

Federal Court



Cour fédérale

Date: 20220728

Docket: T-1257-22

Citation: 2022 FC 1139

Ottawa, Ontario, July 28, 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. Introduction

[1] On June 17, 2022, the Plaintiffs, Bell Media Inc. [Bell Media], Rogers Media Inc. [Rogers Media], Columbia Pictures Industries, Inc. [Columbia], Disney Enterprises, Inc. [Disney], Paramount Pictures Corporation [Paramount], Universal City Studios LLC and Universal City Studios Productions LLLP [collectively Universal], and Warner Bros. Entertainment Inc. [Warner Bros.] commenced the underlying action for infringement of the Plaintiffs' copyrights in the "Plaintiffs' Works," as defined in the Statement of Claim, against the Defendants, Marshall Macciachera, Antonio Macciachera and various Canadian and foreign companies under their control, Arm Hosting Inc. [Arm Hosting], Star Hosting Limited (Hong Kong) [Star Hosting HK], Roma Works Limited (Hong Kong) [Roma Works HK] and Roma Works SA. The proceeding is brought pursuant to subsection 2.4(1.1), paragraph 3(1)(f) and subsection 27(1) of the *Copyright Act*, RSC 1985, c C-42.

[2] The Plaintiffs allege in the Statement of Claim that the Defendants are responsible for developing, launching, operating, maintaining, promoting and selling subscriptions to unlawful Internet services. More specifically, they claim that Marshall Macciachera and his father, Antonio Macciachera, are the key individuals behind the operation of the Smoothstreams.tv Internet Protocol Television [IPTV] service network, including smoothstreams.tv, live247.tv [Live247], streamtvnow.tv and starstreams.tv [collectively referred as the SSTV Services], which provide subscribers with unauthorized access to a large number of motion pictures and live

television channels that broadcast television programming for which the copyright is owned by various rights holders, including the Plaintiffs.

[3] Because of their family relationship and for ease of reference, the two individual Defendants shall be referred to in these reasons solely by their first names.

II. Interim Injunction and Anton Piller Order

[4] On the same day the Statement of Claim was filed, the Plaintiffs requested that a special sitting be scheduled to hear their *ex parte* motion for an interim injunction, an Anton Piller Order, and other ancillary orders.

[5] On June 28, 2022, Madam Justice Vanessa Rochester granted the Plaintiffs' motion and issued an order for an interim injunction against the Defendants pursuant to Rule 374 of the *Federal Courts Rules*, RSC 1985, c F-7, as well as an Anton Piller Order pursuant to Rule 377, and other ancillary orders [Interim Order]. The Interim Order was granted by Justice Rochester based on confidential motion material and following an *in camera* hearing.

[6] At a high level, the interim injunction contained in the Interim Order 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 an independent supervising solicitor [ISS] as custodian, and for that infrastructure to be shut down. The Interim Order also enjoins the Defendants from dissipating or removing assets out of the Court's jurisdiction, and

orders them to sign a consent form authorizing their financial institutions to disclose information pertaining to their assets to the Plaintiffs.

[7] The Anton Piller Order portion of the Interim Order provides for the search, seizure and preservation of evidence and equipment related to the SSTV Services and of financial information regarding the Defendants' assets.

[8] Paragraph 2 of the Interim Order provides that the Interim Order is valid for a period of no more than fourteen (14) days from the date of service on the Defendants, subject to any further Order of this Court. The Notice to the Defendants also specifies that the Plaintiffs may seek its renewal or conversion into an interlocutory order by way of motion.

[9] On July 14, 2022, at the outset of the execution of the Interim Order, the Defendants were served with the Statement of Claim, the Interim Order, and copies of the notice of motion and redacted versions of the motion material filed in support of the Plaintiffs' motion.

III. Plaintiffs' Motion to Review the Execution of the Interim Order

A. *The Review of the Interim Order*

[10] The Interim Order includes a provision that its execution be reviewed by this Court on motion by the Plaintiffs, returnable within fourteen (14) days from the date of service of the Interim Order on the Defendants.

[11] On July 19, 2022, the Plaintiffs submitted a letter requesting a special sitting along with a notice of motion to review the execution of the Interim Order.

[12] A Direction was issued the same day fixing the hearing date of the Plaintiffs' motion on July 28, 2022. The Plaintiffs were directed to serve and file their motion record by July 22, 2022. The Direction also provided that the Defendants serve and file their responding motion record(s) by July 26, 2022.

[13] The Plaintiffs filed their motion record on July 22, 2022 in compliance with the Direction dated July 19, 2022. The motion record contained an amended notice of motion seeking additional relief. The specific relief requested is reproduced below:

- a) a declaration that the execution of the Interim Order was lawfully conducted;
- b) an Order authorizing the Plaintiffs to withdraw from the Court the deposit of \$100,000 that they filed on June 22, 2022, as security for damages in connection with the execution of said Interim Order, and ordering the Administrator to pay out said deposit together with all interest accrued thereon, by cheque made payable to Smart & Biggar LLP in Trust;
- c) an interlocutory injunction Order, pursuant to Rule 373 of the *Federal Courts Rules* to remain valid until a final determination of this proceeding on the merits,

in terms similar to those of the Interim Order, subject to certain specified modifications;

- d) an Order directing Mr. Daniel Drapeau, the independent supervising solicitor in respect of the execution of the Interim Order, to provide to the Plaintiffs' solicitors copies of certain documents that have been preserved pursuant to the Interim Order;
- e) an Order that the Defendants shall identify to the Plaintiffs' solicitors the identity of the third party or third parties involved in the operation of the SSTV Services;
- f) a confidentiality Order, requiring that those portions of the confidential affidavit evidence referred to at paragraph 45 of the Interim Order be kept under seal and marked confidential pursuant to Rule 151 of the *Federal Courts Rules*;
- g) an Order pursuant to Rule 467 of the *Federal Courts Rules*, charging the Defendants Marshall Macciachera, Arm Hosting Inc., Star Hosting Limited, and Roma Works Limited with contempt of the Interim Order;
- h) costs to the Plaintiffs for that motion, and for the Motion for the Interim Order dated June 17, 2022, and heard June 24, 2022, in the form of a lump sum in an amount to be determined following the filing of brief written submissions by the parties within three (3) weeks of the disposition of this motion; and

- i) such further and other relief as to this Court may seem just.

[14] In support of their motion, the Plaintiffs rely on the affidavit evidence that was before Justice Rochester, the affidavits of the two independent solicitors who supervised the execution of the Interim Order, and the affidavits of two investigators pertaining to their role in the execution of the Interim Order.

[15] While the Defendants have not yet had an opportunity to cross-examine the deponents and the Plaintiffs' affidavit evidence is untested, the material before me establishes an extremely strong *prima facie* case of copyright infringement against the Defendants. I have set out below certain facts that do not appear to be contentious.

B. *The Plaintiffs and their Copyright*

[16] The Plaintiffs Bell Media and Rogers Media [collectively, the Media Plaintiffs] are Canadian broadcasters that own and operate a number of television stations throughout Canada [the Media Plaintiffs' Stations] on which they broadcast a wide variety of television programs, for which they respectively own or exclusively license the Canadian rights to communicate to the public by telecommunication [the Media Plaintiffs' Programs].

[17] The Media Plaintiffs' Programs asserted in the action are produced by the Media Plaintiffs. The Media Plaintiffs own the copyright in the Media Plaintiffs' Programs as "makers" of these programs under the *Copyright Act*.

[18] The Media Plaintiffs' Stations broadcasted by Bell Media and Rogers Media are distributed generally through broadcasting distribution undertakings that retransmit bundles of stations to their subscribers, including for example Bell Media's parent Bell Canada and its affiliate Bell Express Vu or Rogers Media's affiliate Rogers Communications Canada Inc. [Rogers Cable]. Some of the Media Plaintiffs' Stations are also broadcast over-the-air.

[19] The Media Plaintiffs also broadcast television programming on their respective Internet services Crave, TSN Direct and RDS Direct (Bell), and SN Now, WWE and NHL Live (Rogers), which are subscription-based on-demand streaming services through which subscribers may watch a wide variety of programming for which the rights are owned by or exclusively licensed to the respective Media Plaintiffs.

[20] Canadian users can thus access the legitimate Media Plaintiffs' Programs by either: subscribing to a television service offered by an authorized broadcasting distribution undertaking that distributes the Media Plaintiffs' Stations that air the Media Plaintiffs' Programs; receiving over-the-air signal of some Media Plaintiffs' Stations broadcast by the Media Plaintiffs themselves; and/or subscribing to a legitimate streaming service like Crave or SN Now.

[21] The Plaintiffs Disney, Paramount, Columbia, Universal, and Warner Bros. [collectively, the Studio Plaintiffs], either directly or indirectly through a parent, affiliate or subsidiary, are engaged in, among other things, the production and distribution of motion pictures and television content, and own or control the copyright in Canada in some of these cinematographic works [the Studio Plaintiffs' Works].

[22] The Studio Plaintiffs and/or their affiliates distribute their respective cinematographic works on various platforms, including in theatres, on digital distribution services, through cable and satellite television providers and on physical media such as DVDs and Blu-ray. Some Studio Plaintiffs and/or their affiliates also own and operate subscription-based online digital platforms, such as Disney+ (Disney), Paramount+ (Paramount), Peacock (Universal), and HBO Max (Warner Bros), on which they distribute their respective cinematographic works.

[23] The Studio Plaintiffs, either directly or through a parent or affiliate, are members of the Motion Picture Association [MPA], whose mandate includes pursuing content protection efforts on behalf of its members. In Canada, the MPA's mandate is fulfilled by the MPA-Canada. In terms of content protection efforts, the mandate is more specifically taken care of by the MPA and MPA Canada's Global Content Protection [GCP] department.

[24] Similarly, the Studio Plaintiffs and Bell Media, as well as other third party rightsholders, are part of an initiative named the Alliance for Creativity and Entertainment [ACE], whose mission is to mitigate and prevent the online theft of copyrighted content by bringing together its international members in order to identify common piracy threats and take collective legal action to address them.

[25] The Studio Plaintiffs' Works and the Media Plaintiffs' Programs are collectively referred to as the Plaintiffs Works.

C. *IPTV Services*

[26] IPTV is the delivery of television content to subscribers through Internet infrastructures.

[27] IPTV services may generally deliver two types of video content: (i) live video content such as the continuous streaming of television stations; and (ii) video-on-demand [VOD] content, including motion pictures and on-demand television programs.

[28] While legitimate IPTV services are available to Canadian consumers, such as Bell Fibe TV or Rogers Cable, other IPTV services widely available on the Internet and defined as unauthorized subscription services do not have the authorization from copyright owners to distribute the content they make available to their subscribers.

D. *Unauthorized Subscription Services*

[29] Unauthorized subscription services typically source the live television content that they distribute in one of two ways: by obtaining the content from legitimate sources and retransmitting it without authorization, or by sourcing the content from illegitimate sources.

[30] Unauthorized subscription services typically operate on a subscription-based revenue model and usually provide access to hundreds or thousands of television stations for a cost of approximately \$USD 10 to \$USD 15 per month, which is significantly lower than the prices to access legitimate services. This lower price is possible because, unlike legitimate services, the

operators of unauthorized subscription services do not invest the billions of dollars required to create, produce and acquire motion pictures and television programs.

[31] Once users have purchased a subscription to an unauthorized subscription service (typically in monthly increments), they can access its content through various electronic devices such as a standard computer, a tablet, a smartphone, a smart television or via a set-top box.

[32] Operators of unauthorized subscription services often process payments through a separate website that is under their control but that is made to appear to belong to a business that offers services unrelated to the provision of unauthorized subscription services. This is, in part, to avoid associating the payment processing with infringing activities, thereby making it extremely difficult for rightsholders to file successful complaints with third-party payment platforms.

[33] Unauthorized subscription services are appealing to subscribers not only because of the significantly lower price of subscriptions as compared to legitimate television services, but also because it removes numerous obstacles that are associated with trying to access and view content on unauthorized streaming sites that are available on the Internet free of charge, such as exposure to viruses or malware, dead links and pop-up advertisements.

[34] However, content piracy is not a victimless crime. The deleterious impact of such acts of copyright infringement cannot be understated. The continued operation of unauthorized subscription services cause the Plaintiffs to suffer serious harm, as it:

- a) undermines the Plaintiffs' right to control the time, place and circumstances in which their works are displayed, reproduced, and performed.
- b) interferes with the Plaintiffs' relationships with authorized distributors and licensees of their works and leads to lost opportunities for various other stakeholders in the entertainment industry.
- c) results in incalculable losses in revenues from home entertainment physical media (e.g., DVD, Blu-ray), digital transmissions (e.g., Crave, iTunes and other online content delivery systems) and traditional transmissions (free and paid cable television, etc.).
- d) impacts subscription and advertising revenues of motion pictures and television content creators, owners and broadcasters, such as the Plaintiffs, which in turn hinders their ability to finance their ongoing activities, including their acquisition, creation and distribution of television programming and motion pictures.
- e) leads to cancellation of subscriptions or loss of opportunities, as they provide Canadian users with an incentive to cancel their legitimate subscriptions or never become subscribers in the first place.

[35] There have been a number of recent cases before this Court relating to individuals involved in the unauthorized distribution of motion picture and television content that resulted in injunctions being issued against the defendants, notably *Paramount Pictures Corporation et al v.*

David Lemarier et al. (T-1679-15); *Bell Canada et al v. Adam Lackman et al.* (T-800-17); *Columbia Pictures Industries, Inc. v. Samuel Horkoff* (T-1633-18); *Disney Enterprises, Inc. et al v. Vader Streams* (T-329-19) and *Warner Bros Entertainment Inc. v Tyler White et al dba Beast IPTV* (T-1176-20). As can be seen from the above, the Plaintiffs appear to be drawn into an endless game of whack-a-mole to try to prevent the online theft of their copyrighted content by disparate actors who seek to take advantage of any vacuum created in the illicit market by the Plaintiffs' efforts.

E. *Investigation into the Activities of the Defendants*

[36] The MPA-Canada began a sophisticated, extensive, and resource and time-intensive investigation into the activities of the SSTV Services and its operators in 2018. The investigators could not accurately confirm when the SSTV Services began their operations. However, they were able to conclude that Marshall and Antonio were key individuals involved in the operation of the SSTV Services and their payment processors, including the Live247 service and its payment processor Arm Hosting, and that they provided unauthorized content available on these services from a number of locations in Ontario, and in particular the individual Defendants' personal residences.

[37] The investigation revealed that the SSTV Services could be accessed on five (5) different user-friendly platforms, which give subscribers a broad choice of user-friendly ways to access a vast amount of unauthorized content, including copyrighted content of the Plaintiffs.

[38] The investigation also revealed that Roma Works HK is the payment processor for the StarStreams TV service, and Star Hosting HK is the payment processor for the StreamTVNow service. Corporate records show that the corporate Defendants are operated and/or owned by either Marshall or Antonio.

IV. Execution of the Interim Order

[39] The affidavits of the two solicitors who supervised the execution of the Interim Order provide a thorough, meticulous and detailed record of their interactions with the individual Defendants and their role in the execution.

[40] The affidavit of the lead independent supervising solicitor [ISS], Mr. Daniel Drapeau, describes in detail the execution upon Marshall at his residence and a commercial facility [the Patterson Address] in Barrie, Ontario over a period of two days, July 14 and 15, 2022.

[41] Mr. Mark Davis, the second ISS, filed two affidavits that describe the circumstances surrounding the service and explanation of the Interim Order upon Antonio at his residence in Woodbridge, Ontario on July 14, 2022.

[42] After being served with the Interim Order, the Defendants were given explanations concerning the Interim Order's terms, including the terms relating to compliance, adverse inference in case of non-compliance, and contempt. They were also given the opportunity to ask questions about the Interim Order and to seek advice from their own counsel.

[43] Both Antonio and Marshall were informed that failure to comply with the provisions of the Interim Order would put them in breach of its terms and subject them to facing a motion for contempt of Court, which could result in a fine and/or imprisonment.

[44] Mr. Davis reports that Antonio refused to read the Interim Order or to provide his consent for the execution of the Interim Order. The Plaintiffs moved separately for an order to charge Antonio with contempt. On July 21, 2022, Associate Judge Benoit Duchesne granted the Plaintiffs' motion and ordered Antonio to appear before a judge of this Court on August 17, 2022 to hear proof of the acts with which he is charged and be prepared to present any defence that he may have to the charges.

[45] According to Mr. Drapeau, Marshall complied with certain portions, but not all of terms of the Interim Order. His affidavit, which includes numerous photos and contemporaneous videos, paints a damning picture of the scope of the alleged infringing activities of the Defendants.

[46] Despite the Defendants' refusal to comply with many aspects of the Interim Order, the Plaintiffs were able to uncover evidence of a sophisticated operation running out of Marshall's residence and the Patterson Address. They also seized and preserved evidence that includes dozens of television receivers, encoders, and servers allegedly responsible for capturing and redistributing infringing television content on a massive scale through the SSTV Services.

[47] After the SSTV Services were deactivated (at least in part) as a result of the execution of the Interim Order, subscribers to the service started to voice their concerns, complaints and grievances on SSTV's Twitter account. One subscriber wrote: "Saddest day 10years (*sic*) of perfection gone – please come back soonest." Another one wrote: "Should have kept it more on the down low..." In the same vein, one suggested that SSTV may "have been caught." Many other subscribers asked if others knew of good alternatives to the SSTV Services. These tweets suggest that there has been a substantial period of infringement and that the subscribers knew full well that they were enabling the theft of the Plaintiffs' rights.

V. Request to Adjourn the Motion to Review the Interim Order

[48] On July 25, 2022, newly retained counsel for the Defendants submitted a letter requesting a case management conference on an urgent basis to adjourn and discuss the rescheduling of the hearing of the Plaintiffs' motion scheduled on July 28, 2022. While the Plaintiffs agreed in principle to the Defendants' request for an adjournment of the hearing, the parties could not agree as to the length of the adjournment.

[49] A teleconference was held with counsel for the parties on July 26, 2022. Given the volume of motion material served on the Defendants and their stated intention to cross-examine Mr. Drapeau on his affidavit, I agreed to adjourn the hearing to August 18, 2022 and fixed a timetable for completion of steps leading to the hearing.

[50] The Defendants agreed that the terms of the Interim Order should be extended pending disposition of the Plaintiffs' motion for review of the execution of the Interim Order. Those

portions of the confidential affidavit evidence referred to at paragraph 45 of the Interim Order shall remain confidential in the interim pending further order of the Court.

[51] This leaves outstanding the following heads of relief sought by the Plaintiffs in their amended notice of motion that are unrelated to the review of the Interim Order:

- a) an Order pursuant to Rule 467 of the *Federal Courts Rules*, charging Marshall Macciachera, Arm Hosting Inc., Star Hosting Limited, and Roma Works Limited with contempt of the Interim Order; and
- b) an Order that the Defendants shall identify to the Plaintiffs' solicitors the identity of the third party or third parties involved in the operation of the SSTV Services.

VI. Whether an Order charging the Defendants Marshall Macciachera, Arm Hosting Inc., Star Hosting Limited, and Roma Works Limited with contempt should be issued

[52] Rules 466 to 472 of the *Federal Courts Rules* establish a code governing contempt of Court. The Rules contemplate a two-stage procedure. The first stage is the motion for an order under Rule 467 requiring the person alleged to be in contempt to appear to answer the allegations of contempt. Such orders were referred to in the past as "show cause" orders; however, since contempt proceedings are quasi-criminal in nature, there is no requirement for a respondent to present any evidence.

[53] A party seeking an order pursuant to Rule 467(1) must establish a *prima facie* case of willful and contumacious conduct on the part of the contemnor: *Chaudhry v Canada*, 2008 FCA 173, at para. 6. At the first stage, the moving party must simply present evidence that there is a

court order, that the alleged contemnor has knowledge of the order and that they deliberately disobeyed the order. While the Court has the discretion to order that the alleged contemnor be given notice and an opportunity to make submissions at the first stage, Rule 467(2) provides that the order may be obtained *ex parte*. On the basis of the material before me, I see no reason to exercise my discretion in favour of the Defendants.

[54] The Plaintiffs have established that the Interim Order was issued on June 28, 2022, and that the Interim Order was personally served on Marshall in his personal capacity and in his capacity as director of Arm Hosting Inc., Star Hosting Limited, and Roma Works Limited. Specifically, and as evidenced in the Plaintiffs' *ex parte* motion record, Marshall is the sole director (and therefore the directing mind) of the said corporations – each of which are responsible for operating the subscription management / payment portals for one of the SSTV Services, respectively. Documents located at the Patterson Address (including a small number of HSBC bank documents) provided further support linking Marshall with these foreign corporate entities.

[55] The Plaintiffs have established a *prima facie* case that some or all of the said Defendants have deliberately failed to comply or fully comply with paragraph 20, subparagraphs 24(a), 24(b), 24(c) and paragraph 25 of the Interim Order. In particular, the said Defendants were provided with an opportunity to comply with the terms of the Order by providing information as required by the Interim Order towards the end of the execution at the Patterson Address. The evidence before me establishes that Marshall refused to answer questions about the source of about fifty unauthorized streams that remained online after the servers at the Patterson Address

were disconnected and seized; refused to answer questions about the details and login credentials for the SSTV Services registrar accounts, servers and hosting providers (beyond what was already provided regarding the armhosting.ca and client.armhosting.ca domains); and refused to provide any financial details or the requisite financial disclosure authorizations with respect to the assets of the Defendants Star Hosting Limited and Roma Works Limited.

[56] According to Mr. Drapeau, Marshall stated that he is either uncomfortable or simply not willing to answer these questions without his own lawyer being present. To date, the above-named Defendants have not supplemented their answers.

[57] Mr. Drapeau also reports having witnessed relevant financial documents residing on Marshall's personal computer when he was requesting information from him, leading to his request to have the device mirrored. Although Marshall consented to having the computer copied, he continued to refuse to disclose the password for his computer which would be needed to review the computer's contents and the mirrored image thereof, throughout the execution.

[58] According to Mr. Drapeau, Marshall refused the request. His reason for refusing was initially that "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 the wrap-up questioning, Marshall objected to the disclosure of the login credentials on the grounds that the computer contained personal information.

[59] Based on the above evidence, I conclude a *prima facie* case of contempt has been made out by the Plaintiffs.

VII. Whether the Defendants should be ordered to identify to the Plaintiffs' Solicitors the identity of the third party or third parties involved in the operation of the SSTV Services

[60] With the exception of one website that served as a payment processor for one of the three known SSTV Services, the Defendants refused to transfer to the Plaintiffs the online infrastructure for the SSTV Services, as provided in the Interim Order. It was observed that an unknown third party was visibly interacting with that infrastructure during the Barrie Execution. The evidence before me establishes that an unknown third party named "Sam" may be complicit with the Defendants in the operation of the SSTV Services.

[61] The Plaintiffs submit that the Defendants should identify this third party so he may be impleaded in this action. According to the Plaintiffs, it would be more just and efficient to complete this task while the pleadings are not yet closed, rather than wait for the discovery process. I agree. The Interim Order enjoined and restrained the Defendants, by themselves or by any company, partnership, trust, entity or person under their authority or control, from "selling, assigning, alienating, transferring, or otherwise disposing of their assets." The Defendants were also required to provide all necessary information to assist the persons enforcing the Interim Order, including disclosing any other premises under the Defendants' control or "through any person or entity related to them or to the SSTV Services." In the circumstances, I agree that an explicit order as requested by the Plaintiffs should be granted.

ORDER IN T-1257-22

THIS COURT ORDERS that:

1. The action shall continue as a specially managed proceeding.
2. This matter shall be referred immediately to the Chief Justice for designation of a Case Management Judge.
3. The Order issued by the Honourable Madam Justice Rochester on June 28, 2022 [the Interim Order] shall remain valid until the disposition of all issues raised in the Plaintiffs' Motion dated July 22, 2022 [the Plaintiffs' Motion].
4. The hearing of the Plaintiffs' Motion, on issues not otherwise dealt with in this Order, is adjourned and rescheduled to take place on Thursday, August 18, 2022, at 10:00 a.m. (EDT), by way of Zoom videoconference.
5. The undersigned remains seized with the Plaintiffs' Motion.
6. The following schedule shall govern the steps leading to the hearing of the Plaintiffs' Motion:
 - (a) Any cross-examination to be conducted by the Defendants shall be completed by August 5, 2022;
 - (b) The Plaintiffs may serve and file an amended Memorandum of Fact and Law no later than August 10, 2022;

(c) The Defendants shall serve and file their responding motion record no later than 1:00 p.m. (EDT) on August 16, 2022;

7. The Defendants Marshall Macciachera, Arm Hosting Inc., Star Hosting Limited, and Roma Works Limited shall appear before a Judge of this Court for a contempt hearing, at a time and place to be fixed by the Case Management Judge [the Contempt Hearing] to hear proof of the acts set out in the paragraphs below, purportedly committed by them, with which they are charged, and to be prepared to present any defence that they may have to the charges.
8. The acts with which the Defendants Marshall Macciachera, Arm Hosting Inc., Star Hosting Limited, and Roma Works Limited are charged with contempt of Court under Rule 466(b) of the *Federal Courts Rules* is that they, by their conduct or inaction breached paragraph 20 of the Interim Order by refusing to provide to the independent supervising solicitor and/or to the Plaintiffs' solicitors the technical information related to the SSTV Services and/or any other unauthorized subscription services under their control.
9. The acts with which the Defendants Marshall Macciachera, Star Hosting Limited, and Roma Works Limited are charged with contempt of Court under Rule 466(b) of the *Federal Courts Rules* is that they, by their conduct or inaction:
 - (a) breached paragraph 24(a) of the Interim Order by refusing to disclose the assets, revenues, expenses and profits referred to in said paragraph.

- (b) breached paragraph 24(b) of the Interim Order by refusing to provide all information pertaining to these assets, including by refusing to provide the documents likely to contain that information.
 - (c) breached paragraph 24(c) of the Interim Order by refusing to provide the identity and contact information of the banks, financial institutions or other service providers with which these assets are registered or through which they are controlled.
 - (d) breached paragraph 25 of the Interim Order by refusing to provide their written consent to authorise banks, financial institutions or other service providers to disclose information pertaining to their assets to the independent supervising solicitor and to the Plaintiffs' solicitors.
10. The acts with which the Defendant Marshall Macciacchera is charged with contempt of Court under Rule 466(b) of the *Federal Courts Rules* is that he, by his conduct or inaction breached paragraph 30 of the Interim Order by refusing to disclose the login credentials for his home computer necessary to enforce the Interim Order in accessing the evidence to be preserved thereunder.
11. By August 3, 2022, the Defendants Marshall Macciacchera and Antonio Macciacchera shall identify to the Plaintiffs' solicitors the identity of the third party or third parties involved in the operation of the SSTV Services, including the third party identified as "Sam" on the WMS Panel application installed on the Defendants' servers and the third party who remotely manipulated one of the Defendants' servers during the execution of the Interim Order.

12. Costs of the Plaintiffs' motion for the Interim Order and on the Plaintiffs' Motion shall be determined on the basis of submissions to be made by the parties at the hearing of the Plaintiffs' Motion.
13. Costs of the contempt proceeding ordered at paragraphs 7 to 10 above shall be determined at the Contempt Hearing.
14. Without costs on the other issues dealt with in this Order.

"Roger R. Lafrenière"

Judge

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: JULY 26, 2022

ORDER AND REASONS: LAFRENIÈRE J.

DATED: JULY 28, 2022

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