

FEDERAL COURT

BETWEEN:

VOLTAGE PICTURES LLC

Plaintiff/Moving Party

and

JOHN DOE and JANE DOE

Defendants

and

TEKSAVVY SOLUTIONS INC.

Responding Party

NOTICE OF MOTION

(Motion for a written examination of a non-party, returnable December 17, 2012)

TAKE NOTICE THAT the Plaintiff, **VOLTAGE PICTURES LLC** (“Voltage”) will make an Motion to the Court on Monday, December 17, 2012, at 10:00 a.m., or as soon thereafter as the motion can be heard, at the Courthouse at 180 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order pursuant to Rule 238 of the *Federal Court Rules* that TekSavvy Solutions Inc. (“TekSavvy”) be required to disclose to Voltage, in Microsoft Excel format, the

contact information, including the names and addresses, of the TekSavvy customer accounts associated with the IP addresses attached as Exhibit “B” to the Affidavit of Barry Logan; and

2. Such further and other relief as counsel may advise and this Honourable Court may permit;

THE GROUNDS FOR THE MOTION ARE:

3. The Plaintiff, Voltage, is a movie production company based in Los Angeles, California. In 2012, Voltage retained Canipre Inc. (“Canipre), a forensic investigation firm, to investigate whether Voltage’s cinematographic works (the “Works”) were being copied and distributed in Canada over peer to peer (“P2P”) networks using the BitTorrent Protocol;
4. The BitTorrent Protocol is a P2P file sharing protocol that facilitates the distribution of large amounts of data over the internet through networks. The BitTorrent Protocol breaks a file into numerous small data packets, allowing other network users or peers to download different sections of the same file from multiple users. This speeds up the time it takes to download a file and frees up the capacity of a computer or server to simultaneously download and upload files;
5. Once a packet is downloaded by a peer, that peer automatically becomes a download source for other peers connected to the Bit Torrent network who are requesting the file. Unless the settings on the user’s BitTorrent program are changed, every user who is copying or who has copied a file is simultaneously distributing it to every

other user or peer connected to the BitTorrent network. This allows even small computers with low bandwidth to participate in large data transfers across a P2P network;

6. Between September 1 and October 30, 2012, Canipre used forensic software to scan BitTorrent networks for the presence of the Works. The forensic software searched BitTorrent networks for files corresponding to the Works and identified the IP address of each seeder or peer who was offering any of these files for transfer or distribution. This information is available to anyone that is connected to the P2P network;
7. The forensic software downloaded the copies of the Works available for distribution on the P2P networks and for each file downloaded recorded the following identifying information:
 - a. the IP address assigned to the peer by his or her internet service provider (“ISP”) at the time it distributed the file;
 - b. the date and time at which the file was distributed by the seeder or peer;
 - c. the P2P network utilized by the peer; and
 - d. the file’s metadata, which includes the name of the file and the size of the file (collectively, the “File Data”);
8. Canipre analyzed each of the BitTorrent packets distributed by the IP addresses contained in File Data and verified that reassembling the pieces results in a fully

playable digital motion picture that is one of the Works. Canipre verified this by viewing a control copy of each of the Works side by side with the digital media files being distributed on the P2P network and confirming that they were the same;

9. Canipre reviewed the File Data and identified the transactions associated with IP addresses for customers of TekSavvy in Ontario that used the BitTorrent network to reproduce and distribute the Works during the period of September 1 to October 30, 2012 (the “Distributors”);
10. ISP’s track the IP addresses assigned to their customers at any given time and retain “user logs” of that information. Once provided with the IP address and the corresponding File Data, ISPs can review their user logs to identify the contact information of their clients who acted as peers to copy and distribute unauthorized versions of the Works. Only an ISP can correlate the IP address to the real identity of its subscriber;
11. In simple terms, the Distributors are facilitating the flagrant theft of the Works by others, on an international scale;
12. Voltage has a right to receive revenues, proceeds, and profits from its Works and has a proprietary interest in this right. Through their conduct, the Distributors have:
 - 1) contravened the *Copyright Act*;
 - 2) converted Voltage’s proprietary rights unto themselves;
 - 3) deprived Voltage of revenues and other consideration; and

- 4) unlawfully interfered with Voltage's economic relations;
13. All of the Distributors' activities are done without the authorization of Voltage and without any payment or compensation to Voltage;
14. Voltage is therefore entitled to determine the identity of the Distributors and to pursue its available legal remedies against the Distributors, including an accounting and disgorgement of all revenues and profits (in whatever form) made by the Distributors from the wrongful conversion of Voltage's property, and damages from the losses of actual and prospective proceeds as a result of the Distributors' acts;
15. *Rules of Federal Court*, and in particular Rule 238;
16. Sections 27, 35, and 38.1 of *The Copyright Act*;
17. Such further and other grounds as counsel may advise and this Honourable Court may permit;

THE FOLLOWING DOCUMENTARY EVIDENCE will be relied on at the hearing of the motion:

18. The Affidavit of Barry Logan and the Exhibits thereto; and
19. Such further and other material as counsel may advise and this Honourable Court may permit.

December 7, 2012

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VOLTAGE PICTURES LLC
Plaintiff/Moving Party

and

JOHN DOE and JANE DOE
Defendants

FEDERAL COURT

Proceeding commenced at Toronto

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