inc. v. GoldTV Services* (2019 FC 1432), the Court held in favour of plaintiffs Bell Media Inc., Groupe TVA Inc. and Rogers Media Inc. (Plaintiffs), and issued the first Canadian site-blocking order against websites that contained infringing copyrighted content. The order applies to Canada's largest internet service providers (ISPs).

Background

The order required the named ISPs to block access to certain streaming sites that hosted and provided access to unauthorized copies of the Plaintiffs' programming content.

The Canadian media companies acting as Plaintiffs had already succeeded in obtaining two injunction orders against the defendants, but the injunctions proved to be ineffective against the anonymous site operators. Despite the issuance of the injunctions, the infringing content remained available on the sites and the Plaintiffs sought an alternative remedy to block access to the websites and internet services operated by the defendants through the third-party respondent ISPs. The third-party respondents named in this case included Eastlink, Cogeco, TELUS, Distributel, Saskatchewan Communications, Shaw Communications, Teksavvy, Fido, Videotron, Bell Canada and Rogers Communications. We note that four of the major ISPs consented to the Plaintiff's motion, while the remaining ISPs either took no position on the merits of the motion, except for Teksavvy. Teksavvy presented arguments opposing the website blocking order on a number of grounds, including that the Court lacked the jurisdiction to grant an order of such type, or should refrain from issuing a blocking order if it did have jurisdiction.

Jurisdiction

In this decision, the Court first confirmed that it had the necessary jurisdiction to issue this particular type of remedy. The Court rejected Teksavvy's argument that the Canadian Radio-television and Telecommunications Commission (CRTC), not the Court, had the sole jurisdiction to issue or approve site-blocking orders. The Court

determined that it could issue such orders, which did not need to be approved by the CRTC, particularly given that the case was a copyright matter and the *Copyright Act* provides the Court with the broad power to grant injunctive relief, including orders against innocent third parties.

The Court then discussed the test to be met in order to issue a site-blocking order.

Test for a site-blocking order

The Court set out the three well-established criteria for an injunction: 1) there was a serious issue to be tried; 2) irreparable harm will result if the injunction is not granted and 3) the balance of convenience favours the Plaintiffs. The Court considered case law from the United Kingdom and particularly the English Court of Appeal's decision in the *Cartier International AG v. British Sky Broadcasting Ltd*., [2016] EWCA Civ 658, aff'd [2018] UKSC 28) (*Cartier*) in which the several factors were considered in determining whether a site-blocking order should be issued. The Court also referenced reasoning developed in *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 (see BLG's bulletin on this case here).

1. Serious issue

The Court was quick to confirm that the Plaintiffs had established a strong *prima facie* case on the merits that the defendant operators of the pirate subscription streaming service infringed their copyrights. As such, it was quick to conclude that there was a serious issue to be tried.

2. Irreparable harm

The Court underlined that despite the previously issued injunctions, the infringing activities continued and, quoting the findings of the CRTC in *Telecom Decision CRTC 2018-384*, explained that the copyright piracy results in harm to the Canadian broadcasting system as whole. The Court considered Teksavvy's arguments as unpersuasive and as such, rejected its argument that Plaintiffs had not suffered any substantial financial harm and determined that the Plaintiffs would suffer irreparable harm if the order did not issue and that the number of the targeted websites had been taken down since the first injunctions.

3. Balance of convenience

The Court also determined that the balance of convenience favoured the issuance of the site-blocking order. It considered the factors expressed in *Cartier* in order to come to the conclusion that all such factors favoured the issuance of the order.

The eight factors considered from the *Cartier* case were the following:

- Necessity — whether the relief is necessary to protect the Plaintiff's rights;
- Effectiveness — whether the relief sought will render the infringing activities more difficult to achieve and discourage Internet users from accessing the infringing service;

- Dissuasiveness — whether others not currently accessing the infringing service will be dissuaded from doing so;
- Complexity and Cost — a consideration of the complexity and cost of implementing the relief sought;
- Barriers to legitimate use or trade — whether the relief will create barriers to legitimate use by unduly affecting the ability of users of ISP services to access information lawfully;
- Fairness — whether the relief strikes a fair balance between fundamental rights of the parties, the third parties and the general public;
- Substitution — a consideration of the extent to which blocked websites may be replaced or substituted and whether a blocked website may be substituted for another infringing website; and
- Safeguards — whether the relief sought includes measures that safeguard against abuse.

The Court rejected Teksavvy's arguments that site-blocking is an extreme measure that would stifle free expression by blocking legitimate content and that the impact of the order (for example, in terms of the cost to the ISPs to comply with the order) outweighed any harm the Plaintiffs might incur as a result of the infringing activity. In doing so, the Court went through each of the eight factors (noting that the necessity factor is closely related to the irreparable harm branch of the test) and ultimately ruled that the balance of convenience favoured granting the site-blocking order.

The Court determined that the site-blocking order would reduce the infringing activities because such orders have proven effective in other jurisdictions. Furthermore, the order would have a strong deterrent effect.

On the issue of complexity and costs for the ISPs subject of the order, the Court held that the named ISPs (which represented a significant percentage of ISP subscribers in Canada) had the technology to perform the required DNS blocking and IP address blocking.

For the site-blocking order itself, the Court required the Plaintiffs to indemnify the ISPs for the ISPs' reasonable marginal costs and any reasonable liability (including defence costs) resulting from third-party claims that resulted from the ISP's compliance with the site-blocking order for a period of two years.

Takeaways

This is the first case of its kind in Canada. Canadian copyright owners now join their counterparts in many European countries in obtaining an additional remedy to help protect their copyrights on the Internet. However, this remedy should not be considered as the first course of action in defending copyrights as the case demonstrates that the order was only issued because the defendants had not complied with previously issued injunctions.

Future cases involving a similar site-blocking order will still have to undergo a discussion of the factors discussed above before being granted a site-blocking order.

Teksavvy has since appealed the site-blocking order on several grounds, namely that the Court erred in finding it has jurisdiction to issue such order and in its interpretation and application of the test for a mandatory injunction. Teksavvy is also appealing on the grounds that the site-blocking order violates freedom of expression, as protected by the Canadian *Charter of Rights and Freedoms.*

By

Vinay Desai

Expertise

Copyright, Intellectual Property

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3
T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9
T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2
T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4
T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3
T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.