

Federal Court



Cour fédérale

Date: 20221122

Docket: T-1257-22

Citation: 2022 FC 1602

Ottawa, Ontario, November 22, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**BELL MEDIA INC.
ROGERS MEDIA INC.
COLUMBIA PICTURES
INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
PARAMOUNT PICTURES
CORPORATION
UNIVERSAL CITY STUDIOS LLC
UNIVERSAL CITY STUDIOS
PRODUCTIONS LLLP
WARNER BROS. ENTERTAINMENT INC.**

Plaintiffs

and

**MARSHALL MACCIACCHERA
DBA SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA
DBA SMOOTHSTREAMS.TV
ARM HOSTING INC.
STAR HOSTING LIMITED
(HONG KONG)
ROMA WORKS LIMITED
(HONG KONG)
ROMA WORKS SA (PANAMA)**

Defendants

ORDER AND REASONS

I. Overview

[1] The background to the present motion seeking the review of the execution of an interim order is set out in detail in the Order and Reasons issued on July 28, 2022: *Bell Media Inc v Macciachera (Smoothstreams.tv)*, 2022 FC 1139. It will not be repeated in this decision.

[2] Very briefly, on June 17, 2022, the Plaintiffs commenced the underlying action against the Defendants alleging that they infringed the Plaintiffs' copyrights in the Plaintiffs' Works, as defined in the Statement of Claim, by developing, operating, maintaining, updating, hosting, distributing and selling subscriptions to at least three known unauthorized internet protocol television [IPTV] services [the SSTV Services]. The Defendants, Marshall Macciachera, and his father, Antonio Macciachera, are alleged to be the controlling minds and operators of the SSTV Services. For convenience and not out of disrespect, they will be referred to in these reasons by their first names.

[3] On June 28, 2022, Madam Justice Vanessa Rochester, on an *ex parte* motion by the Plaintiffs, granted an interim injunction against the Defendants pursuant to Rule 374 of the *Federal Courts Rules*, RSC 1985, c F-7 [FCR], an Anton Piller Order pursuant to Rule 377, and other ancillary orders [the "Interim Order"].

[4] At a high level, the Anton Piller Order requires the Defendants to permit entry onto specified premises to an independent supervising solicitor [ISS] and their team "on any day that

is not a holiday starting at 8:00 a.m., or earlier if necessary to enforce this Order, and until 8:00 p.m. or until such time as deemed necessary by the [ISS] to complete the execution of this Order.” The Interim Order states that the Defendants have the right to refuse entry to the premises, but warns of the consequences for failing to do so, including being held in contempt.

[5] The interim injunction enjoins the Defendants from being involved in the operation of the SSTV Services or other unauthorized subscription services. The Interim Order also includes a mechanism that orders the Defendants to transfer control over the infrastructure of the SSTV Services to the ISS as custodian, and for that infrastructure to be shut down. It also enjoins the Defendants from dissipating or removing assets out of the Court’s jurisdiction, and orders them to sign a consent form authorising their financial institutions to disclose information pertaining to their assets to the Plaintiffs.

[6] The Interim Order was served on the Defendants on July 14, 2022. It was executed over a period of two days by ISS Daniel Drapeau, at Marshall’s residence [the “Dunlop Address”] and at a commercial facility [the “Patterson Address”], both located in Barrie, Ontario [together, the “Barrie Premises”]. ISS Mark Davis, who was selected to execute the Interim Order on Antonio, was refused entry to Antonio’s residence, located in Woodbridge, Ontario [the “Woodbridge Address”].

[7] The Interim Order includes a provision that its execution be reviewed by this Court on motion by the Plaintiffs within 14 days of the execution.

[8] On July 19, 2022, the Plaintiffs moved for a declaration that the execution of the Interim Order was lawfully conducted, an order authorizing the Plaintiffs to withdraw the deposit of \$100,000 paid into Court as security for the Defendants' damages in connection with the Interim Order, and an interlocutory injunction order pursuant to Rule 373 to remain valid until a final determination of the underlying action on its merits.

[9] On the same day, the Plaintiffs submitted a letter requesting a special sitting to hear their motion. Directions were issued fixing the hearing date on July 28, 2022. In accordance with the Directions, the Plaintiffs filed their motion record on July 22, 2022 which included an amended notice of motion seeking additional relief.

[10] What follows are the reasons for granting the Plaintiffs' motion.

II. Evidence on the Motion

[11] In support of their motion, the Plaintiffs rely on the affidavit evidence that was before Justice Rochester, the affidavit of ISS Drapeau dated July 22, 2022, as corrected, two affidavits of ISS Davis dated July 14, 2022, and the affidavits of two investigators pertaining to their role in the execution of the Interim Order at the Barrie Premises.

[12] Following a teleconference with counsel for the parties, an Order was issued on July 28, 2022, disposing of some of the relief requested by the Plaintiffs, including an order charging Marshall with contempt and an order requiring the Defendants to disclose the identity of a third party involved in the operation of the SSTV Services. The hearing of the Plaintiff's motion was

adjourned to August 18, 2022 to allow the Defendants to cross-examine the Plaintiffs' affiants. The terms of the Interim Order were also extended pending disposition of the Plaintiffs' motion, on consent of the parties.

[13] The Defendants did not file any affidavit evidence in response to the Plaintiffs' motion. They chose instead to cross-examine ISS Drapeau on his affidavit, leaving the remaining affidavits unchallenged. In opposing the Plaintiffs' motion, the Defendants rely mainly on the transcript of the cross-examination of ISS Drapeau and video footage taken by videographers who attended the execution on the Barrie Premises and the attempted execution on the Woodbridge Address.

III. Issues

[14] At the hearing on August 18, 2022, the Defendants consented to the release of Exhibits DSD-6 and DSD-14 to the Plaintiffs. The parties also agreed on terms of the confidentiality order sought by the Plaintiffs. An order will go accordingly.

[15] The issues that remain to be determined are:

- 1) Whether the Court should issue a declaration that the execution of the Interim Order was lawfully conducted.
- 2) If so, whether the Court should authorize the return of the Plaintiffs' security for damages.

- 3) Whether a portion of the interim relief provided by the Interim Order should be converted to interlocutory relief.

[16] Although the parties were asked to address the issue of costs at the hearing, the matter was put over to a later date in light of the Defendants' stated intention to cross-examine the deponent of an affidavit filed in support of the Plaintiffs' claim for their costs and disbursements.

IV. The Facts

[17] The manner in which the execution of the Interim Order on the Barrie Premises and the attempted execution on the Woodbridge Address were conducted is well documented in the affidavits filed by the Plaintiffs' affiants and corroborated by video footage.

A. *The Barrie Execution*

[18] ISS Drapeau's team assigned to enforce the Interim Order on the Barrie Premises consisted of a computer forensic expert, a videographer who was also a private investigator, another private investigator, and Plaintiffs' counsel.

[19] The Barrie Execution commenced at 8:00 a.m. on July 14, 2022 and ended at 12:47 a.m. on July 16, 2022. It spanned a period of approximately 34 hours, excluding two hours spent by ISS Drapeau and Plaintiffs' counsel to explain the Interim Order to Marshall, three hours devoted by Marshall in attempting to locate a lawyer, a lunch break, and a seven hour sleep break early morning on July 15, 2022.

(1) Dunlop Address

[20] At the outset of the execution of the Interim Order on the Dunlop Address, Marshall was served with the Interim Order, the notice of motion for the review of the execution of the Order, a redacted version of the motion record for the Interim Order, and the Statement of Claim in accordance with subparagraph 17(a) of the Interim Order.

[21] Over the course of two hours, from approximately 8:00 a.m. to 10:00 a.m., ISS Drapeau and Plaintiffs' counsel went over and explained the various components of the Interim Order to Marshall, including the silence and confidentiality provisions.

[22] The video footage shows that both ISS Drapeau and Plaintiffs' counsel carefully explained the terms of the Interim Order to Marshall, in plain English language, in accordance with subparagraph 17(b) thereof. They remained patient and respectful towards Marshall and answered all his questions. ISS Drapeau informed Marshall on numerous occasions that he was entitled to seek the advice of counsel before complying with the terms of the Interim Order (subparagraph 17(d) of the Interim Order).

[23] ISS Drapeau explained to Marshall that the proceeding was a civil matter and not criminal, but that failure to comply with the terms of the Interim Order could result in the Court drawing adverse inferences and that he could be found in contempt of Court and subject to a fine and/or imprisonment (subparagraph 17(e) of the Interim Order).

[24] From 10:00 a.m. to 1:00 p.m., well beyond the two hour period allotted in subparagraph 17(d) of the Interim Order, ISS Drapeau provided Marshall with the opportunity to contact legal counsel, and assisted him in that regard.

[25] Marshall was able to reach a lawyer who had been contacted by his father, Antonio. The lawyer provided Marshall with some quick advice and then referred him to two intellectual property firms.

[26] At around 1:00 p.m., Marshall provided his consent to the execution based on legal advice he received to the effect that the consequences of contempt outweigh not complying with the Interim Order. Marshall informed ISS Drapeau that he was told by the lawyer “basically to comply and then seek counsel.”

[27] At approximately 1:45 p.m., after Marshall was given time to eat and ask further questions about the terms in the Interim Order, ISS Drapeau commenced requesting information from Marshall. Another counsel and computer forensic expert joined the team after they had been refused entry to the Woodbridge Address by Antonio.

[28] No counsel appeared on the record for Marshall or contacted ISS Drapeau prior to or during the execution at the Barrie Premises.

[29] The execution of the Interim Order at the Dunlop Address consisted of two steps: a) requesting that Marshall provide information on topics listed in the Interim Order; and b) the identification, mirroring and/or seizure of equipment as provided in the Interim Order.

[30] Marshall was questioned on matters pertaining to the following portions of the Interim Order:

- a. paragraph 20: details concerning the domain/subdomain registrar accounts, servers, and hosting provider accounts associated with the SSTV Services;
- b. paragraph 24: financial accounting of the SSTV Services and the Defendants' assets; and
- c. paragraph 29: location of relevant documents, information, materials and equipment associated with the SSTV Services.

[31] Marshall provided ISS Drapeau with credentials for accounts pertaining to the domain armhosting.ca and client-armhosting.ca (items 6 and 7 of Schedule I of the Interim Order) as well as certain financial information and disclosure authorizations pertaining to his personal assets and those of the Defendant, Arm Hosting Inc.

[32] Marshall stated he did not know anything about the assets of the Defendants, Star Hosting Limited and Roma Works Limited, and refused to provide any financial disclosure authorizations for those entities.

[33] During the execution of the Interim Order, it was established that a server rack located in the living room at the Dunlop Address, pictured below, was the source of four channels streamed

on the SSTV Services. The manner in which this was established is explained in the confidential affidavit of an investigator retained by the Plaintiffs.



[34] Marshall acknowledged that servers responsible for disseminating content on the SSTV Services were also located at the Patterson Address.

[35] In the presence of ISS Drapeau and a computer technician, Marshall shut down two servers located at the Dunlop Address. Shortly thereafter, an investigator who was observing the SSTV Services remotely, noted that the stations, Fight Network (channel 15), WWE Network (channel 16), CityTV (channel 64) and CTV (channel 65) displayed a black screen on the SSTV Services. This was different from what the investigator observed the night prior to the execution, whereby the channels 15 and 16 were displaying television content and channel 65 was displaying a “splash” screen. This confirmed to the investigator that the devices installed in the server rack were used to receive television content and to retransmit it on the SSTV Services.

Ensuring compliance with subparagraph 27(h) of the Interim Order, ISS Drapeau and his team subsequently inventoried, dismantled and seized the devices installed in the server rack.

[36] Marshall's personal computer was mirrored at the request of ISS Drapeau, who had observed that it contained financial documents. Marshall consented to having the content of the computer copied. In addition, two USB keys located in close proximity of the computer were also mirrored. Authority to mirror these devices is found at subparagraph 24(a) (records of the Defendants' assets), paragraph 27 (property as to which a question may arise), subparagraph 27(e) (devices likely to contain financial records), and subparagraph 27(g) (authority to mirror entire devices) of the Interim Order.

[37] Marshall refused ISS Drapeau's request to provide the password required to access its contents of his computer. His reason for refusing was initially stated as: "there is evidence against me [on the computer] that I don't want to login for you to collect information against me." By the end of the execution, and during a wrap-up questioning, Marshall objected to the disclosure of the login credentials on the grounds that the computer contained "personal information."

[38] Marshall's personal cellphone was mirrored at the request of ISS Drapeau after being informed that an individual identified as "TONY ROMA" had attempted to call the phone during the explanation of the Interim Order at the outset of the execution. "TONY ROMA" is a pseudonym of Antonio.

[39] Four hard drives located in Marshall's office were also seized for preservation at the request of ISS Drapeau after Marshall indicated the contents of at least one of the drives related to "hosting" and at least another drive belonged to Antonio. The drives could not be copied because Mr. Marshall could not provide passwords to access the drives.

(2) Patterson Address

[40] The execution of the Patterson Address took place in the evening of July 14, 2022 and continued throughout the afternoon and evening of July 15, 2022, and was only interrupted by a sleep break.

[41] The execution involved the following steps:

- a. The disconnection and removal of multiple television receivers that were receiving (or "capturing") television content that was being redistributed on the SSTV Services;
- b. The disconnection and removal of multiple servers that were connected to those receivers and responsible for transferring the content received by the television receivers to the SSTV Services;
- c. The removal of additional receivers, encoders and servers located on the premises but not connected at the time of the execution;
- d. The identification, review and copying of documents found on the premises; and
- e. Requesting information from Marshall on topics listed in the Interim Order.

[42] The main server room at the Patterson Address, pictured below, contained nine large server cabinets with at least sixty-five television receivers connected to twenty-three servers.



[43] ISS Drapeau and his team disconnected the television receivers sequentially. An investigator observed corresponding television stations displaying a “no signal” error code on the SSTV Services. This confirmed to the investigator that the equipment was used to receive television content and then retransmitted that content to the SSTV Services. After the testing was complete, the investigators inventoried and removed the receivers from the premises pursuant to subparagraph 27(h) of the Interim Order.

[44] The next day, a computer technician connected a monitor to each of the servers located in the cabinets. Twenty-three of these servers displayed software applications identified with a channel number, confirming that the servers were used to retransmit television content.

[45] In addition, the following was observed on certain servers. An application named “WMS Panel” was running on one of the servers and the username “Sam” with a starhosting.me email address was logged in. The application can be used to manage the sources and servers for streams of television content. The interface for the application displayed the words “view247” (shorthand for Live247), “viewss” and “viewstvn,” which are shorthand for the names of three

suspected SSTV Services: Live247, StarStreams and StreamTVNow. The server was disconnected and seized pursuant to subparagraph 27(h) of the Interim Order.

[46] Servers in cabinets 3 and 4, which Marshall claimed had streaming capabilities, were disconnected and seized pursuant to subparagraph 27(h) of the Interim Order after the computer technician observed an unknown third party remotely activating a television stream on one of the servers.

[47] Two additional servers in cabinet 3, “proxmox 1” and “proxmox 2,” that Marshall insisted were not related to the operation of the SSTV Services, were not disconnected nor seized.

[48] The execution also entailed the inventorying and removal of other unconnected devices including twenty-three additional television receivers, five additional servers and twenty-nine encoders pursuant to subparagraph 27(h) of the Interim Order.

[49] The identification and copying of documents found in filing cabinets and a cupboard at the Patterson Address took place pursuant to subparagraphs 27(e) and (f) of the Interim Order. After confirming the documents were relevant, a bundle of documents (Exhibits DSD-19 and DSD-20) were photographed by ISS Drapeau onsite, but were not removed from the premises, as Marshall refused to allow the documents to be seized or produced to the Plaintiffs. He initially asserted solicitor-client privilege over another set of documents (Exhibit DSD-14) but later withdrew the privilege claim. The documents are in possession of ISS Drapeau, awaiting the

Court's instructions on how to handle them. An additional bundle of documents (Exhibit DSD-16) was seized for copying and returned to Marshall the next day.

[50] At the end of the execution, Marshall provided the computer technicians with the necessary credentials to secure and deactivate the domain www.armhosting.ca pursuant to paragraphs 20 and 21 of the Interim Order.

[51] Based on the information discovered during the Barrie Execution, ISS Drapeau permitted Plaintiffs' counsel to seek further information from Marshall towards the end of the Barrie Execution in order to provide Marshall with a final opportunity to comply with the terms of the Order.

[52] ISS Drapeau ensured that Marshall was present with him at all times during the execution at the Barrie Premises. As a result, steps which could have been undertaken either in parallel or with the assistance of the private investigators or Plaintiffs' counsel were conducted sequentially, thereby lengthening the duration of the execution.

B. *The Woodbridge Execution*

[53] As mentioned earlier, Antonio refused to provide entry to the ISS team to his residence. He is presently the subject of a separate contempt proceeding.

[54] ISS Davis attempted to execute the Interim Order at the Woodbridge Address at approximately 8:05 a.m. on July 14, 2022. After Antonio answered the door, ISS Davis served

him with the Interim Order, materials in support of the Interim Order, the Statement of Claim and the notice of motion for the review motion.

[55] At the front steps of the residence, ISS Davis attempted to explain the contents of the Interim Order to Antonio, including the consequences for failure to comply. Antonio refused to look at or read the Interim Order and repeatedly interrupted ISS Davis while he went over the terms set out in the Notice to the Defendants. After contacting a lawyer and leaving a message, Antonio asked ISS Davis and his team to leave his property, which they did immediately.

[56] At approximately 9:00 a.m., Antonio called ISS Davis back onto his property to speak with a police officer by telephone. ISS Davis advised the officer that he had contacted York Regional Police the previous day and spoken to a constable to alert him to the fact that he would be executing the Interim Order. ISS Davis advised the officer that the constable had informed him that the police would only attend if violence was anticipated. Both Antonio and ISS Davis confirmed to the officer that they did not anticipate any violence. At that time, ISS Davis repeated his advice to Antonio that his team would only enter his premises with his consent and that the Interim Order required him to provide that consent. Antonio again refused consent.

[57] ISS Davis and his team remained in the neighbourhood. He reached Antonio by phone a few times throughout the morning and early afternoon to inquire about his intention to retain a lawyer and to reiterate the consequences of failing to comply with the Interim Order. At approximately 1:15 p.m., when it became clear Antonio would not consent to the execution of the Interim Order, ISS Davis and his team left the area.

V. Analysis

[58] The Plaintiffs submit that, based on the account of how the Interim Order was executed, the Court should declare that the execution of the Interim Order was conducted lawfully, and authorize the return of the Plaintiffs' deposit for security for potential damages. They say that the execution of the Interim Order directly corroborates and bolsters the evidence presented at the *ex parte* motion heard by Justice Rochester.

[59] The Plaintiffs further submit that given the infringing nature of the Defendants' activities, non-compliance by Marshall and Antonio with some or all of the terms of the Interim Order, and the involvement of at least one unidentified third party in the operation of the SSTV Services, an interlocutory order should be issued extending certain terms of the interim relief into interlocutory relief.

[60] The Defendants do not take issue with the terms of the Interim Order. The focus of their arguments in opposing the motion is rather on the manner in which the Interim Order was executed, which they say was unlawful.

[61] An Anton Piller order is extraordinary relief. As such, the test for granting an Anton Piller order requires the moving party to show: (a) a strong *prima facie* case; (b) very serious damage, actual or potential for the moving party; (c) convincing evidence that the respondent has in its possession incriminating documents or things; and (d) a real possibility that it may destroy

such material before the discovery process can do its work: *Celanese Canada Inc v Murray Demolition Corp*, 2006 SCC 36 (CanLII), [2006] 2 SCR 189 at para 35 [*Celanese*].

[62] While most Anton Piller orders are executed properly, they are capable of giving rise to serious abuse. As stated in *Celanese* at paragraph 32: “Those responsible for their implementation should conform to a very high standard of professional diligence. Otherwise, the moving party, not its target, may have to shoulder the consequences of a botched search.” At paragraph 40, the Supreme Court of Canada sets out guidelines for preparation and execution of an Anton Piller order that may be helpful, depending on the circumstances.

A. *Whether the Court should issue a declaration that the execution of the Interim Order was lawfully conducted.*

[63] The onus is on the Plaintiffs to demonstrate that the execution of the Interim Order was lawfully conducted.

[64] The affidavits of ISS Drapeau and ISS Davis document the events that transpired over the course of the Barrie Execution and the attempted Woodbridge Execution. There is no dispute between the parties that the duties incumbent on all parties who attended the executions, including the Plaintiffs’ counsel and representatives and the other persons involved, were fulfilled in regard to most of the provisions of the Interim Order, including the following:

- a) The Interim Order and other documents listed therein were served upon the Defendants at or after 8:00 a.m. on a weekday at their respective residence, within twelve (12) months of its issuance (paragraph 3 of the Interim Order);

- b) The executions were attended and led by an impartial ISS whose qualifications meet the requirements of the Order (paragraphs 6-9 of the Interim Order);
- c) One ISS, one investigator (for service of documents), one of the Plaintiffs' solicitors, and one videographer were the only individuals who attended at the respective residence of Marshall and Antonio during the service and explanation of the Order (subparagraph 17(c) of the Interim Order);
- d) Antonio and Marshall were informed of their right to seek the advice of counsel before deciding whether to comply with the Interim Order, and were provided with more than the requisite two (2) hours and assistance from the ISS to do so (subparagraph 17(d) of the Interim Order);
- e) Marshall was present at all times when his property was searched and items were removed, and he was provided with a list of all elements taken into custody (paragraph 35 of Interim Order);
- f) The ISS (and the persons to whom they may delegate their authorizations) are acting as custodians of the elements that were mirrored, removed or seized during the context of the executions (paragraphs 22 and 36 of the Interim Order);
- g) The Plaintiffs brought a motion to review the execution of the Interim Order within 14 days of the start of the execution (subparagraph 17(a) of the Interim Order); and
- h) The Plaintiffs are treating the information and material obtained pursuant to the Interim Order on a confidential basis and their motion record, which contains some of that information, is marked as confidential (paragraph 44 of the Interim Order).

[65] The Defendants submit that the affidavits do not tell the whole story, and point to admissions made by ISS Drapeau during his cross-examination and some of the video footage taken during the executions on the Barrie Premises and the Woodbridge Address.

- (1) Whether the Plaintiffs unlawfully attempted to execute the Interim Order on the Woodbridge Address

[66] The Defendants submit that the execution of the Anton Piller Order on the Woodbridge Address was not lawfully executed because it was not properly explained to Antonio and the execution did not abide by recognized health and safety precautions. These arguments may be disposed of summarily as they are wholly without merit.

[67] The affidavit evidence before me related to the attempted execution on the Woodbridge Address, which is unchallenged, establishes that ISS Davis made numerous attempts to explain the terms of the Interim Order to Antonio.

[68] The video footage shows that the terms contained in the Notice to the Defendants were explained to Antonio by ISS Davis, despite numerous interruptions by Antonio. I pause to note that Antonio was also using his cellphone to record ISS Davis as he was attempting to explain the Interim Order.

[69] ISS Davis told Antonio that he was an ISS acting pursuant to the Interim Order. Antonio was specifically advised that he had the right to contact and obtain advice from counsel, that his consent was required before the execution team could enter the premises, and that failure to

comply with the Interim Order could result in the Court drawing adverse inferences and put him in breach of a court order. Antonio refused to allow Plaintiffs' counsel to explain the interim injunction portion of the Interim Order. ISS Davis and his team never entered the residence. ISS Davis was required to explain the Interim Order standing at the front steps of the house, while Antonio stood and later sat in a chair at the front entrance.

[70] Antonio repeatedly refused entry to his residence. He would shut the door and then re-emerge later, despite being warned that this was in violation of the terms of the Interim Order.

[71] The lack of cooperation on the part of Antonio made it impossible for ISS Davis, the private investigator, the Plaintiffs' solicitor, and the computer forensic expert, to execute the Interim Order.

[72] The Defendants claim that the execution at the Woodbridge Address did not abide by recognized health and safety precautions referenced in the Interim Order. I disagree.

[73] Paragraph 38 provides that persons authorized to enforce the Order, as well as the Defendants, "abide by recognized health and safety precautions in light of the ongoing COVID-19 pandemic, as deemed reasonable and necessary by the independent supervising solicitor." The evidence before me is that reasonable health and safety precautions were taken by ISS Davis and his team prior to or when they arrived at the Woodbridge Address. They had completed a negative antigen test the prior day, wore N95 masks, and maintained physical distancing during their interactions with Antonio.

[74] The Defendants also submit that ISS Davis was wrong in stating to Antonio that he could not be made to wear a mask. However, there is no evidence that such a statement was ever made to Antonio. In any event, the Defendants have failed to establish under what authority ISS Davis could compel Antonio to wear a mask over his objection.

(2) Whether the Plaintiffs unlawfully executed the Interim Order on the Barrie Premises

[75] The Defendants submit that there are various reasons why the execution of the Interim Order on the Barrie Premises was unlawful, which may be summarized as follows: (1) the execution occurred outside the time permitted by the Interim Order; (2) an adverse inference should be drawn against any lawful execution, based on the failure to record video of the execution outside of 8:00 a.m. to 8:00 p.m.; (3) ISS Drapeau improperly required Marshall to make statements of law that required an assessment of the Plaintiffs' evidence; (4) Plaintiffs' counsel improperly questioned Marshall on the locations of servers which Justice Rochester explicitly and specifically prohibited in the Court's "amended order"; (5) the Anton Piller Order was not properly explained to Marshall; and (6) the execution did not abide by recognized health and safety precautions.

[76] Some of the Defendants' arguments overlap and many amount to the same argument presented from a different perspective or approach. They are addressed below.

- (a) *Whether the execution occurred outside the time permitted by the Interim Order*

[77] The Defendants claim that the execution of the Anton Pillar Order occurred outside the permitted time by the Interim Order. This is incorrect. ISS Drapeau had discretion to conduct the execution outside the 8:00 a.m. to 8:00 p.m. timeframe, as provided at paragraph 16 of the

Interim Order:

Authorizes the execution of this Order at any premises under the Defendants' ownership or control between 8:00 a.m. and 8:00 p.m. on any day that is not a holiday, or outside of these hours if deemed necessary by the independent supervising solicitor

[Emphasis mine.]

[78] What the Defendants are actually challenging is ISS Drapeau's decision made late in the evening on July 14, 2022 that it was necessary in the circumstances to continue the execution, rather than suspend until the next day. The Defendants argue it was unreasonable for ISS Drapeau and his team to remain at the Patterson Address. They say a more reasonable alternative would have been to place a private investigator at the main entrance and seal the rear entrance overnight.

[79] While that was certainly an option, the Defendants have failed to establish that ISS Drapeau's decision was unreasonable, let alone unlawful. As he explains in his affidavit, when ISS Drapeau arrived shortly after 11:00 p.m. at the Patterson Address, he decided to initiate the search and secure the premises despite the late hour for two reasons. First, he was concerned that the premises could be penetrated overnight. Second, it emerged during discussions he was monitoring between Plaintiffs' counsel and Marshall that "servers would be off if we do

Patterson.” ISS Drapeau was advised by the technical experts that 65 receivers had to be disconnected and inventoried.

[80] ISS Drapeau cannot be faulted for wanting to ensure compliance with subparagraph 21 (c) of the Interim Order, which authorized the deactivation of servers. I note from reviewing the video footage that Marshall did not object to the length of time it was taking to execute at both premises and acknowledged that the time it took to explain the Interim Order and to attempt to retain a lawyer played a role for the late start of the execution at the Dunlop Address. Moreover, there is no indication that the execution team was dilatory in any way.

(b) *Whether an adverse inference should be drawn based on failure by ISS Drapeau to record video of the entire execution*

[81] The Defendants submit that an adverse inference should be drawn from the failure by ISS Drapeau to ensure that there was video recording throughout the execution. According to the Defendants, it is only as a result of the limited video available, that substantial violations of the Interim Order can be observed. This argument has no merit.

[82] It is important to note from the outset that paragraph 14 of the Interim Order simply authorizes the ISS to record the execution.

14. Authorizes the independent supervising solicitor to record, through video, audio and photographic means, all or parts of the execution of this Order, for the purpose of recording information and documents obtained through the execution of this Order and for the purpose of reporting to the Court on the Review Motion (defined below).

[Emphasis mine.]

[83] The Defendants contend that the Interim Order may have been violated when there was no video recording on July 14, 2022 after 8:00 p.m., or from approximately 12:15 pm. on July 15, 2022 to 12:47 a.m. on July 16, 2022. However, this is pure speculation and conjecture. The Defendants did not adduce any evidence establishing that anything improper took place when the video recording was turned off.

[84] In the end, it was entirely in the discretion of ISS Drapeau as to what should be videotaped. The Defendants have failed to establish that it was unreasonable for ISS Drapeau to direct that the videographer stop recording at various points in time, let alone that it was unlawful for him to do so.

(c) *Whether Marshall was asked improper questions*

[85] The Defendants submit that shortly after midnight in the early hours of July 15, 2022, Marshall was required to provide statements that required him to interpret the law and provide an assessment of the Plaintiffs' evidence.

[86] Before turning to this argument, I need to address a serious allegation made by the Defendants at paragraph 24 of their written representations, where they claim that "ISS Drapeau, hits the table and demands is this your statement!?!" [their underline and emphasis]. Based on my review of the video recording, I find this to be a complete mischaracterization of what transpired.

[87] The video shows that ISS Drapeau taps a document in front of him, presumably a document that was previously reviewed with Marshall, and that ISS Drapeau simply asks Marshall whether it is his statement. Mr. Drapeau’s demeanour is consistent with the other footage of the execution on the Barrie Premises that shows that he remained professional and patient throughout the execution and maintained a good rapport with Marshall.

[88] In my view, the Defendants unfairly seek to portray ISS Drapeau as verbally and physically aggressive towards Marshall, which is squarely contradicted by the evidence before me.

[89] The Defendants argue that there are two instances where Marshall was improperly questioned. The first instance is the same one identified above at paragraph 87.

Q: Mr. Macciaccera, is this your statement: “...Given the propensity of the evidence, it appears that all receivers pertain to Smoothstream, Live 24/7, Stream TV Now, or Star Stream TV...”
Is that accurate?

A: Yes, given the book of information and what is going on, then...I can’t say for sure it is all or none, but it appears that way, so...

Q: It appears that way?

A: Right.

[90] The second instance is when Plaintiffs’ counsel asked Marshall, quoting from the Interim Order:

Q: So, point 8 says: “...This is an authorization for the defendant’s solicitor to remove some materials...” And it says: ‘...Remove all materials or equipment that is or can be used by the defendants, for the purpose of providing unauthorized television content to the

SSTV Service, or other unauthorized subscription services...” Do you agree that the receivers fall within that scope? To your knowledge, you are not a lawyer...

[91] The Defendants claim that the questions posed to Marshall were improper. However, the two questions must be placed in the proper context. Earlier that morning, ISS Drapeau explained in great detail the terms of the Interim Order to Marshall, including the requirement at paragraph 20 that the Defendants provide to the ISS “the identity and location of the servers and hosting provider accounts for the servers associated with the SSTV Services.” Marshall was asked by ISS Drapeau to confirm the accuracy of the statement that he had just given. Although his decision to preface his question with the words “given the propensity of the evidence” may be questioned, it remains that all that was being solicited from Marshall were the very facts that the Interim Order required him to provide.

[92] The same can be said about the question posed by Plaintiffs’ counsel. Paragraph 29 of the Interim Order specifically authorized Plaintiffs’ solicitors to ask the Defendants to disclose “the location of all documents, information, materials and equipment described at subparagraph 27(e)” pertaining to the SSTV Services or other unauthorized subscription services.

[93] The Defendants have failed to establish that ISS Drapeau acted improperly, let alone unlawfully, in posing any questions to Marshall. Moreover, there is simply no evidence, as alleged by the Defendants, that Plaintiffs’ counsel required undertakings that were not explained or asked questions that amounted to discovery.

(d) *Whether the execution failed to abide by recognized health and safety precautions*

[94] The Defendants submit that ISS Drapeau and his team failed to abide by the recognized health and safety precautions in the context of COVID-19. I disagree.

[95] As stated earlier, paragraph 38 of the Interim Order provides that persons authorized to enforce the Order, as well as the Defendants, “abide by recognized health and safety precautions in light of the ongoing COVID-19 pandemic, as deemed reasonable and necessary by the independent supervising solicitor.” [Emphasis mine.]

[96] Based on the evidence before me, I am satisfied that ISS Drapeau paid particular and careful attention to ensure that the risk of the spread of the virus would be minimized during the execution. He supervised the administration of a COVID-19 test on members of his team the evening of July 13, 2022. He also advised them that anyone testing positive would not participate in the execution on the Barrie Premises. Moreover, he suggested that they cancel all social engagements from July 6, 2022 onwards to ensure that they tested negative.

[97] Upon their arrival at the Dunlop Address, ISS Drapeau and members of his team wore N95 masks. Marshall was offered a mask and asked to wear it; however he declined to do so. The mask was placed by ISS Drapeau on the stairwell immediately beside where Marshall was sitting.

[98] The video footage shows that ISS Drapeau and his team wore N95 masks throughout most of the day on July 14, 2022, except when eating or drinking. ISS Drapeau also insisted that a mask be worn when Marshall was in the presence of a representative of the Plaintiff, Bell Media Inc., who was masked but had not been tested.

[99] The Defendants argue that the execution did not abide by the ordered “recognized” health and safety precautions. However, the Interim Order is silent in that regard. Justice Rochester explicitly left it to the ISS to determine what precautions needed to taken. The Defendants have not identified any “reasonable or necessary” health and safety precautions that were overlooked and should have been taken.

[100] The Defendants point out that ISS Drapeau admitted on cross-examination that he did not know the type of COVID-19 test taken by the ISS team, the accuracy of the test, or when it should be taken prior to the execution. However, the evidence before me is that “Rapid Response, COVID-19 Antigen” tests were administered. I have no reason to doubt that these were standard tests recommended by public health authorities to detect and to confirm the presence of COVID-19.

[101] The Defendants also claim that ISS Drapeau was not truthful in his affidavit regarding when masks were worn during the execution of the Anton Piller Order. I disagree.

[102] At paragraph 56 of his affidavit, ISS Drapeau states that: “Masks were worn by all participants (except when eating or drinking) throughout July 14 and July 15 until the Execution

was suspended for the Sleep Break.” He adds in the next paragraph that masks were worn with less regularity when the execution resumed after noon on July 15. ISS Drapeau explains that he did so after ascertaining that there was no concern on Marshall’s part.

[103] The video footage shows that masks were not always worn by ISS Drapeau and others on July 14 and 15, 2022 prior to the sleep break. However, the video also shows that masks were worn the vast majority of the time and that lapses were infrequent. While ISS Drapeau may have been inaccurate in describing when masks were being worn throughout the execution, I do not accept the Defendants’ contention that this is fatal to the finding of a lawful execution of the Anton Piller Order.

(e) *Whether the execution further violates the Anton Piller Order*

[104] The Defendants raise other arguments about the manner in which the Interim Order was executed, however there is no evidence to substantiate the claims. In the circumstances, I will not entertain them.

[105] For the above reasons, I find the Defendants’ arguments to be unfounded and without merit. I conclude that ISS Drapeau and ISS Davis conducted themselves professionally and in a manner that protected the Defendants’ rights adequately. Further, I find that they fully complied with the terms of the Interim Order.

- B. *If so, whether the amount of \$100,000 deposited as security for damages should be paid out to the Plaintiffs*

[106] Given that I have found the executions of the Interim Order to be lawful, and that the Defendants do not claim to have suffered any damages in connection to the executions, it follows that the Plaintiffs should be allowed to withdraw their security deposit of \$100,000. An order will go accordingly.

- C. *Whether an interlocutory injunction should be granted pending a final determination of the proceeding on its merits.*

[107] When issued, the Interim Order was valid for a period of no more than 14 days from the date of service (paragraph 2 of the Interim Order). However, the July 28, 2022 Order continued the Interim Order until the disposition of the present motion.

[108] The Plaintiffs seek an order converting parts of the interim relief contained in the Interim Order into interlocutory relief. More specifically, they ask that:

- a. The interim injunction enjoining the Defendants from being involved in the SSTV Services (para. 19).
- b. The portion of the Interim Order that orders the Defendants to identify the infrastructure of the SSTV Services and provide associated credentials, and that authorizes the deactivation and guardianship of that infrastructure (paras. 20-23).
- c. The portion of the Interim Order that orders the Defendants to disclose financial information to the Plaintiffs and that enjoins them from disposing of their assets (paras. 24-26).
- d. The portion of the Interim Order that orders the Defendants to provide the necessary login information to access evidence preserved with the Anton Piller Order (modified para 30).

e. Other ancillary provisions related to the handling of the preserved evidence (paras. 11, 15, 33–34, 36, 40 and 44).

[109] Rule 373(1) of the FCR grants this Court the authority to issue an interlocutory injunction. The test to determine whether an interlocutory injunction should be granted is outlined in *RJR-MacDonald Inc v Canada*, [1994] 1 SCR 311 at 334. The Plaintiffs must demonstrate that:

- a. The case raises a serious question to be tried;
- b. The plaintiff would suffer irreparable harm if the application is refused; and
- c. The plaintiff would suffer greater harm than the defendant if the remedy is not granted pending a decision on the merits (i.e. the balance of convenience weighs in their favour).

[110] Based on the evidence before me, which is not challenged by the Defendants, I find that the execution of the Interim Order directly corroborates and bolsters the evidence presented at the *ex parte* motion before Justice Rochester. A strong case has been established by the Plaintiffs that the Defendants have infringed the Plaintiffs' copyrights. I further find that in the absence of an interlocutory injunction enjoining the Defendants from being involved in unauthorized subscription services, the Plaintiffs will suffer irreparable harm that cannot be adequately compensated in damages. Finally, I conclude that the balance of convenience favours granting the interlocutory injunction on the terms requested by the Plaintiffs.

[111] Following the hearing, and after consulting the Defendants, the Plaintiffs submitted a draft order to dispose of the motion for my consideration. The Defendants did not consent to the

draft order as their position regarding the legality of the execution and the scope of any injunction remained unchanged.

[112] I have taken into account the parties' positions in fashioning the order below.

ORDER IN T-1257-22

THIS COURT DECLARES that:

1. The execution of the Interim Order issued by the Honourable Madam Justice Rochester on June 28, 2022, as against the Defendants [the Interim Order], was lawfully conducted.

THIS COURT ORDERS that:

2. The Plaintiffs are granted leave to withdraw the deposit of \$100,000 paid into Court on June 22, 2022, as security for damages in connection with the execution of the Interim Order. The Administrator shall pay out said deposit, together with all interest accrued thereon, by cheque made payable to Smart & Biggar LLP in Trust.
3. Mr. Daniel Drapeau, the lead independent supervising solicitor in respect of the execution of the Interim Order [hereinafter ISS Drapeau], shall provide to the Plaintiffs' solicitors copies of:
 - a) the documents marked as Exhibit DSD-6, but not appended to his affidavit of July 22, 2022; and
 - b) the documents marked as Exhibit DSD-14, but not appended to his affidavit of July 22, 2022.
4. The Defendants, by themselves or by their employees, representatives and agents, or by any company, partnership, trust, entity, or person under their authority or control, or with which they are associated or affiliated, are enjoined and restrained pending further order of this Court from directly or indirectly:

- a) developing, operating, maintaining, hosting, promoting, providing support for, or selling subscriptions to unauthorized subscription services [often colloquially referred to as Internet protocol television services or IPTV services] [Unauthorized Subscription Services] including those under the “SmoothStreams” umbrella brand [SSTV Services], that provide users with unauthorized access to cinematographic works for which the copyright is owned or licensed by the Plaintiffs, including the television programs and cinematographic works described in the Statement of Claim, including such programs and works set out in Appendices 1 and 2 appended thereto [hereinafter Plaintiffs’ Works];
- b) developing, maintaining, updating, hosting, distributing, promoting or selling any software application that provides access to Unauthorized Subscription Services, such as the SSTV Services, including the SSTV Android Application, the SSTV Roku Application, the SSTV Kodi Add-on and the SSTV Plex Add-on, or any similar software application;
- c) operating, accessing, maintaining, updating, hosting, promoting or selling access to the internet domains, subdomains and server on which Unauthorized Subscription Services, including the SSTV Services, are directly or indirectly available, advertised, offered for sale or sold, including the internet domains, subdomains and servers listed in Schedule I to this Order;
- d) communicating the Plaintiffs’ Works to the public by telecommunications, including by making the Plaintiffs’ Works available to the public by

telecommunication in a way that allows members of the public to have access to them from a place and at a time individually chosen by them; and

- e) authorizing or directing anyone to perform any of the foregoing acts.

5. The Defendants shall:

- a) provide to ISS Drapeau the identity of the registrar accounts with which the domains and subdomains listed in **Schedule I** attached to this Order are registered, and provide to ISS Drapeau the login credentials for each of these accounts that have not already been provided;
- b) provide to ISS Drapeau the identity and location of the servers and hosting provider accounts for the servers associated with the SSTV Services and/or with the domains and subdomains listed in **Schedule I** to this Order, and provide to ISS Drapeau the login credentials and any other credentials necessary to access the highest available privilege level for these servers and accounts that have not already been provided; and
- c) disclose to ISS Drapeau and the Plaintiffs' solicitors any other domain, subdomain, registrar account, hosting provider account, and server associated with the development, hosting, operation, promotion and sale of the SSTV Services and/or any other Unauthorized Subscription Service under the Defendants' control, which shall then be treated as being part of **Schedule I** for the purpose of this Order that have not already been provided.

6. ISS Drapeau is authorized to:
 - a) log into the accounts and servers referred to in paragraph 5 above, using the credentials provided by the Defendants;
 - b) modify these login credentials; and
 - c) deactivate any domain, subdomain or server referred to in paragraph 5 above, including the domains, subdomains and servers listed at **Schedule I**.
7. ISS Drapeau is authorized to delegate tasks authorized under this Order to computer forensic experts and/or private investigators. Any reference to ISS Drapeau in this Order includes by reference the individuals to whom ISS Drapeau may delegate his duties.
8. ISS Drapeau shall act as custodian of the accounts, domains, subdomains, servers referred to in paragraph 5 above, including of the credentials as modified pursuant to paragraph 6, including by transferring domains or subdomains to a registrar account that is in the control and custody of the independent supervising solicitor.
9. The Plaintiffs' solicitors shall send out the "Notice to Providers" attached as **Schedule II** of this Order to the providers for the domains, subdomains and servers listed in **Schedule I** to ensure that the terms of this Order and the tasks undertaken pursuant to this Order can have their full intended effect and are not interfered with by the Defendants or third parties.

10. The Defendants shall disclose to ISS Drapeau and the Plaintiffs' solicitors:
 - a) the existence of any assets, revenues, expenses and profits derived from the operation of the SSTV Services or other Unauthorized Subscription Services, whether located in Canada or abroad, including but not limited to bank account or account from any other institutions or persons that deal in financial matters; safety deposit boxes; investment accounts; brokerage accounts; financial instruments or other assets within the control of a bank, financial or similar institution; cryptocurrency; and any other asset that is owned by, directly or indirectly controlled by or registered to the Defendants, by themselves or through any person or entity related to them or to the SSTV Services or any other Unauthorized Subscription Services that have not already been provided;
 - b) all information pertaining to the assets identified pursuant to subparagraph (a), including the identity of their owner, account number, type, creation date, transaction history, value and balance, including by providing all documents likely to contain this information, such as financial records, banking statements, invoices, and other similar documents that have not already been provided; and
 - c) the identity and contact information of the bank(s), financial institution(s) or other service provider(s) with which these assets are registered or through which they are controlled that have not already been provided.
11. The Defendants shall provide their written consent, in the form of **Schedule III** of this Order (with the necessary modifications as appropriate), to authorize the bank(s), financial

institution(s) or other financial service provider(s) identified pursuant to this Order to disclose to ISS Drapeau and the Plaintiffs' solicitors all information pertaining to their assets, including but not limited to the types of information listed at subparagraph 10(b) above that have not already been provided.

12. The Defendants are enjoined and restrained, by themselves or by any company, partnership, trust, entity or person under their authority or control, or with which they are associated or affiliated, from directly or indirectly:

a) selling, assigning, alienating, transferring, or otherwise disposing of their assets, including but not limited to the properties located at:

- i. 11 Patterson Road, unit 23, Barrie, Ontario, Canada, L4N 7W5
- ii. 32 Brownlee Avenue, Woodbridge, Ontario, Canada, L4L 8H4

in any way except for the payment of expenses in the normal course of their livelihood, during the course of the present proceedings;

b) removing, or assisting in the removal of their assets from Canada, or doing any act, the effect of which is to remove or assist in the removal of their assets from Canada, without leave of the Court; and

c) converting their assets to foreign currency or converting them to anonymous, encrypted and/or untraceable formats (e.g.: cryptocurrency).

13. The Defendants shall provide to ISS Drapeau any login credentials or other means necessary to access the content of and/or decrypt any encrypted device, as necessary to inspect or copy evidence that has been preserved pursuant to this Order or the Interim Order;
14. Failing an agreement to the contrary between the parties, the parties are ordered to comply with the protocol provided at **Schedule IV** of this Order to ensure that the aforementioned property, or copies thereof, that are taken into custody to be preserved as evidence in this proceeding, are purged of privileged and of non-relevant personal and non-relevant business documents and information before being remitted to the Plaintiffs and/or their solicitors.
15. ISS Drapeau, once the protocol provided at **Schedule IV** has been completed, shall provide to the solicitors for the Plaintiffs copies of the evidence that has been preserved pursuant to this Order and that has been purged of privileged and of non-relevant personal and non-relevant business documents and information.
16. ISS Drapeau and the Plaintiffs' solicitors are authorized to consult the documents and information obtained pursuant to the execution of the Interim Order and pursuant to this Order for the purpose of this proceeding.
17. ISS Drapeau is authorized to place the aforementioned property, documents and equipment, or copies thereof, under the custody of a guardian to be designated by ISS Drapeau, including computer forensic experts and/or private investigators assisting the ISS

Drapeau, for the purpose of preserving it as evidence to be used in this proceeding, at the Plaintiffs' costs pending the final determination of the issues in this proceeding, which costs shall ultimately be borne by the party so designated in said final determination.

18. The Plaintiffs, ISS Drapeau, and the guardian of any element secured pursuant to this Order are exempt from any obligation to insure the aforementioned elements.
19. The parties shall keep confidential:
 - a) all videos of the execution of Interim Order; and
 - b) personal or business financial information such as account numbers, social insurance numbers, account balances and transaction history, or other identifying information that could be used for identity fraud;

The parties are granted leave to file such material in this proceeding under seal and marked as confidential, subject to the parties' right to challenge that confidentiality designation by way of motion, and subject to the Court's discretion as to that confidentiality designation.

20. The following materials, referred to at paragraph 45 of the Interim Order, shall continue to be kept under seal and marked confidential pursuant to Rule 151 of the *Federal Courts Rules*: the confidential versions of the affidavits of Mr. George Saleh, Mr. Anthony Martin, Mr. Yves Rémillard and Mr. Jonathan Breault, the entirety of which and their exhibits are left unredacted, the confidential version of the affidavit of Andrew McGuigan, from which paragraphs 134-252 are left unredacted and containing exhibits AM-14, AM-15, AM-17 to

AM-20 and AM-31 to AM-77, and the confidential version of the written representations, from which paragraphs 58 to 77 are left unredacted.

21. The Defendants shall, no later than December 5, 2022, serve and file their written representations on costs of the present motion and of the Plaintiffs' motion for the Interim Order, including any transcript of cross-examination, and provide dates of mutual availability of counsel for the parties for a hearing on costs by way of videoconference during the month of December 2022.

“Roger R. Lafrenière”

Judge

Schedule I

List of domains, subdomains and servers

Domains and subdomains

1. smoothstreams.tv
2. guide.smoothstreams.tv
3. mail.smoothstreams.tv
4. smoothstreams.tv/board/
5. live247.tv
6. armhosting.ca
7. client.armhosting.ca
8. starstreams.tv
9. romaworks.co
10. streamtvnow.tv
11. starhosting.me
12. chat.efnet.org:9090/?nick=&channels=%23SmoothStreams &Login=Login

Servers and hosting providers

Domain	IP	Hosting Provider / Suspected Server
Deu.smoothstreams.tv	31.24.224.105	Uk-2 Limited/United Kingdom
deu-de.smoothstreams.tv	185.59.221.37	Datacamp Limited/London
deu-nl.smoothstreams.tv	31.204.151.1	I3d.net B.v/Rotterdam
deu-uk.smoothstreams.tv	185.93.2.180	Datacamp Limited/London
deu-	185.59.221.37	Datacamp Limited/London
deu-	31.24.224.105	Uk-2 Limited/London
deu-nl1.smoothstreams.tv	185.59.220.73	I3d.net B.v/Rotterdam
dap1.smoothstreams.tv	161.202.204.252	Hosting Services Inc/US
dap2.smoothstreams.tv	139.99.8.38	OVH Singapore Pte. Ltd/Singapore
dap3.smoothstreams.tv	104.248.98.90	DigitalOcean/Turkey
dap.smoothstreams.tv	104.248.98.90	DigitalOcean/Turkey
dna.smoothstreams.tv	185.93.0.209	Datacamp Limited/US - ATL
dnae.smoothstreams.tv	185.59.223.58	DataCamp/US -NY
dnaw.smoothstreams.tv	108.170.31.162	Secured Servers LLC/Arizona/ (Assigned to Privacy Protected)
dnae1.smoothstreams.tv	64.237.32.235	Star Hosting Limited/Piscataway (NJ)
dnae2.smoothstreams.tv	185.59.223.58	DataCamp/US -NY
dnae3.smoothstreams.tv	185.93.1.86	Datacamp Limited/US - CHI
dnae4.smoothstreams.tv	185.93.0.209	Datacamp Limited/US - ATL
dnae5.smoothstreams.tv	198.24.171.186	Datacamp Limited/US - AZ
dnaw1.smoothstreams.tv	108.170.31.162	Secured Servers LLC/Arizona/ (Assigned to Privacy Protected)
Dnaw2.smoothstreams.tv	108.170.31.162	Secured Servers LLC/Arizona (Assigned to Privacy Protected)

Schedule II

Notice to Providers

Court Docket: T-1257-22

BETWEEN:

**BELL MEDIA INC.
ROGERS MEDIA INC.
COLUMBIA PICTURES
INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
PARAMOUNT PICTURES
CORPORATION
UNIVERSAL CITY STUDIOS LLC
UNIVERSAL CITY STUDIOS
PRODUCTIONS LLLP
WARNER BROS. ENTERTAINMENT INC.**

Plaintiffs

and

**MARSHALL MACCIACCHERA
DBA SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA
DBA SMOOTHSTREAMS.TV
ARM HOSTING INC.
STAR HOSTING LIMITED
(HONG KONG)
ROMA WORKS LIMITED
(HONG KONG)
ROMA WORKS SA (PANAMA)**

Defendants

NOTICE TO INTERNET SERVICE PROVIDERS

TAKE NOTICE that an Order of the Federal Court, issued on June 28, 2022, and converted into an interlocutory Order on November 22, 2022 in Federal Court Docket: T-1257-22, is directed at certain domain names, registrar accounts and/or hosting accounts for which it

appears you provide Internet services. A list of the relevant domain names is provided in Schedule I to the Order, which list may be supplemented by disclosure from the Defendants, in which case a supplementary list will be attached to the present notice as Schedule 1.1

The Order of the Federal Court provides authority to an independent supervising solicitor, whose contact information is identified below, to take temporary custody and control of the various domain names and related accounts referred to above, and to deactivate any content associated therewith.

In order to ensure that the Order of the Federal Court has its full intended effect, the Court requests that you do not interfere with the transfer or control of the domain names, registrar accounts and hosting accounts in the custody of the independent supervising solicitor.

It is further requested that you do not permit any subsequent transfer, modification, recovery or reactivation of the domain names, registrar accounts and/or hosting accounts, unless specifically requested or authorized by the independent supervising solicitor.

You may contact the supervising solicitor at:

[contact information]

You may contact the Plaintiffs' solicitors at:

[contact information]

Schedule III

Defendants' Consent Form re: Assets

I, _____, residing at _____, hereby authorize the following bank, financial institution or other financial service provider:

[identity and contact]

1. to disclose to the law firm Smart & Biggar LLP, at their request, all information (including, but not limited to, identity of the owner, account number, type, creation date, transaction history, value and balance) pertaining to the following account(s):

[account(s)]

2. to disclose to Smart & Biggar LLP any other bank account, safety deposit box, investment account, brokerage account, financial instrument or other asset registered with or within the control of the above-mentioned bank, financial institution or other financial service provider and that is directly or indirectly owned by, controlled by or registered to myself and/or [other entity], for which I am an authorized signatory and for which I have authority to provide the present consent; and

3. to disclose to Smart & Biggar LLP all information of the type mentioned at point (1) for the accounts and other assets disclosed pursuant to point (2).

Date:

Signature: _____

Name:

Title:

Schedule IV

Protocol for Handling of Digital Evidence with Regard to Privileged and Personal Information and Documents

For the protection of privileged and of non-relevant and personal digital communications, the following procedure shall apply:

1. A mirror image shall be made of all computerized equipment [Mirror Image] at the time of the execution of the Interim Order and of this Order or as soon thereafter as practicable.
2. The Mirror Image shall be entrusted to the independent supervising solicitor.
3. Within two (2) weeks from the issuance of this Order, the Defendants shall provide the independent supervising solicitor with key words allowing for the identification and retrieval of communications over which the Defendants claim privilege or that they claim to be non-relevant and personal [Key Word].
4. The independent supervising solicitor, assisted by the computer forensic experts, shall remove from the Mirror Image documents that contain the Key Words [Privileged and Personal Documents]. The Mirror Image from which the Privileged and Personal Documents have been removed is referred to as the “Expurgated Image.”
5. Within two (2) weeks from his reception of the Key Words, the independent supervising solicitor shall provide the Expurgated Image to the Defendants.

6. Within two (2) weeks from reception of the Expurgated Image, the Defendants shall provide the independent supervising solicitor with a copy of any documents found in the Expurgated Image over which the Defendants claim privilege or that they claim to be non-relevant personal and non-relevant business [Additional Privileged and Personal Documents].
7. The independent supervising solicitor, assisted by the computer forensic experts, shall remove the Additional Privileged and Personal Documents from the Expurgated Image. The Expurgated Image from which the Privileged and Personal Documents and Additional Privileged and Personal Documents [Claimed Privileged and Personal Documents] have been removed is referred to as the “Final Expurgated Image.”
8. Within two (2) weeks of his reception of the Additional Privileged and Personal Documents, the independent supervising solicitor shall provide the Final Expurgated Image to the Plaintiffs’ counsel and to the Defendants.
9. Within three (3) weeks from his reception of the Additional Privileged and Personal Documents, the independent supervising solicitor will advise counsel for the parties whether he is of the view that one or more Claimed Privileged and Personal Documents are not privileged or non-relevant and personal, as the case may be [Questionable Documents], by:
 - a. Identifying for counsel for both parties the Questionable Documents only by date or, if the document is not dated, by general description; and

- b. Providing to counsel for the Defendants or to the Defendants a copy of the Questionable Documents and a brief reason in support of his view that a given Questionable Document is not privileged or is not non-relevant and personal.

10. Within three (3) weeks from reception of the Questionable Documents, the Defendants shall present an ex parte motion to this Honourable Court to obtain a determination as to whether the Questionable Documents are privileged or non-relevant and personal, or not.

11. Upon reception of an Order of this Honourable Court further to the Defendants' motion, the Defendants shall remit to the Plaintiffs' solicitors any Questionable Documents held not to be privileged or non-relevant and personal by the Order.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1257-22

STYLE OF CAUSE: BELL MEDIA INC. ROGERS MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC. DISNEY
ENTERPRISES, INC. PARAMOUNT PICTURES
CORPORATION UNIVERSAL CITY STUDIOS LLC
UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP
WARNER BROS. ENTERTAINMENT INC. v
MARSHALL MACCIACCHERA DBA
SMOOTHSTREAMS.TV ANTONIO
MACCIACCHERA DBA SMOOTHSTREAMS.TV
ARM HOSTING INC. STAR HOSTING LIMITED
(HONG KONG) ROMA WORKS LIMITED (HONG
KONG) ROMA WORKS SA (PANAMA)

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 18, 2022

ORDER AND REASONS: LAFRENIÈRE J.

DATED: NOVEMBER 22, 2022

APPEARANCES:

Guillaume Lavoie Ste-Marie FOR THE PLAINTIFFS
François Guay
Denise Felsztyna

Paul Lomic FOR THE DEFENDANTS
Sabrina Salituro

SOLICITORS OF RECORD:

Smart & Biggar LLP FOR THE PLAINTIFFS
Montreal, Quebec

Lomic Law FOR THE DEFENDANTS
Toronto, Ontario