

FEDERAL COURT

BETWEEN:

**ROGERS MEDIA INC.
ROGERS COMMUNICATIONS INC.
BCE INC.
BELL MEDIA INC.
CTV SPECIALTY TELEVISION ENTERPRISES INC.
THE SPORTS NETWORK INC.
LE RESEAU DES SPORTS (RDS) INC.
GROUPE TVA INC.**

Plaintiffs

and

**JOHN DOE 1
JOHN DOE 2
OTHER UNIDENTIFIED PERSONS WHO OPERATE UNAUTHORIZED STREAMING
SERVERS PROVIDING ACCESS TO NHL LIVE GAMES IN CANADA**

Defendants

and

**BELL CANADA
BRAGG COMMUNICATIONS INC. dba EASTLINK
COGECO CONNEXION INC.
DISTRIBUTEL COMMUNICATIONS LIMITED
EBOX TELECOMMUNICATIONS INC.
FIDO SOLUTIONS INC.
ROGERS COMMUNICATIONS CANADA INC.
SASKATCHEWAN TELECOMMUNICATIONS
SHAW COMMUNICATIONS INC.
TEKSAVYY SOLUTIONS INC.
TELUS COMMUNICATIONS INC.
VIDEOTRON LTD.
2251723 ONTARIO INC. dba VMEDIA**

Third Party Respondents

and

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY
AND PUBLIC INTEREST CLINIC
BEANFIELD TECHNOLOGIES INC.**

Interveners

AMENDED NOTICE OF MOTION

(Plaintiffs' motion for the renewal of an interlocutory injunction Order binding the Third Party Respondents pursuant to Section 44 of the *Federal Courts Act* and Rule 373 of the *Federal Courts Rules*)

TAKE NOTICE THAT the Plaintiffs will make a motion to the Court at a special sitting, on a date and at a location to be determined by the Judicial Administrator, pursuant to Rule 35(2) of the *Federal Courts Rules*. The expected duration of the hearing for this motion is one (1) day. The Plaintiffs respectfully request that the hearing of the motion take place by videoconference, pursuant to paragraphs 12-16 of the Federal Court's Update #8 and Consolidated COVID-19 Practice Direction (June 24, 2022).

THE MOTION IS FOR:

1. **THE RENEWAL OF THE INTERLOCUTORY INJUNCTION** issued by this Court on May 27, 2022 (the "**2021-2022 Order**"), with certain amendments described below and reflected in the enclosed draft Order, pursuant to Section 44 of the *Federal Courts Act* and Rule 373 of the *Federal Courts Rules*, in the form of the "**Proposed 2022-2023 Order**" attached as Schedule A to this Notice of Motion (in clean format and in tracked changes over the 2021-2022 Order), ordering the Third Party Respondents to, *inter alia*, temporarily and dynamically block or attempt to block access by at least their residential wireline Internet service customers to Unauthorized Streaming Servers identified by the Plaintiffs or their appointed agent as providing or facilitating unauthorized access to NHL Live Games (as defined below) during the 2022-2023 NHL season, including the playoffs, up to the conclusion of the Stanley Cup final;
2. **A CONFIDENTIALITY ORDER** pursuant to Rule 151, directed at certain paragraphs of the Plaintiffs' written representations and evidence in support of this motion;
- 2.1 **AN ORDER** pursuant to Rules 70 and 366 dispensing the Plaintiffs from complying with the requirement of filing a Memorandum of Fact and Law of a maximum of 30 pages in support of the present motion, and granting them leave to file a Memorandum of Fact and Law in excess of 30 pages in support of this motion;
3. **WITHOUT COSTS** against the Defendants or the Third Party Respondents, unless contested, in which case the Plaintiffs seek costs against the contesting Defendant(s) or Third Party Respondent(s) in the form of a lump sum payment in an amount to be

determined by the Court depending on the complexity and merits of the contestation, payable forthwith; and

4. **SUCH FURTHER AND OTHER ORDER** as to this Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

I. Context

1. The Plaintiffs are well-known Canadian broadcasters that own and operate television stations and online streaming platforms and applications in Canada, on which they broadcast a wide variety of television programs, including sports programs and live sports events for which they hold the Canadian broadcasting rights (i.e., the “rights to communicate to the public by telecommunication” under the *Copyright Act*).
2. The Plaintiffs notably hold the exclusive rights to communicate to the public the live footage and/or production of all live matches of the National Hockey League (“NHL”) in Canada for the 2022-2023 season, including the 2023 NHL playoffs (“**NHL Live Games**”), through television broadcast and online streaming.
3. During the 2020-2021 NHL season, the Plaintiffs retained a specialized third-party vendor to monitor the Internet for instances of piracy of their NHL content. They detected a very large number of distinct anonymous servers accessible from Canada that were broadcasting NHL Live Games in real time over the Internet without authorization (“**Unauthorized Streaming Servers**”). Over 95% of these Unauthorized Streaming Servers were located outside of Canada.
4. The John Doe 1 and John Doe 2 Defendants are anonymous operators of Unauthorized Streaming Servers that were identified during this monitoring exercise. They provided unauthorized access to NHL Live Games in Canada from servers located in Russia and the Seychelles, hosted by hosting providers based in the Seychelles, Netherlands, Ukraine and Hong Kong.
5. The Plaintiffs, by themselves and through the NHL, have invested important resources to try to stop Unauthorized Streaming Servers from infringing their rights in NHL Live

Games in Canada, including by sending thousands of notices to the hosting providers renting the servers used as Unauthorized Streaming Servers.

6. However, despite these efforts, it is practically impossible to identify the operators of Unauthorized Streaming Servers such as the Defendants or to obtain effective remedies to stop them from distributing unauthorized content to Canadian users.
7. For instance, the Defendants were served with the Statement of Claim in this action through various means between June 15 and July 2, 2021, but have not appeared on the Court record or otherwise contacted the Plaintiffs or the Court.
8. Since the Plaintiffs cannot effectively stop certain operators of Unauthorized Streaming Servers from distributing unauthorized content to Canadian users, they sought relief that would preclude access to that unauthorized content.
9. In order to access that unauthorized content, including unauthorized streams of NHL Live Games, Canadian users must subscribe to the services of an Internet service provider (“ISP”).
10. The Third Party Respondents in this case are ISPs that serve the vast majority of Canadian residential Internet subscribers.
11. In that context, on July 7, 2021, the Plaintiffs filed a motion for the only effective remedy available to stop such blatant and widespread infringement of their rights in Canada: an interlocutory injunction directed at Canadian ISPs to enjoin them to temporarily and dynamically block, or attempt to block, access by their Internet service subscribers to IP addresses associated with Unauthorized Streaming Servers distributing NHL Live Games in Canada for the 2021-2022 season.
12. As described below and in the Plaintiffs’ motion materials filed in support of the 2021-2022 Order, the Third Party Respondents have the technical means to block this access to unauthorized content by their subscribers.
13. On May 27, 2022, the Honourable Mr. Justice Pentney issued the 2021-2022 Order in terms similar to those sought by the Plaintiffs.

14. At a high level, the 2021-2022 Order included the following mechanism:
- a. An “Agent” identified by the Plaintiffs would use its systems to detect IP addresses associated with Unauthorized Streaming Servers that provide unauthorized access to NHL Live Games. These could either be:
 - i. Unauthorized Streaming Servers that were detected during a “Pre-Monitoring Period” as streaming one of the Plaintiffs’ television stations on which that NHL Live Game was scheduled to be broadcast; or
 - ii. Unauthorized Streaming Servers detected during an NHL Live Game as providing unauthorized access to that game.

In practice, the Agent was Friend MTS Limited (“**Friend MTS**”), a company specialized in this type of task that had experience with the implementation of similar orders in other jurisdictions and that had performed the monitoring described at paragraph 3 above.

- b. Friend MTS then applied numerous safeguards to the identified IP addresses to ensure that blocking them would not lead to the blocking of any legitimate content. IP addresses that did not pass one or more of the safeguards would not be blocked.
- c. Friend MTS then published the list of IP addresses that passed all safeguards to a secure location on the Internet, accessible to all Third Party Respondents.
- d. The Third Party Respondents ingested that list in their ISP systems for blocking. The Third Party Respondents had to block the IP addresses on the list at the latest 30 minutes after the start of an “NHL Live Game Window” and every hour during the game. They had to unblock all IP addresses at the latest 15 minutes after the game.
- e. The 2021-2022 Order included measures to ensure that Canadian Internet users and the operators of the Unauthorized Streaming Servers were aware of its implementation and had an opportunity to challenge it if appropriate.

- f. The 2021-2022 Order also included measures to protect the Third Party Respondents, including some flexibility in its implementation to ensure it did not negatively affect their other operations, and certain indemnity provisions.
15. The key difference between the Order sought by the Plaintiffs before Mr. Justice Pentney and the 2021-2022 Order as issued pertains to the reporting of its implementation to the Court after the end of the NHL season. The Plaintiffs had proposed reporting on a number of issues by filing affidavit evidence comprising the list of blocked IP addresses, details of any complaints, details of any technical issues, and any available evidence of effectiveness. In the 2021-2022 Order, Mr. Justice Pentney instead the appointment of independent experts to oversee its implementation and report back to the Court on these issues.
16. The Third Party Respondents implemented the Order starting on May 31, 2022, until the last game of the Stanley Cup final on June 26, 2022.
17. During that period, Friend MTS identified a large number of instances (incidents) of unauthorized streams of NHL Live Games originating from a large number of unique IP addresses of Unauthorized Streaming Servers. Many of the IP addresses identified by Friend MTS passed all safeguards and were identified for blocking by the Third Party Respondents.
18. The Third Party Respondents were able to comply with the 2021-2022 Order at minimal cost.
19. As mentioned above, the 2021-2022 Order was only valid until the end of the 2022 NHL playoffs.
20. This motion is brought to renew the 2021-2022 Order for the 2022-2023 NHL season, with certain amendments, as further explained below.
- 20.1 The Third Party Respondents on this motion are the same as those to which the 2021-2022 Order applied, except for EBOX Telecommunications Inc. and 2251723 Ontario Inc. dba VMedia, which are now affiliated with some of the Plaintiffs.

II. The necessity to renew the 2021-2022 Order

21. As will be further detailed in the Plaintiffs' written representations and affidavits in support thereof, and as explained in the reports filed by the independent experts, the 2021-2022 Order has been effective at preventing the unauthorized distribution of NHL content in Canada.
22. The four (4) Third Party Respondents associated with the Plaintiffs at the time of the issuance of the 2021-2022 Order have gathered empirical evidence showing that it prevented a very large number of Canadian Internet users from accessing Unauthorized Streaming Servers during NHL Live Games.
23. None of the Plaintiffs, their associated Third Party Respondents or Friend MTS received any legitimate complaint with regard to the implementation of the 2021-2022 Order. To the Plaintiffs' knowledge, none of the other Third Party Respondents have received any such complaints.
24. The Third Party Respondents associated with the Plaintiffs had no technical issues with the implementation of the 2021-2022 Order and, to the Plaintiffs' knowledge, the other Third Party Respondents were also able to implement the 2021-2022 Order.
25. The implementation of the 2021-2022 Order also did not affect the ability of Canadian Internet users to access legitimate content.
26. There were only three minor incidents with the implementation of the 2021-2022 Order.
 - a. The 2021-2022 Order provides that notices must be sent to hosting providers when IP addresses that they host are added to the blocking list. This was done for all IP addresses added to the blocking list. However, for the first blocking window on May 31, 2022, the automated notice system had inadvertently not yet been activated, and the notices were sent manually on June 1, 2022, less than 12 hours after the end of the blocking window. All subsequent notices were sent concurrently with the identification of IP addresses for blocking.

- b. One misconfiguration during the first week of implementation led to the inadvertent blocking of six (6) IP addresses associated with Unauthorized Streaming Servers during their distribution of unauthorized content from other sports leagues, namely the NFL, WWE and NBA. Some of these IP addresses also provided unauthorized access to NHL content at other times during the implementation of the 2021-2022 Order. This error was quickly detected and corrected within ninety (90) minutes.
 - c. Due to another misconfiguration, certain IP addresses that could have been detected as providing unauthorized access to NHL Live Games were not detected and therefore not blocked.
27. These incidents were due to human error, not an error of automatic detection or implementation systems. These incidents did not lead to over-blocking of legitimate content, and in fact led to under-blocking for the third incident.
28. Given the above, the 2021-2022 Order accomplished what it set out to accomplish: it measurably curbed access to unauthorized streams of NHL Live Games, without any negative impacts on access to the Internet by Canadians and at a very low marginal cost to the Third Party Respondents.
29. That said, the nature of online piracy is unfortunately such that the operators of Unauthorized Streaming Servers will very likely not abandon their attempts to distribute unauthorized streams of NHL games for the 2022-2023 season. In that context, the Plaintiffs respectfully submit that unless the 2021-2022 Order is renewed for the 2022-2023 season, the Plaintiffs will suffer the same irreparable harm resulting from the same type of infringement that the 2021-2022 Order aimed to address.

III. Request to amend certain aspects of the 2021-2022 Order

30. The Proposed 2022-2023 Order is in large part identical to the 2021-2022 Order. The Plaintiffs seek the following modifications for the following reasons:
- a. **“Refreshing rate” of the IP blocking list:** The 2021-2022 Order provided that the Third Party Respondents must implement the blocking within thirty (30) minutes

following the start of an “NHL Live Game Window”, and at least every hour thereafter until the end of the NHL Live Game Window.

The Plaintiffs respectfully request to change that second period to every thirty (30) minutes. This is in line with the initial implementation delay and, as such, should not cause any technical issue (or increase the technical burden) for the Third Party Respondents.

In addition, operators of Unauthorized Streaming Servers are known to change the location of their server to attempt to circumvent the effect of such orders. A shorter implementation period ensures that these new servers are also blocked.

- b. **Format of the blocking list:** The 2021-2022 Order provided that Friend MTS must publish a consolidated list of all IP addresses to be blocked, accompanied by the start and anticipated end time for each NHL Live Game Window.

The format of the list of IP addresses generated by Friend MTS must be as simple as possible to avoid technical issues. It is formatted in a way that does not allow the inclusion of the start and end time for each NHL Live Game Window for each IP address directly in the list. The Plaintiffs therefore respectfully request that this requirement be removed from the Proposed 2022-2023 Order.

Instead, in practice, Friend MTS has sent an e-mail to the Third Party Respondents one hour ahead of each NHL Live Game Windows to notify them that the blocking will start momentarily, another e-mail when the blocking started, and another e-mail after the NHL Live Game Window to advise them that the blocking must stop. This fulfilled the same purpose as publishing start-end times with the list of IP addresses.

- c. **Method to notify the end of the blocking period:** The 2021-2022 Order provided that Friend MTS must notify the end of a blocking period by publishing an empty list of IP addresses.

In practice, to avoid technical issues that could result from a completely empty blocking list, the system put in place by Friend MTS involves giving notice of the end of the blocking by publishing a single IP address controlled by Friend MTS and that was communicated to all Third Party Respondents in advance of the start of implementation. Because that IP address is controlled by Friend MTS and does not have any useful purpose on the Internet, its publication on the blocking list does not lead to any over-blocking. Knowing this IP address in advance, the Third Party Respondents could configure their systems to unblock all IP addresses as soon as they detected this control IP address on the blocklist published by Friend MTS. This fulfilled the same purpose as publishing an empty list of IP addresses.

- d. **Limitation on obligation to give notice to ISP customers:** The 2021-2022 Order provided that the Third Party Respondents must make reasonable efforts to immediately make certain information available to their subscribers who attempt to access a blocked IP address.

The Third Party Respondents associated with the Plaintiffs (and presumably other Third Party Respondents) use a blocking system that does not allow the immediate display of such information to subscribers (ex.: on a splash page). The 2021-2022 Order already includes a “reasonable efforts” caveat but, for greater certainty, the Plaintiffs respectfully request the addition of a caveat that this immediate obligation only applies when technically possible and practical. The requirement for the Plaintiffs to pay for this effort has also been removed since the Proposed 2022-2023 Order already provides for the indemnification of reasonable marginal costs.

The Third Party Respondents associated with the Plaintiffs have and can continue to post a notice on their website containing the prescribed information. The Plaintiffs respectfully request a small amendment to the relevant paragraph of the draft Order to reflect this arrangement.

- e. **Reporting to the Court:** As mentioned above, the 2021-2022 Order provided for the appointment of independent experts to report on various issues regarding its implementation. These experts filed three (3) reports with the Court over a period

of a few months, including two confidential reports and one consolidated public report.

While the Plaintiffs understand the Court's and the public's interest in having independent experts review the implementation of the 2021-2022 Order as it was the first of its kind, the costs associated with the preparation of these reports were borne by the Plaintiffs and were very high, and the reports that were filed in the context of the 2021-2022 Order independently confirmed that the parties and Friend MTS complied with its terms and that it was effective.

The Plaintiffs therefore respectfully request that the reporting requirements for the 2022-2023 Order be in the form of affidavit evidence containing essentially the same key elements as the expert reports, namely a list of the blocked IP addresses, details of any complaints or technical issues, and available data regarding effectiveness. The Plaintiffs propose to report on the first three issues after the approximate mid-point of the 2022-2023 NHL season, and on all four issues after the season is completed.

IV. Confidentiality Order

31. The Plaintiffs' motion record contains sensitive information that should remain confidential. This information includes:
 - a. Sensitive and proprietary information of Friend MTS regarding the detection of IP addresses and the safeguards it applies to avoid over-blocking. This information could be used by copyright infringers to attempt to circumvent the Order sought and would defeat the purpose of that Order and of similar relief issued in other jurisdiction. Similar information was treated as confidential in the context of the motion leading to the 2021-2022 Order.
 - b. Sensitive information of the Plaintiffs and of their associated Third Party Respondents, notably regarding the scope of the blocking that resulted from the 2021-2022 Order (for the same reason as above), and their implementation costs.

- c. The confidential reports of the independent experts, which were ordered to be treated as confidential under the 2021-2022 Order.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THIS MOTION

32. The motion materials filed in support of the 2021-2022 Order, including transcripts of cross-examinations.
33. The pleadings and proceedings herein.
34. The second affidavit of Mohamed Drif, dated October 19, 2022.
35. The second affidavit of Jean-Philippe Neveu, dated October 19, 2022.
36. The second affidavit of Greg Sansone, dated October 19, 2022.
37. The second affidavit of George Demetriades, dated October 20, 2022.
38. The second affidavit of Gareth Evans, dated October 20, 2022.
39. The second affidavit of Sarah Farrugia, dated October 20, 2022.
40. The second affidavit of Greg Murray, dated October 20, 2022.
41. The affidavit of Shawn Redmond, dated October 20, 2022.
42. The third affidavit of Jason Vallée-Buchanan, dated October 21, 2022.
43. The initial confidential report of Mr. David Lipkus, dated July 26, 2022.
44. The further confidential report of Mr. David Lipkus and Mr. Jon Wilkins, dated August 26, 2022.
45. The draft consolidated public report of Mr. David Lipkus and Mr. Jon Wilkins, filed with the Court on a confidential basis and for direction on September 23, 2022.

Montreal (Quebec), October 14, 2022

Amended: Montreal (Quebec), October 21, 2022

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SCHEDULE A

Court File No. T-955-21

FEDERAL COURT**BETWEEN:**

**ROGERS MEDIA INC.
 ROGERS COMMUNICATIONS INC.
 BCE INC.
 BELL MEDIA INC.
 CTV SPECIALTY TELEVISION ENTERPRISES INC.
 THE SPORTS NETWORK INC.
 LE RESEAU DES SPORTS (RDS) INC.
 GROUPE TVA INC.**

Plaintiffs**and****JOHN DOE 1****JOHN DOE 2**

**OTHER UNIDENTIFIED PERSONS WHO OPERATE UNAUTHORIZED STREAMING
 SERVERS PROVIDING ACCESS TO NHL LIVE GAMES IN CANADA**

Defendants

**BELL CANADA
 BRAGG COMMUNICATIONS INC. dba EASTLINK
 COGECO CONNEXION INC.
 DISTRIBUTEL COMMUNICATIONS LIMITED
 EBOX TELECOMMUNICATIONS INC.
 FIDO SOLUTIONS INC.
 ROGERS COMMUNICATIONS CANADA INC.
 SASKATCHEWAN TELECOMMUNICATIONS
 SHAW COMMUNICATIONS INC.
 TEKSAVVY SOLUTIONS INC.
 TELUS COMMUNICATIONS INC.
 VIDEOTRON LTD.
2251723 ONTARIO INC. dba VMEDIA**

Third Party Respondents**and**

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY
AND PUBLIC INTEREST CLINIC
BEANFIELD TECHNOLOGIES INC.**

Interveners

ORDER

UPON noting that on May 27, 2022, this Court issued an interlocutory injunction Order against the Third Party Respondents (except for EBOX Telecommunications Inc. and 2251723 Ontario Inc. dba VMedia, which have since been added as a Third Party Respondents) pursuant to section 44 of the *Federal Courts Act*, RSC 1985, c F-7 and Rule 373 of the *Federal Courts Rules*, SOR/98-106; (the “**Original Order**”);

UPON noting that pursuant to the Original Order, the Third Party Respondents were ordered, during each of the NHL Live Game Windows (as defined in Confidential Schedule 2 of the Original Order) specified in Schedule 1 of the Original Order, to block or attempt to block access, by at least their residential wireline Internet service customers, to each of the IP addresses for the Target Servers (as defined in Confidential Schedule 2 of the Original Order) which the Plaintiffs’ appointed Agent notified to the Third Party Respondents in accordance with the Original Order;

UPON considering that the Original Order contained a “sunset clause” pursuant to which it terminated at the end of the last NHL Live Game Window of the 2021-2022 NHL season, (i.e., the final of the Stanley Cup, which took place on June 26, 2022), unless the Court ordered otherwise;

UPON noting that on June 8, 2022, this Court issued an Order naming Mr. David Lipkus as the primary independent expert to (i) gather facts regarding the Plaintiffs’ implementation of the Original Order, the degree to which its specific terms were complied with, and any difficulties encountered by the Third Party Respondents, (ii) assess the Original Order’s effectiveness, and (iii) report on these matter to the Court and then prepare a consolidated report to be made public,

and naming Mr. Jon Wilkins as secondary independent expert to be involved in the second and third mandates listed above.

UPON taking note that, in their analysis of the implementation of the Original Order, Mr. Lipkus and Mr. Wilkins found that [...] nine (9) out of ten (10) Third Party Respondents were able to block 100% of the tested IP Addresses, that there were no legitimate complaints from any of the individuals or businesses related to the blocking, and that the empirical data supported an assessment that the available supply of infringing copyrighted content was reduced and that the Original Order therefore met the necessary conditions for effectiveness as it delivered a measurable benefit for a very low cost.

UPON considering the consent of Bell Canada, EBOX Telecommunications Inc., Fido Solutions Inc., Rogers Communications Canada Inc., Vidéotron Ltd. and 2251723 Ontario Inc. dba VMedia, for the issuance of this Order;

AND without prejudice to the ability of any Third Party Respondents to subsequently seek to stay, vary, or set aside this Order or to oppose on any basis any other related to similar Order sought by the Plaintiffs or any other party;

UPON considering the Plaintiffs' motion record and the Plaintiffs' oral submissions at the hearing of this motion;

UPON considering subsections 3(1)(f) and 27(1) of the *Copyright Act*, RSC 1985, c C-42, section 36 of the *Telecommunications Act*, SC 1993, c 38, section 44 of the *Federal Courts Act*, and Rules 151, 373, and 399(2)(a) of the *Federal Courts Rules*;

AND UPON being satisfied that the Order sought should issue, based on the evidence and argument presented to the Court;

THE COURT ORDERS AS FOLLOWS:

1. In this Order, “**NHL Live Game**” refers to the live footage of a National Hockey League (“**NHL**”) game and/or the live television program produced by adding text, images, videos, commentaries and/or animations to said footage, and which is produced and/or broadcast by the Plaintiffs in Canada under license from the NHL or its Canadian franchise teams.
2. Subject to the terms of this Order, the Third Party Respondents shall, during each of the NHL Live Game Windows (as this term is defined in Confidential Schedule 2 of this Order) specified in Schedule 1 of this Order, block or attempt to block access, by at least their residential wireline Internet service customers, to each of the IP addresses for the Target Servers (as this term is defined in Confidential Schedule 2 of this Order and as may be hereafter varied) which the Plaintiffs or their appointed agent have notified to the Third Party Respondents in accordance with this Order.
3. The Plaintiffs shall collectively appoint a single agent to fulfill the duties outlined in this Order (the “Agent”).
4. The Agent may notify to the Third Party Respondents an IP address to be blocked as a Target Server pursuant to paragraph 2 of this Order if:
 - (a) The Agent has detected that the IP address is being used:
 - (i) during an NHL Live Game Window to communicate an NHL Live Game to the public by telecommunication without authorization; or
 - (ii) during the Pre-Monitoring Period (as defined in Confidential Schedule 2 of this Order) to communicate to the public by telecommunication without the Plaintiffs’ authorization a station on which an NHL Live Game is scheduled to be broadcast during the NHL Live Game Window; or
 - (iii) in a manner that meets one or more of the detection conditions specified in paragraph (c) and (d) of Confidential Schedule 2 of this Order; and

- (b) the Agent has concluded that at the time of the detection the IP address satisfies the safeguard requirements of paragraph 2(e) and (f) of Confidential Schedule 2 of this Order.
5. Upon the conclusion of each NHL Live Game Window, the Agent shall give notice to the Third Party Respondents in accordance with this Order to unblock all Target Servers that have previously been notified for blocking during the NHL Live Game Window. The Third Party Respondents shall use reasonable efforts to unblock as soon as reasonably practical after the end of the NHL Live Game Window.
6. The Third Party Respondents have no obligation to verify whether the IP addresses to be blocked as Target Servers notified by the Agent pursuant to this Order have been correctly identified, and are wholly reliant on the Plaintiffs or the Agent accurately identifying and communicating to the Third Party Respondents such IP addresses in compliance with this Order.
7. A Third Party Respondent will be deemed to have complied with paragraph 2 of this Order if it uses either manual or automated IP address blocking, or an alternative or equivalent technical means (provided that the Third Party Respondent provides reasonable notice to the Plaintiffs of said alternative or equivalent means). If a Third Party Respondent is unable to implement either manual or automated IP address blocking, or IP address rerouting, or alternative or equivalent technical means, that Third Party Respondent shall, within fifteen (15) business days of this Order, notify the Plaintiffs of the step(s) it has taken and why it will be unable to comply with the Order.
8. When blocking access to an IP address pursuant to paragraph 2 of this Order, the Third Party Respondents shall use reasonable efforts, subject to the limits of their networks and resources, to disable access to the IP address as soon as practicable following the notification by the Plaintiffs or their appointed Agent pursuant to this Order. A Third Party Respondent will be deemed to have complied with paragraph 2 of this Order if it uses the

technical means set out in paragraph 7 of this Order within thirty (30) minutes of the start of an NHL Live Game Window and at least every thirty (30) minutes thereafter until the end of the NHL Live Game Window, or according to such other schedule as may be agreed between the relevant Third Party Respondent and the Plaintiffs in writing. For greater certainty, the Third Party Respondents are not required to make capital investments to acquire additional software and/or hardware to implement the present Order.

9. A Third Party Respondent shall not be in breach of this Order if it temporarily suspends its compliance with paragraph 2, in whole or in part, when such suspension is reasonably necessary:
- (a) to correct or investigate potential over-blocking that is caused or suspected to be caused by the steps taken pursuant to paragraph 2;
 - (b) to maintain the integrity or quality of its Internet services or the functioning of its network and/or system(s);
 - (c) to upgrade, troubleshoot or maintain its Internet services or blocking system(s), including as a result of technical or capacity limitations of its blocking system(s);
or
 - (d) to prevent or respond to an actual or potential security threat to its network or systems,

provided that:

- (e) the Third Party Respondent gives notice to the Plaintiffs as soon as reasonably practical in advance of, during or following such suspension and provides the reason for such suspension and an estimate of its duration, or if the suspension does not last longer than 48 hours, uses commercially reasonable efforts to maintain a record of the suspension and provides that record to the Plaintiffs upon request; and

- (f) the suspension lasts no longer than is reasonably necessary.

For greater certainty, a Third Party Respondent shall not be in breach of this Order where it suspends in part compliance with paragraph 2 because the capacity of its blocking system is exceeded by the number of IP addresses for the Target Servers notified in accordance with this Order, provided it continues to block or attempt to block access to the number of IP addresses that does not exceed the capacity of its blocking system. A Third Party Respondent may hold a reasonable portion of its capacity in reserve if it deems it necessary to do so in order to be able to respond to threats to its subscribers and to maintain the integrity of its network and services. Any such measure must be justified with reference to the network capacity used for similar purposes within the 12 months preceding this Order.

The Plaintiffs shall treat any information received pursuant to this paragraph confidentially and shall use it solely for the purposes of monitoring compliance with this Order.

Notifications of IP addresses of Target Servers to the Third Party Respondents

10. Any notifications given by the Agent under paragraph 4 of this Order must:
 - (a) be notified to the Third Party Respondents by means of publishing a consolidated list of all the IP addresses of the Target Servers to be blocked during an NHL Live Game Window on a secure electronic platform to which each of the Third Party Respondents has been given access by arrangement with the Agent, in the manner specified in paragraphs (b) – (d);
 - (b) be in a fully specified data format, that is provided to the Third Party Respondents in advance.

- (c) be published to the said platform on an ongoing basis during each NHL Live Game Window, and (save as set out in paragraph 11 below) not during other periods; and
 - (d) be published in such a manner that they are brought actively to the attention of all Third Party Respondents as contemporaneously as is reasonably practicable.
11. Any notifications given by the Agent under paragraph 5 of this Order must be notified to the Third Party Respondents by the same means as those specified in paragraph 10 of this Order and given within fifteen (15) minutes of the expiry of the relevant NHL Live Game Window, and shall be effected by publishing a list containing a single previously-disclosed IP address controlled by the Agent.
12. The Court takes notice of the Plaintiffs' representation that they will appoint the same Agent for the implementation of this Order that was appointed for the implementation of this Court's Order in *Rogers Media Inc. v. John Doe 1*, 2022 FC 775, and that the notifications of IP addresses of Target Servers to the Third Party Respondents pursuant to this Order will follow the same technical requirements.

Notification to Target Servers

13. Where the Agent notifies an IP address for blocking in accordance with paragraph 4 of this Order, the Agent must within a reasonable period of the first occasion when that IP address is notified (being no later than the end of the day on the day of the NHL Live Game Window in question) send to the hosting provider associated with the IP address an electronic notice which contains at least the following information:
- (a) that access to the IP address has been blocked in Canada by Court Order;
 - (b) the identity of the Plaintiffs who obtained this Order;

- (c) a link to an internet location from which the public version of this Order may be accessed; and
- (d) a statement that affected server operators have the right to apply to the Court to discharge or vary the Order pursuant to paragraph 20 below.

Notification to Third Party Respondents Customers

14. The Third Party Respondents affiliated with the Plaintiffs shall post this Order, as well as an explanation of the purpose of the Order, and contact information for any inquires or complaints, on their websites, in a prominent manner.
15. Where access to a Target Server is blocked by a Third Party Respondent pursuant to this Order, that Third Party Respondent shall make reasonable efforts to make the following information immediately available to its residential Internet service customers who attempt to access the Target Servers and whose access is blocked, to the extent it is technically possible and practical with that Third Party Respondent's current technology:
 - (a) that access has been blocked by this Order;
 - (b) the identity of the Plaintiffs and the Federal Court File for this matter and contact information of the Plaintiffs, to be provided by the Plaintiffs to the Third Party Respondents for use by such customers;
 - (c) a statement to the effect that the operators of the Target Servers (i.e. the John Doe Defendants), any third party who claim to be affected by this Order, and any Internet service customer affected by the Order, may apply to the Court to discharge or vary the Order pursuant to paragraph 20 below; and
 - (d) contact information that the Plaintiffs' Agent shall provide to the Third Party Respondents, and may update from time to time on 30 days' notice, that enables

the affected customer to readily contact the Plaintiff or its Agent to direct any complaints, including false positives.

16. Any personal information collected to achieve the objectives of this Order, or collected through any Deep Packet Inspection (DPI) or other system adopted to achieve the objectives of this Order, will be used solely for the purposes of providing notice to customers, will not be disclosed, and will only be retained as long as is strictly necessary to ensure the integrity of the customer notification obligation.

Changes to Confidential Schedule 2

17. No changes to the contents of PART 1, paragraphs (a) to (g), or to PART II, paragraphs (a) to (e) of Confidential Schedule 2 may be made unless approved by Order of this Court. No additions to Part II, paragraph (f) of Confidential Schedule 2 may be made unless approved by Order of this Court. For greater certainty, deletions from PART II, paragraph (f) may be made without approval of the Court, and must be made without delay as soon as the Plaintiffs or Agent become aware that the criteria for inclusion are no longer met.
18. The Plaintiffs must report any deletions to the Court, on a confidential basis, within 30 days of the end of the NHL Playoffs.
19. All parties have permission to apply by way of motion to vary the contents of Confidential Schedule 2, such motion to be supported by evidence and on notice to all the other parties.

Permission to apply

20. The operators of the Target Servers (i.e. the John Doe Defendants), any other third party who claims to be affected by this Order, and any Internet service customer of the Third Party Respondents affected by the Order, may bring a motion to seek a variation of this Order insofar as this Order affects their ability to access or distribute non-infringing content by serving and filing a motion record within thirty (30) days of the first occurrence of the event that allegedly affects them and that results from this Order.

21. This Order shall in no way limit the ability of a Third Party Respondent to seek to stay, vary, or set aside this Order or oppose on any basis any other related or similar Order sought by the Plaintiffs or any other party. In particular and without limitation, this Order shall in no way limit the ability of a Third Party Respondent to raise issues in connection with the implementation or renewal of this Order on grounds relating to the technical implementation of this Order, impacts on a Third Party Respondent's services to its subscribers, or the effectiveness of the Order in preventing the unauthorized streaming during an NHL Live Game Window.

Sunset clause

22. This Order shall terminate at the end of the last NHL Live Game Windows of the 2022-2023 NHL season (i.e., the final of the Stanley Cup).

Confidentiality

23. The Court is satisfied that the following documents filed in support of the Plaintiffs' motion for the issuance of the present Order shall remain confidential and be sealed in the Court record because it is necessary to prevent a serious risk to the efficacy of the present Order and similar orders rendered by courts in other jurisdictions; and no reasonable alternative measures will prevent that risk; and the benefits of protecting this efficacy outweigh the negative effects of confidentiality:

- (a) Paragraphs 62 to 78 of the Affidavit of Greg Sansone dated October 19, 2022;
- (b) Paragraphs 24 to 26, certain figures at paragraphs 32, 33 and 35, portions of paragraph 40, and footnote 1 of the Affidavit of Greg Murray dated October 20, 2022 ["Second Murray Affidavit"];

- (c) Certain figures at paragraphs 24 to 27 of the Affidavit of Sarah Farrugia dated October 20, 2022 [“Second Farrugia Affidavit”];
- (d) Certain figures at paragraphs 21 to 24 of the Affidavit of Mohamed Drif dated October 19, 2022 [“Second Drif Affidavit”];
- (e) Appendices A and C; Exhibits GD-10 to GD-16; portions of paragraphs 18, 20, 25, 26(a), 27, 31, 37, 38, 40, 41, 43(b), and 72; and paragraphs 19(b) to (d), 21, 22, 26(c), 26 (d), 26 (f), 26 (g), 33, 34, 36, 43(c), and 45 to 64 to the Affidavit of George Demetriades dated October 20, 2022;
- (f) Exhibits JVB-48 to the Affidavit of Jason Vallée Buchanan dated October 21, 2022 [“Third Vallée Buchanan Affidavit”]

(Collectively, “Confidential Information”).

- 24. The Confidential Information shall be treated as confidential by the Registry of the Court and shall not be available to anyone other than the Plaintiffs, the Third Party Respondents, the Intervenors and appropriate Court personnel. Any defendant or third party bringing a motion pursuant to paragraph 20 of this Order who wishes to have access to the Confidential Information for the purposes of these proceedings shall serve and file a motion record seeking leave from the Court to have access to the Confidential Information.
- 25. Any party who is authorized to have access to the Confidential Information pursuant to paragraphs 24 or 24 of this Order may only make use of the Confidential Information for the purposes of these proceedings and shall not disclose the Confidential Material to anyone (except their legal counsel or experts who have been informed of the present Order), without leave from the Court.

25.1 The Court is satisfied that the following documents filed in support of the Plaintiffs' motion for the issuance of the present Order shall remain confidential and be sealed in the Court record because they contain highly sensitive commercial and/or technical information of the parties; no reasonable alternative measures will prevent the risk associated with potential dissemination of that information; and the benefits of protecting this information outweigh the negative effects of confidentiality:

- (a) Exhibits GM-5 and GM-6, and certain figures at paragraphs 32 to 35, 40, 43(d), 44, and 45 to the Second Murray Affidavit;
- (b) Certain figures at paragraphs 24 to 27 of the Second Farrugia Affidavit;
- (c) Certain figures at paragraphs 21, 28, 29 and 32, and paragraph 27 of the Second Drif Affidavit;
- (d) Exhibits JVB-46, JVB-47 and JVB-57 to the Third Vallée Buchanan Affidavit;

(Collectively, "Highly Confidential Information")

25.2 Highly Confidential Information shall be treated by the Court and the parties in the same way as paragraphs 24 and 25 above, with the exception that it may only be accessed by outside counsel for the Plaintiffs, for the Third Party Respondents and for the Intervenors, and appropriate Court personnel.

Reporting to the Court

26. Within 45 days of the last NHL Live Game Window of calendar year 2022, the Plaintiffs shall file with the Court, and serve on all Third Party Respondents, one or more affidavit comprising (i) a confidential list of all IP addresses that were notified for blocking pursuant to this Order by that time, with the dates and times on which they were required to be blocked, and the criteria which were applied that resulted in them being notified for

blocking (ii) the details of any complaint received from operators of Target Servers, their hosting provider or any other third party (including customers of the Third Party Respondents), (iii) any material technical issues encountered with the implementation of this Order by that time, including any issues reported by the Third Party Respondents to the Plaintiffs.

27. Within 60 days of the end of the last NHL Live Game Windows of the 2022-2023 NHL season (i.e., the final of the Stanley Cup), the Plaintiffs shall file with the Court, and serve on all Third Party Respondents, one or more affidavit comprising the information at points (i) to (iii) of paragraph 26 above, along with (iv) any relevant available data pertaining to the effectiveness of the Order.

Costs of Implementation

28. The Plaintiffs shall indemnify and save harmless the Third Party Respondents for:
- (a) the reasonable marginal cost of implementing this Order, up to a maximum amount of \$50,000.00; and
 - (b) any reasonably incurred loss, liability, obligation, claim, damages, costs (including defence costs), or expenses resulting from a third party complaint, demand, action, claim, application or similar proceeding whether administrative, judicial, or quasi-judicial in nature, in respect of the Third Party Respondents as a result of their compliance with the Order.
29. With respect to the costs referenced in paragraph 28(a) above:
- (a) the Third Party Respondents shall provide the Plaintiffs with an itemized invoice setting out the claimed costs elements and the total cost claimed, within 30 days of the end of the NHL Playoffs;

- (b) the Plaintiffs shall, within thirty (30) days of receipt of the invoice, either (i) pay the invoice; or (ii) serve and file a motion disputing the reasonableness of the costs claimed in the invoice, failing which the costs shall be deemed to be reasonable.

Costs

30. There shall be no costs on the present motion, unless contested by any of the Defendants or Third Party Respondents, in which case costs are awarded against the contesting Defendant(s) and Third Party Respondent(s) in favour of the Plaintiffs in the form of a lump sum payment in an amount to be determined by the Court, payable forthwith.

SCHEDULE 1: NHL LIVE GAME WINDOWS

- The NHL Live Game Window of all national and regional NHL games broadcast in Canada by any of the Plaintiffs via television broadcast and/or online streaming during the 2022-2023 NHL season (starting on or around October 7, 2022), including the 2022-2023 Stanley Cup playoffs and final series, as per the schedule found on the NHL website (<https://www.nhl.com/schedule>), subject to variations by the NHL, as may be notified to the Third Party Respondents by the Plaintiffs and/or their Agent from time to time.

B E T W E E N:

FEDERAL COURT

**ROGERS MEDIA INC.
ROGERS COMMUNICATIONS INC.
BCE INC.
BELL MEDIA INC.
CTV SPECIALTY TELEVISION ENTERPRISES INC.
THE SPORTS NETWORK INC.
LE RESEAU DES SPORTS (RDS) INC.
GROUPE TVA INC.**

Plaintiffs

- and -

**JOHN DOE 1
JOHN DOE 2
OTHER UNIDENTIFIED PERSONS WHO OPERATE UNAUTHORIZED STREAMING
SERVERS PROVIDING ACCESS TO NHL LIVE GAMES IN CANADA**

Defendants

- and -

**BELL CANADA
BRAGG COMMUNICATIONS INC. dba EASTLINK
COGECO CONNEXION INC.
DISTRIBUTEL COMMUNICATIONS LIMITED
FIDO SOLUTIONS INC.
ROGERS COMMUNICATIONS CANADA INC.
SASKATCHEWAN TELECOMMUNICATIONS
SHAW COMMUNICATIONS INC.
TEKSAVYY SOLUTIONS INC.
TELUS COMMUNICATIONS INC.
VIDEOTRON LTD.
2251723 ONTARIO INC. dba VMEDIA**

Third Party Respondents

- and -

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY
AND PUBLIC INTEREST CLINIC
BEANFIELD TECHNOLOGIES INC.**

Intervenors

SCHEDULE 2

CONTAINS CONFIDENTIAL INFORMATION

**FILED UNDER SEAL
SEE CONFIDENTIAL VOLUME**
