

Federal Court



Cour fédérale

Date: 20221021

Docket: T-1894-22

Citation: 2022 FC 1432

Ottawa, Ontario, October 21, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**BELL MEDIA INC.
CTV SPECIALTY TELEVISION ENTERPRISES INC.
THE SPORTS NETWORK INC.
LE RESEAU DES SPORTS (RDS) INC.**

Plaintiffs

and

**JOHN DOE 1
JOHN DOE 2**

**OTHER UNIDENTIFIED PERSONS WHO OPERATE UNAUTHORIZED STREAMING
SERVERS THAT PROVIDE OR WILL PROVIDE ACCESS TO FIFA WORLD CUP
LIVE MATCHES IN CANADA**

Defendants

and

**BELL CANADA
BRAGG COMMUNICATIONS INC. dba EASTLINK
COGECO CONNEXION INC.
DISTRIBUTEL COMMUNICATIONS LIMITED
EBOX TELECOMMUNICATIONS INC.
FIDO SOLUTIONS INC.
ROGERS COMMUNICATIONS CANADA INC.**

**SASKATCHEWAN TELECOMMUNICATIONS
SHAW COMMUNICATIONS INC.
TEKSAVYY SOLUTIONS INC.
TELUS COMMUNICATIONS INC.
VIDEOTRON LTD.**

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*, RSC 1985, c F-7 and Rule 373 of the *Federal Courts Rules*, SOR/98-106;

UPON considering the Plaintiffs' motion record and having heard from the Plaintiffs and each of the Third Party Respondents at Case Management Conferences held by way of teleconference on September 29, 2022 and October 6, 2022;

UPON considering that this Court has previously found in *Bell Media Inc. v GoldTV.Biz*, 2019 FC 1432 that it has the jurisdiction to issue site blocking orders (i.e., injunctions enjoining third party Internet service providers to block their subscribers' access to certain websites or services), that this order was upheld by the Federal Court of Appeal (*TekSavvy Solutions Inc v Bell Media Inc*, 2021 FCA 100), and that leave to appeal to the Supreme Court of Canada was denied on March 24, 2022 (SCC File No. 39876);

UPON considering that this Court has since found in *Rogers Media Inc. v John Doe 1*, 2022 FC 775 that the Third Party Respondents each have the capacity to engage in the type of live and dynamic IP address blocking sought by the Plaintiffs;

UPON considering the consent of Bell Canada and Ebox Telecommunications Inc.;

UPON considering that the other named Third Party Respondents (Bragg Communications Inc. dba Eastlink, Cogeco Connexion Inc., Distributel Communications Limited, Saskatchewan Telecommunications, Shaw Communications Inc., TekSavvy Solutions Inc., Telus Communications Inc., Fido Solutions Inc., Rogers Communications Inc. and Videotron Ltd.) have indicated to the Court that they are not opposing the issuance of the Order sought by the Plaintiffs in the present form, and have confirmed that they do not wish to present arguments or otherwise be heard by the Court beyond the above-mentioned Case Management Conferences prior to the issuance of this Order;

UPON considering subsections 2.4(1.1), 3(1)(f), 27(1) and 27(2.3) of the *Copyright Act*, RSC 1985, c C-42, section 36 of the *Telecommunications Act*, SC 1993, c 38, section 44 of the *Federal Courts Act*, and Rules 151 and 373 of the *Federal Courts Rules*;

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;

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

THE COURT ORDERS that:

[1] In this Order, “**FIFA World Cup Live Match**” refers to the live footage of a FIFA World Cup Qatar 2022 match and/or the live television program produced by adding text, images, videos,

commentaries and/or animations to said footage, and which is produced and/or broadcast by the Plaintiffs in Canada under exclusive license from Fédération Internationale de Football Association (FIFA).

[2] Subject to the terms of this Order, the Third Party Respondents shall, during each of the FIFA World Cup Live Match Windows (as this term is defined in Confidential Schedule 2 of this Order) specified in Schedule 1 of this Order, block or attempt to block access, by at least their residential wireline Internet service customers, to each of the IP addresses for the Target Servers (as this term is defined in Confidential Schedule 2 of this Order and as may be hereafter varied) which the Plaintiffs or their appointed agent have notified to the Third Party Respondents in accordance with this Order.

[3] The Plaintiffs shall collectively appoint a single agent to fulfill the duties outlined in this Order (the “Agent”).

[4] The Agent may notify to the Third Party Respondents an IP address to be blocked as a Target Server pursuant to paragraph 2 of this Order if:

(a) The Agent has detected that the IP address is being used:

- (i) during a FIFA World Cup Live Match Window to communicate a FIFA World Cup Live Match to the public by telecommunication without authorization; or

- (ii) during the Pre-Monitoring Period (as defined in Confidential Schedule 2 of this Order) to communicate to the public by telecommunication without the Plaintiffs' authorization a station on which a FIFA World Cup Live Match is scheduled to be broadcast during the FIFA World Cup Live Match Window; or
 - (iii) in a manner that meets one or more of the detection conditions specified in paragraphs 1(c) and (d) of Confidential Schedule 2 of this Order; and
- (b) the Agent has concluded that at the time of the detection the IP address satisfies the safeguard requirements of paragraphs 2(e) and (f) of Confidential Schedule 2 of this Order.

[5] Upon the conclusion of each FIFA World Cup Live Match Window, the Agent shall give notice to the Third Party Respondents in accordance with this Order to unblock all Target Servers that have previously been notified for blocking during the FIFA World Cup Live Match Window. The Third Party Respondents shall use reasonable efforts to un-block as soon as reasonably practical after the end of the FIFA World Cup Live Match Window.

[6] The Third Party Respondents have no obligation to verify whether the IP addresses to be blocked as Target Servers notified by the Agent pursuant to this Order have been correctly identified, and are wholly reliant on the Plaintiffs or their appointed agent accurately identifying and communicating to the Third Party Respondents such IP addresses in compliance with this Order.

[7] A Third Party Respondent will be deemed to have complied with paragraph 2 of this Order if it uses either manual or automated IP address blocking, or an alternative or equivalent technical means (provided that the Third Party Respondent provides reasonable notice to the Plaintiffs of said alternative or equivalent means). If a Third Party Respondent is unable to implement either manual or automated IP address blocking, or IP address rerouting, or alternative or equivalent technical means, that Third Party Respondent shall, within fifteen (15) business days of this Order, notify the Plaintiffs, of the step(s) it has taken and why it will be unable to comply with the Order.

[8] When blocking access to an IP address pursuant to paragraph 2 of this Order, the Third Party Respondents shall use reasonable efforts, subject to the limits of their networks and resources, to disable access to the IP address as soon as practicable following the notification by the Plaintiffs or their appointed Agent pursuant to this Order. A Third Party Respondent will be deemed to have complied with paragraph 2 of this Order if it uses the technical means set out in paragraph 7 of this Order within thirty (30) minutes of the start of a FIFA World Cup Live Match Window and at least every thirty (30) minutes thereafter until the end of the FIFA World Cup Live Match Window, or according to such other schedule as may be agreed between the relevant Third Party Respondent and the Plaintiffs in writing. For greater certainty, the Third Party Respondents are not required to make capital investments to acquire additional software and/or hardware to implement the present Order.

[9] A Third Party Respondent shall not be in breach of this Order if it temporarily suspends its compliance with paragraph 2, in whole or in part, when such suspension is reasonably necessary:

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

provided that:

- (e) the Third Party Respondent gives notice to the Plaintiffs as soon as reasonably practical in advance of, during or following such suspension and provides the reason for such suspension and an estimate of its duration, or if the suspension does not last longer than 48 hours, uses commercially reasonable efforts to maintain a record of the suspension and provides that record to the Plaintiffs upon request; and
- (f) the suspension lasts no longer than is reasonably necessary.

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

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

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

[10] Any notifications given by the Agent under paragraph 4 of this Order must:

- (a) be notified to the Third Party Respondents by means of publishing a consolidated list of all the IP addresses of the Target Servers to be blocked during a FIFA World Cup Live Match Window on a secure electronic platform to which each of the Third Party Respondents has been given

access by arrangement with the Agent, in the manner specified in paragraphs (b) – (d);

(b) be in a fully specified data format, that is provided to the Third Party Respondents in advance.

(c) be published to the said platform on an ongoing basis during each FIFA World Cup Live Match Window, and (save as set out in paragraph 11 below) not during other periods; and

(d) be published in such a manner that they are brought actively to the attention of all Third Party Respondents as contemporaneously as is reasonably practicable.

[11] Any notifications given by the Agent under paragraph 5 of this Order must be notified to the Third Party Respondents by the same means as those specified in paragraph 10 of this Order and given within fifteen (15) minutes of the expiry of the relevant FIFA World Cup Live Match Window, and shall be effected by publishing a list containing a single previously-disclosed IP address controlled by the Agent.

[12] The Court takes notice of the Plaintiffs' representation that they will appoint the same Agent for the implementation of this Order that was appointed for the implementation of this Court's Order in *Rogers Media Inc. v John Doe I*, 2022 FC 775, and that the notifications of IP addresses of Target Servers to the Third Party Respondents pursuant to this Order will follow the same technical requirements.

Notification to Target Servers

[13] Where the Agent notifies an IP address for blocking in accordance with paragraph 4 of this Order, the Agent must within a reasonable period of the first occasion when that IP address is notified (being no later than the end of the day on the day of the FIFA World Cup Live Match Window in question) send to the hosting provider associated with the IP address an electronic notice which contains at least the following information:

- (a) that access to the IP address has been blocked in Canada by Court order;
- (b) the identity of the Plaintiffs who obtained this Order;
- (c) a link to an internet location from which the public version of this Order may be accessed; and
- (d) a statement that affected server operators have the right to apply to the Court to discharge or vary the Order pursuant to paragraph 20 below.

Notification to Third Party Respondents Customers

[14] The Plaintiffs shall post this Order, as well as an explanation of the purpose of the Order, and contact information for any inquiries or complaints, on their websites, in a prominent manner.

[15] Where access to a Target Server is blocked by a Third Party Respondent pursuant to this Order, that Third Party Respondent shall make reasonable efforts to make the following

information immediately available to its residential Internet service customers who attempt to access the Target Servers and whose access is blocked:

- (a) that access has been blocked by this Order;
- (b) the identity of the Plaintiffs and the Federal Court File for this matter and contact information of the Plaintiffs, to be provided by the Plaintiffs to the Third Party Respondents for use by such customers;
- (c) a statement to the effect that the operators of the Target Servers (i.e. the John Doe Defendants), any third party who claim to be affected by this Order, and any Internet service customer affected by the Order, may apply to the Court to discharge or vary the Order pursuant to paragraph 20 below; and
- (d) contact information that the Plaintiffs' Agent shall provide to the Third Party Respondents, and may update from time to time on 30 days' notice, that enables the affected customer to readily contact the Plaintiff or its agent to direct any complaints, including false positives.

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

Changes to Confidential Schedule 2

[17] No changes to the contents of PART 1, paragraphs (a) to (g), or to PART II, paragraphs (a) to (e) of Confidential Schedule 2 may be made unless approved by Order of this Court. No additions to Part II, paragraph (f) of Confidential Schedule 2 may be made unless approved by Order of this Court. For greater certainty, deletions from PART II, paragraph (f) may be made without approval of the Court, and must be made without delay as soon as the Plaintiffs or Agent become aware that the criteria for inclusion are no longer met.

[18] The Plaintiffs must report any deletions to the Court, on a confidential basis, within 30 days of the end of the FIFA World Cup Qatar 2022.

[19] All parties have permission to apply by way of motion to vary the contents of Confidential Schedule 2, such motion to be supported by evidence and on notice to all the other parties.

Permission to apply

[20] The operators of the Target Servers (i.e. the John Doe Defendants), any other third party who claims to be affected by this Order, and any Internet service customer of the Third Party Respondents affected by the Order, may bring a motion to seek a variation of this Order insofar as this Order affects their ability to access or distribute non-infringing content by serving and filing a motion record prior to the end of the FIFA World Cup Qatar 2022.

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

Sunset clause

[22] This Order shall terminate at the end of the last FIFA World Cup Live Match Window of the FIFA World Cup Qatar 2022.

Confidentiality

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

- (a) The confidential version of the affidavit of Mr. George Demetriades (a public version having been provided);

- (b) The confidential version of the affidavit of Ms. Sarah Farrugia (a public version having been provided);
 - (c) The confidential version of the affidavit of Mr. Yves Rémillard (a public version having been provided);
 - (d) Exhibits SR-23 and SR-31 to the affidavit of Mr. Shawn Redmond;
 - (e) Exhibit JVB-12 to the affidavit of Mr. Jason Vallée Buchanan;
 - (f) The confidential version of the plaintiffs' written representations (a public version having been provided);
 - (g) Schedule 2 to this Order, which pertains to the detection and notification criteria;
and
 - (h) Reports to be submitted to the Court pursuant to paragraph 27
- (Collectively, "Confidential Information").

[24] The Confidential Information shall be treated as confidential by the Registry of the Court and shall not be available to anyone other than the Plaintiffs, the Third Party Respondents, and appropriate Court personnel.

[25] Any defendant or third party bringing a motion pursuant to paragraph 20 of this Order who wishes to have access to the Confidential Information for the purposes of these proceedings

shall serve and file a motion record seeking leave from the Court to have access to the Confidential Information.

[26] Any party who is authorized to have access to the Confidential Information pursuant to paragraphs 24 or 25 of this Order may only make use of the Confidential Information for the purposes of these proceedings and shall not disclose the Confidential Material to anyone (except their legal counsel or experts who have been informed of the present Order), without leave from the Court.

Reporting to the Court

[27] The Plaintiffs shall file with the Court, and serve on all Third Party Respondents, one or more affidavit comprising (i) a confidential list of all IP addresses that were notified for blocking pursuant to this Order with the dates and times on which they were required to be blocked, and the criteria which were applied that resulted in them being notified for blocking (ii) the details of any complaint received from operators of Target Servers, their hosting provider or any other third party (including customers of the Third Party Respondents), (iii) any material technical issues encountered with the implementation of this Order, including any issues reported by the Third Party Respondents to the Plaintiffs, and (iv) any relevant available data pertaining to the effectiveness of the Order, within 60 days of the end of the FIFA World Cup Qatar 2022.

Costs of Implementation

[28] The Plaintiffs shall indemnify and save harmless the Third Party Respondents for:

- (a) the reasonable marginal cost of implementing this Order, up to a maximum amount of \$15,000.00 which may be revisited if the conditions of this Order, particularly those set in paragraph 12, are not as represented by the Plaintiffs; and
- (b) any reasonably incurred loss, liability, obligation, claim, damages, costs (including defence costs), or expenses resulting from a third party complaint, demand, action, claim, application or similar proceeding whether administrative, judicial, or quasi-judicial in nature, in respect of the Third Party Respondents as a result of their compliance with the Order.

[29] With respect to the costs referenced in paragraph 28 (a) above:

- (a) the Third Party Respondents shall provide the Plaintiffs with a itemized invoice setting out the claimed costs elements and the total cost claimed, within 30 days of the end of the FIFA World Cup Qatar 2022;
- (b) the Plaintiffs shall, within thirty (30) days of receipt of the invoice, either (i) pay the invoice; or (ii) serve and file a motion disputing the reasonableness of the costs claimed in the invoice, failing which the costs shall be deemed to be reasonable.

Costs

[30] There shall be no costs on the motion.

"Richard G. Mosley"

Judge

SCHEDULE 1: FIFA WORLD CUP LIVE MATCH WINDOWS

The FIFA World Cup Live Match Windows of all matches of the FIFA World Cup Qatar 2022 broadcast in Canada by any of the Plaintiffs via television broadcast and/or online streaming between November 20, 2022 and December 18, 2022 (or the last match of the FIFA World Cup Qatar 2022, whichever comes first), including the following:

Sunday, November 20, 2022	10:45– 13:00
Monday, November 21, 2022	07:45 - 10:00
Monday, November 21, 2022	10:45 - 13:00
Monday, November 21, 2022	13:45 - 16:00
Tuesday, November 22, 2022	04:45 - 07:00
Tuesday, November 22, 2022	07:45 - 10:00
Tuesday, November 22, 2022	10:45 - 13:00
Tuesday, November 22, 2022	13:45 - 16:00
Wednesday, November 23, 2022	04:45 - 07:00
Wednesday, November 23, 2022	07:45 - 10:00
Wednesday, November 23, 2022	10:45 - 13:00
Wednesday, November 23, 2022	13:45 - 16:00
Thursday, November 24, 2022	04:45 - 07:00
Thursday, November 24, 2022	07:45 - 10:00
Thursday, November 24, 2022	10:45 - 13:00
Thursday, November 24, 2022	13:45 - 16:00
Friday, November 25, 2022	04:45 - 07:00
Friday, November 25, 2022	07:45 - 10:00
Friday, November 25, 2022	10:45 - 13:00
Friday, November 25, 2022	13:45 - 16:00
Saturday, November 26, 2022	04:45 - 07:00
Saturday, November 26, 2022	07:45 - 10:00
Saturday, November 26, 2022	10:45 - 13:00
Saturday, November 26, 2022	13:45 - 16:00
Sunday, November 27, 2022	04:45 - 07:00
Sunday, November 27, 2022	07:45 - 10:00
Sunday, November 27, 2022	10:45 - 13:00
Sunday, November 27, 2022	13:45 - 16:00
Monday, November 28, 2022	04:45 - 07:00
Monday, November 28, 2022	07:45 - 10:00
Monday, November 28, 2022	10:45 - 13:00
Monday, November 28, 2022	13:45 - 16:00

Tuesday, November 29, 2022	09:45 - 12:00
Tuesday, November 29, 2022	09:45 - 12:00
Tuesday, November 29, 2022	13:45 - 16:00
Tuesday, November 29, 2022	13:45 - 16:00
Wednesday, November 30, 2022	09:45 - 12:00
Wednesday, November 30, 2022	09:45 - 12:00
Wednesday, November 30, 2022	13:45 - 16:00
Wednesday, November 30, 2022	13:45 - 16:00
Thursday, December 1, 2022	09:45 - 12:00
Thursday, December 1, 2022	09:45 - 12:00
Thursday, December 1, 2022	13:45 - 16:00
Thursday, December 1, 2022	13:45 - 16:00
Friday, December 2, 2022	09:45 - 12:00
Friday, December 2, 2022	09:45 - 12:00
Friday, December 2, 2022	13:45 - 16:00
Friday, December 2, 2022	13:45 - 16:00
Saturday, December 3, 2022	09:45 - 12:00
Saturday, December 3, 2022	13:45 - 16:00
Sunday, December 4, 2022	09:45 - 12:00
Sunday, December 4, 2022	13:45 - 16:00
Monday, December 5, 2022	09:45 - 12:00
Monday, December 5, 2022	13:45 - 16:00
Tuesday, December 6, 2022	09:45 - 12:00
Tuesday, December 6, 2022	13:45 - 16:00
Friday, December 9, 2022	09:45 - 12:00
Friday, December 9, 2022	13:45 - 16:00
Saturday, December 10, 2022	09:45 - 12:00
Saturday, December 10, 2022	13:45 - 16:00
Tuesday, December 13, 2022	13:45 - 16:00
Wednesday, December 14, 2022	13:45 - 16:00
Saturday, December 17, 2022	09:45 - 12:00
Sunday, December 18, 2022	09:45 - 12:30

The schedule is subject to variations by FIFA, as may be notified to the Third Party

Respondents by the Plaintiffs and/or their Agent from time to time.

All times in this Schedule 1 are given in Eastern Standard Time (EST).

CONFIDENTIAL SCHEDULE 2 OMITTED