

Federal Court



Cour fédérale

**Date: 20130131****Docket: T-2058-12****Citation: 2013 FC 112****BETWEEN:****VOLTAGE PICTURES LLC****Plaintiff****and****JOHN DOE AND JANE DOE****Defendants****REASONS FOR ORDER****MANDAMIN J.**

[1] The Plaintiff's motion came before me on January 14, 2013. After hearing from counsel, I decided to adjourn the motion and gave oral reasons for doing so. I indicated I would set out my reasons for doing so in writing.

[2] By way of background, the Plaintiff, Voltage Pictures LLC [Voltage], has an action in Federal Court claiming copyright infringement by John Doe and Jane Doe who are alleged to copy and distribute Voltage's cinematic works [the Works] over internet peer to peer networks using the BitTorrent Protocol. Voltage brought a Motion for an Order under Rule 238 of the *Federal Courts Rules* that TekSavvy Solutions Inc. [TekSavvy], an internet service provider and a non-party to the

action, be required to disclose to Voltage the names and addresses of TekSavvy customer accounts associated with IP addresses of senders or peers offering any of the files associated with Voltage's Works. These IP addresses had been identified by a forensic investigation firm, Canipre, to scan BitTorrent networks for the presence of the Works.

[3] The motion was initially adjourned to enable TekSavvy to notify those customers who may be affected by Voltage's motion. In the interim, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic [CIPPIC] filed a motion to intervene in this proceeding. That motion to intervene is not before me and is still pending.

[4] In the matter before me, Voltage wished to proceed with its motion while CIPPIC sought an adjournment until after its motion to intervene is considered. TekSavvy took no position on Voltage's motion but supported the CIPPIC request for an adjournment. As matters thus stood, if Voltage's motion for release of customer information by TekSavvy were to proceed, it would be unopposed.

[5] I granted the request for an adjournment for several reasons.

[6] First, proceeding on the basis of an unopposed motion is risky in the sense that the Court is hearing only one side. There have been any number of occasions where a Court, upon hearing subsequently from the other side, has had to change course. The Court is better served in coming to a proper decision having heard from differing sides.

[7] Second, Voltage's action is one in copyright. Parliament has passed new legislation on copyright. It is not yet certain how this new copyright legislation will impact proceedings for copyright infringement. Is the matter proceeding under previous copyright law or under the new enactment? Is there a transitional stage? In my view, the early steps taken in adjudicating new legislation are important and it is important. To be able to do so properly, a Court needs to be as informed as it can be about the matter.

[8] Third, on review of the material and the forensic investigation material, it seems to me there are factual matters that require more explanation. What is the link between IP numbers and the alleged copyright infringers? Is it direct or indirect? Is it a link to a device or to an individual? Again, more information or submissions may be of assistance to the Court.

[9] Fourth, this proceeding raises a question about Court resources. The numbers provided to me indicate there could possibly be over a thousand defendants. The question arises as to how the Court is going to manage the proceeding and this may bring in the need for a specially managed proceeding under Rule 383 of the *Federal Courts Rules*.

[10] Finally, I do not believe the Plaintiff's motion can be adequately heard during the time allotted for general motions. More time would be required. Accordingly, the Plaintiff's motion should be set down for a special sitting on a date which follows the conclusion of the motion to intervene.

[11] The Plaintiff raised the question of prejudice caused by delay in hearing its motion. I am satisfied that the undertaking by TekSavvy to preserve all information responsive to the Plaintiff's motion and its further undertaking to forward a notice that recipients identified as being correlated to the IP addresses in question refrain from any infringement of copyright in the Works addresses the question of prejudice in the interim until the motion is heard.

[12] In result, the foregoing considerations led me to decide to adjourn this motion until the CIPPIC motion is decided. The parties had the opportunity to propose terms of a draft order, which I found to be satisfactory. I issued the Order in question on January 18, 2013.

"Leonard S. Mandamin"

Judge

Ottawa, Ontario  
January 31, 2013