

Date:
Docket: T- -19

FEDERAL COURT

B E T W E E N:

**BELL MEDIA INC.
GROUPE TVA INC.
ROGERS MEDIA INC.**

Plaintiffs /
Moving parties

- and -

**JOHN DOE 1 dba GOLDTV.BIZ
JOHN DOE 2 dba GOLDTV.CA**

Defendants

- and -

**BELL CANADA
BRAGG COMMUNICATIONS INC. dba EASTLINK
~~COGECO COMMUNICATIONS~~ CONNEXION INC.
DISTRIBUTEL COMMUNICATIONS LIMITED
FIDO SOLUTIONS INC.
~~ROGERS COMMUNICATIONS CANADA INC.~~
SASKATCHEWAN TELECOMMUNICATIONS ~~HOLDING CORPORATION~~
SHAW COMMUNICATIONS INC.
TEKSAVVY SOLUTIONS INC.
~~TELUS CORPORATION~~ COMMUNICATIONS INC.
VIDEOTRON LTD.**

Third Party Respondents

ORDER

UPON motion by the Plaintiffs for an interlocutory injunction Order against the Third Party Respondents pursuant to Section 44 of the *Federal Courts Act* and Rule 373 of the *Federal Courts Rules*;

UPON considering the Consents of Bell Canada, Fido Solutions Inc., Rogers Communications Inc. and Videotron Ltd.; and Bragg Communications Inc. dba Eastlink, Saskatchewan Telecommunications, Shaw Communications Inc. and TELUS

COMMUNICATIONS INC. taking no position on this motion, 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 or similar Order sought by any Plaintiffs or any other party;

UPON considering the Plaintiffs' motion record, ~~the~~certain Third Party Respondents' responding records, and the Plaintiffs' and certain Third Party Respondents' oral submissions at the hearing of this motion;

UPON considering subsections 2.4(1.1), 3(1)(f) and 27(1) of the *Copyright Act*, section 36 of the *Telecommunications Act*, section 44 of the *Federal Courts Act*, and Rule 373 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. Within ~~ten (10)~~fifteen (15) days of the issuance of this Order, the Third Party Respondents shall block or attempt to block access by at least their residential wireline Internet service customers to the websites or online services identified at Schedule 1 to this Order (the "Target Websites"), by blocking or attempting to block access to all of the Target Websites' domains, subdomains and IP addresses identified therein.
2. The Plaintiffs may supplement Schedule 1 to this Order on an ongoing basis by giving notice to the Third Party Respondents of any other domain, subdomain or IP address ~~associated with the Target Websites~~that has as its sole or predominant purpose to enable or facilitate access to the Target Websites and providing an updated Schedule 1 to the Third Party Respondents, in which case the Third Party Respondents shall treat this updated Schedule 1 in accordance with paragraph 1 within ten (10) days of the notice.
3. The Third Party Respondents have no obligation to verify whether the Plaintiffs' updates to Schedule 1 to this Order are correct, and are wholly reliant on the Plaintiffs accurately identifying the domains, subdomains or IP addresses associated with the Target Websites.

4. If and once they become or are made aware of the following situations, the Plaintiffs must notify the Third Party Respondents as soon as reasonably practicable:
 - a) any domain, subdomain or IP address contained in Schedule 1 to this Order (as updated) no longer has for sole or predominant purpose to enable or facilitate access to the Target Websites, in which case the Plaintiffs shall provide to the Third Party Respondents an updated Schedule 1 removing said domain, subdomain or IP address and the Third Party Respondents shall no longer be ordered to block or attempt to block access to said domain, subdomain or IP address; and
 - b) any IP address contained in Schedule 1 to this Order (as updated) hosts one or more active website(s) other than the Target Websites, in which case the Plaintiffs shall provide to the Third Party Respondents an updated Schedule 1 removing said IP address and the Third Party Respondents shall no longer be ordered to block or attempt to block access to said IP address;
5. Notices under this Order may be made by the Plaintiffs, the Third Party Respondents and their agents to one another by electronic means at addresses to be determined and agreed upon by them. Notices pursuant to paragraph 2 may be sent no more frequently than every two weeks, on a day to be agreed upon between the Plaintiffs and the Third Party Respondents.
6. To the extent practicable, where access to a Target Website is blocked by a Third Party Respondent pursuant to this Order, that Third Party Respondent must ~~take~~make reasonable ~~steps~~efforts to make available the following information to its residential Internet service customers who attempt to access the Target Website and whose access is blocked:
 - a) that access has been blocked by this Order;
 - b) the identity of the Plaintiffs and ~~of the Third Party Respondents and the Federal Court File for this matter;~~ and
 - c) a statement to the effect that the operators of the Target Websites (i.e. the John Doe Defendants), the operators of any other website who claim to be affected by this

Order, and any Internet service customer of the ~~Third Party Respondents~~ affected by the Order, may apply to the Court to seek a variation of this Order pursuant to paragraph 10 below.

7. ~~The~~ A Third Party Respondent will be deemed to have complied with paragraphs 1 and 2 of this Order if they use the ~~technical means~~ Technical Means set out in Schedule 2 to this Order, or alternative or equivalent technical means, provided that the Third Party ~~Respondents notify~~ Respondent provides reasonable notice to the Plaintiffs of the change.
8. If a Third Party Respondent, in complying with this Order, is unable to implement one of the steps referred to in Schedule 2 of this Order, that Third Party ~~respondent~~ Respondent must, within ten (10) business days of service of these Orders, notify the Plaintiffs of the step or steps it has taken and why it could not comply with the Order.

9. A Third Party Respondent shall not be in breach of this Order if it temporarily suspends its compliance with paragraphs 1 and 2, in whole or in part, when such suspension is necessary to:

- a) correct or investigate potential over-blocking that is caused or suspected to be caused by the steps taken pursuant to paragraphs 1 and 2;
- b) maintain the integrity or quality of its Internet services or the functioning of its blocking system(s);
- c) upgrade, troubleshoot or maintain its Internet services or blocking system(s);
- d) prevent or respond to ~~aan~~ an actual or potential security threat to its network or systems;

provided that:

- e) the Third Party Respondent (i) gives notice to the Plaintiffs ahead of (or, if necessary, ~~contemporaneous with~~ as soon as reasonably practical following) such suspension and provides the reason for such suspension and an estimate of its duration or (ii) 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. The Plaintiffs shall treat any information received pursuant to this paragraph confidentially and shall use it solely for the purposes of monitoring and ensuring compliance with this Order; and
 - f) the suspension lasts no longer than is reasonably necessary.
10. The operators of the Target Websites (i.e. the John Doe Defendants), the operators of any other website who claim 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.

11. There shall be no costs on the present motion, unless contested by any of the Third Party Respondents, in which case costs are awarded against the contesting 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.

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~~12. The costs of implementing this Order shall be borne by the Plaintiffs and Third Party Respondents as follows:~~

~~a) The Third Party Respondents shall bear the following costs:~~

- ~~i. the cost of acquiring and upgrading the hardware and software required to block or attempt to block access to the Target Websites in accordance with this Order;~~
- ~~ii. the cost of managing their blocking system, including customer service, and network and systems management;~~

~~13.12. The Plaintiffs shall indemnify and save harmless the Third Party Respondents for the following costs:-:~~

- ~~i. the reasonable marginal ~~cost~~costs of implementing paragraphs ~~4~~1 and 6 of this Order, which involves processing the Order and implementing it using the Third Party Respondents' blocking systems; and~~

~~b)a) the reasonable marginal cost of and updating the implementation of thethis Order in response to notifications from the Plaintiffs pursuant to paragraph 2 of this Order;paragraphs 2 and 4; and~~

~~e) For clarity:~~

- ~~i. the Plaintiffs shall not be liable to indemnify the Third Party Respondents for any cost, expense or disbursement beyond the marginal costs of implementation of the Order pursuant to subparagraph 12.b) above, such as legal fees; other managerial, technical or professional fees or wages; or disbursements for the acquisition or upkeep of any hardware or software.~~

~~the Plaintiffs retain the right to challenge~~

~~b) any reasonably incurred loss, liability, obligation, claim, damages, costs (including defence costs), or expenses arising as a result of the Third Party Respondents'~~

compliance with the Order that are attributable to an error or omission of the Plaintiffs.

~~14.13. Any disagreement as to the reasonable nature of the marginal implementation costs for which the Third Party Respondents request an indemnity. Should the Plaintiffs and Third Party Respondents disagree as to the reasonable nature of such costs, they~~any costs claimed under paragraph 12 may address~~be submitted to~~ this Court to decide upon the issue by way of motion.

14. _____This Order shall terminate three (3) years from the date of issuance, unless the Court orders otherwise.

Schedule 1 – Target Websites

1. GoldTV.biz Service

Domain(s) to be blocked	Subdomains to be blocked	IP addresses to be blocked
goldtv.biz		151.80.96.122
	dtv.goldtv.biz	195.154.35.172 185.152.64.114
	billing.goldtv.biz	51.15.149.83
	p1-edge.goldtv.biz	188.165.45.150 185.152.64.114
	256.goldtv.biz	188.165.45.150 185.152.64.82
	portal.goldtv.biz	188.165.45.150 185.152.64.82
	p2-edge.goldtv.biz	185.152.64.82 188.165.164.0
<u>edge.tm</u>		
	<u>portal.edge.tm</u>	<u>188.165.164.0</u>
	<u>dyn.edge.tm</u>	<u>185.152.64.137</u>
	<u>256.edge.tm</u>	<u>185.152.64.137</u>
	<u>billing.edge.tm</u>	<u>51.15.149.83</u>

2. GoldTV.ca Service

Domain(s) to be blocked	Subdomains to be blocked	IP addresses to be blocked
goldtv.ca		
goldtv.info		
	watch.goldtv.ca	185.246.209.218
	watch.goldtv.info	185.246.209.218
	live.goldtv.ca	217.23.1.3

Schedule 2 – Technical Means

1. For domains identified in Schedule 1 (as updated): DNS blocking, or alternatively DNS re-routing to comply with paragraph 6 of the Order.

2. For domains, subdomains or specific paths identified in Schedule 1 (as updated): DNS blocking or DNS re-routing, or at the Third Party's Respondent's election URL path blocking, to the extent that the Third Party Respondent's existing technical infrastructure allows this blocking method, ~~or alternatively DNS blocking, or DNS re-routing to comply with paragraph 6 of the Order.~~ For certainty;
 - a) for domains and subdomains identified in Schedule 1 (as updated), the Third Party Respondents do not need to implement URL path blocking if they implement DNS blocking or DNS re-routing in accordance with paragraph 1 of this Schedule 2.

 - b) ~~notwithstanding paragraph 12(a)(i) of the Order,~~ no Third Party Respondent shall be required to acquire the hardware and software necessary to put in place or upgrade URL path blocking.

3. For the IP addresses identified in Schedule 1 (as updated): IP address blocking, or alternatively IP address re-routing ~~to comply with paragraph 6 of the Order~~. For certainty, IP address blocking, or IP address re-routing, shall only be required to block IP addresses in respect of which the Plaintiffs or their agents notify the Third Party Respondents that, to the best of their knowledge, the server associated with the notified IP address does not also host an active website other than the Target Websites.