

Federal Court



Cour fédérale

Date: 20251031

Docket: T-768-25

Citation: 2025 FC 1766

Toronto, Ontario, October 31, 2025

PRESENT: Case Management Judge John C. Cotter

BETWEEN:

HELLBOY PRODUCTIONS, INC.

Plaintiff

and

DOE #1 and others

Defendants

ORDER AND REASONS

I. Introduction

[1] This Order and Reasons deal with three motions by the plaintiff, brought in writing pursuant to Rule 369 (any reference in these Reasons to a Rule is to those in the *Federal Courts Rules*, SOR/98-106).

[2] Stated generally, each motion is for a *Norwich* order seeking to compel a non-party, an Internet Service Provider [ISP], to disclose the names and addresses associated with certain internet protocol addresses, commonly referred to as IP addresses. Each motion concerns a

different ISP: Telus Communications Inc. [Telus]; Cogeco Connexion Inc. [Cogeco]; and Bell Canada [Bell].

[3] This action alleges copyright infringement in respect of a movie, *Hellboy: The Crooked Man* [Work], by unidentified individuals. Specifically, the statement of claim alleges:

5. Each “Doe” Defendant (a “Doe Defendant”) is a person whose name and identity is currently unknown to the Plaintiff. Each Doe Defendant has unlawfully, and without the Plaintiff’s authorization or consent, utilized the BitTorrent peer-to-peer network to unlawfully offer to upload or stream (i.e. make available) the Work and/or has unlawfully copied (downloaded) the Work, thus infringing the Plaintiff’s copyright in the Work. Each other Defendant, as the case may be, was a “Doe” Defendant but has subsequently been identified.

6. Each Defendant has been identified by the internet protocol (“IP”) address used by the Defendant when infringing the copyright in the Work (including by unlawfully making available the Work), as set out in Schedules 1 and 2 to this Claim.

7. Specifically, but without limitation, the Defendant infringed the copyright in the Work (including by unlawfully making available the Work) at least on the dates and times set out in Schedules 1 and 2 to this Claim.

[4] Schedules 1 and 2 to the statement of claim list over 2,400 unknown defendants, from Doe #1 to Doe #2464, each identified by an IP address.

[5] The relief sought by the plaintiff in each of the three motions is essentially the same, with appropriate modifications to the relief sought in paragraph 1 of each notice of motion. The notice of motion relating to Telus seeks the following relief:

1. The Plaintiff seeks an Order compelling the Non-Party Respondent, Telus Communications Inc. (the “Non-Party ISP”) to forthwith disclose to the Plaintiff the name and address of the TELUS subscribers who were associated with the internet protocol

(“IP”) addresses set out in the attached Schedule 1 namely Doe Defendants #795 - #992 (“Schedule 1 Subscribers”), and Schedule 2, namely Doe Defendants #1940 - #2464 (“Schedule 2 Subscribers”, in each case a “Subscriber”) at the various dates and times (UTC) as set out therein, as those names and addresses are contained in the records retained by the Non-Party ISP pursuant to section 41.26(1)(b) of the *Copyright Act* (the “Act”).

2. An Order for a future hearing to determine the quantum to be paid by the Plaintiff to the Non-Party ISP (if any) in respect of the Non-Party ISP’s reasonable costs of disclosure of the personal information requested at paragraph 1 above. Such entitlement to reasonable costs to be limited to work performed to retrieve information stored in accordance with the requirements of the Notice & Notice regime.

3. The Plaintiff’s costs of this motion; and

4. Such further relief as is requested by the Plaintiff and the Court considers just.

[Emphasis in original removed; the terms Schedule 1 Subscribers and Schedule 2 Subscribers as defined above in the notice of motion are used in these Reasons]

[6] Paragraph 1 of notices of motion relating to Cogeco and Bell seek the following relief:

[for Cogeco]

1. The Plaintiff seeks an Order compelling the Non-Party Respondent, Cogeco Connexion Inc. (the “Non-Party ISP”) to forthwith disclose to the Plaintiff the name and address of the Cogeco subscribers were associated with the internet protocol (“IP”) addressees set out in the attached Schedule 1, namely Doe Defendants #367 to #438 (collectively, the “Subscribers”) at the various dates and times (UTC) as set out therein, as those names and addresses are contained in the records retained by the Non-Party ISP pursuant to section 41.26(1)(b) of the *Copyright Act* (the “Act”).

[for Bell Canada]

1. The Plaintiff seeks an Order compelling the Non-Party Respondent, Bell Canada (the “Non-Party ISP”) to forthwith disclose to the Plaintiff the name and address of the Bell subscribers who were associated with the internet protocol (“IP”)

addressees set out in the attached Schedule 1, namely Doe Defendants #1 to #366 (collectively, the “Subscribers”) at the various dates and times (UTC) as set out therein, as those names and addresses are contained in the records retained by the Non-Party ISP pursuant to section 41.26(1)(b) of the *Copyright Act* (the “Act”).

[Emphasis in original removed]

[7] Telus does not oppose the motion. The positions of Cogeco and Bell are unknown. However, a lack of opposition from an ISP is not sufficient on its own to grant the motion. The Court must be satisfied that the applicable test has been met. This is important given the privacy interests of the unidentified alleged wrongdoers. Justice Pentney explained the role of the Court on motion for a *Norwich* order as follows in *ME2 Productions, Inc. v Doe*, 2019 FC 214 [*ME2 Productions*]:

[129] However, in leaving the *Norwich* order as the ultimate backstop for this regime [referring to the notice and notice regime under the *Copyright Act*], Parliament also left it to the courts to ensure that the stringent requirements for such extraordinary relief are satisfied. This is necessary to ensure that the privacy rights of individual subscribers are adequately protected. This remains an important function of the Court in assessing whether to grant a *Norwich* order in a particular case.

[8] For the reasons set out below, the plaintiff’s motions are dismissed. On the evidence put forward by the plaintiff on these motions, the plaintiff is unable to show: a) a *bona fide* claim for copyright infringement; or b) that Telus, Cogeco or Bell is the ISP for the alleged wrongdoers in question.

[9] The plaintiff’s evidence on each motion consists of:

- a) an affidavit of a law clerk in the office of plaintiff's counsel [Law Clerk Affidavit]; and
- b) an affidavit of Thomas Nowak [Nowak Affidavit], who is identified as the CEO of Maverickeye UG, which according to that affidavit, monitors peer-to-peer/BitTorrent networks for acts of distribution or making available of the Work.

[10] In each of the motions, the structure of the above affidavits is the same. The only major difference is the subset of Doe defendants and IP addresses that are dealt with in each motion. Of course, this is not surprising since each motion deals with a different ISP. For the Law Clerk Affidavit, there is also a difference in the affidavit relating to Telus, which is discussed below.

II. Simplified Action and Rule 298

[11] There is a preliminary issue to be considered. The plaintiff's statement of claim is prefaced by the heading "Simplified Action", as are the other documents filed by the plaintiff. If this were a Simplified Action, then Rule 298 would be engaged, and it restricts when motions can be brought. On these motions the plaintiff has not sought to either vary Rule 298(1), or to remove the action from the operation of Rules for Simplified Actions. However, that is of no consequence. As explained below, this matter is not a Simplified Action and Rules 294 to 299 do not apply. Therefore, Rule 298(1) is not an impediment to these motions being determined

[12] As noted above, plaintiff's statement of claim is prefaced by the heading "Simplified Action". Rule 294 provides that:

Style of cause

294 Every pleading in a simplified action shall be prefaced by the heading “Simplified Action”.

Intitulé

294 Dans une action simplifiée, la mention « action simplifiée » est placée en tête des actes de procédure.

[13] If a plaintiff puts “Simplified Action” on a the top of the statement of claim as was done in this case, is that sufficient to make the proceeding a Simplified Action? It is not. This is because the criteria set out in Rule 292 determines whether an action is a Simplified Action. In other words, if the action does not fall within (a), (b), (c) or (d), then Rules 294 to 299 do not apply, and as a result, the proceeding is not a Simplified Action. This can be seen both in the definition of Simplified Action in Rule 2 (which defines it as an action referred to in Rule 292), and in the wording of Rule 292 which states that:

Where mandatory

292 Unless the Court orders otherwise, rules 294 to 299 apply to any action in which

(a) each claim is exclusively for monetary relief in an amount not exceeding \$100,000, exclusive of interest and costs;

(b) in respect of an action in rem claiming monetary relief, no amount claimed, exclusive of interest and costs, exceeds \$50,000;

Application

292 Sauf ordonnance contraire de la Cour, les règles 294 à 299 s’appliquent à toute action dans laquelle :

a) chaque réclamation vise exclusivement une réparation pécuniaire d’au plus 100 000 \$, intérêts et dépens non compris;

b) s’il s’agit d’une action réelle visant en outre une réparation pécuniaire, chaque réclamation est d’au plus 50 000 \$, intérêts et dépens non compris;

(c) the parties agree that the action is to be conducted as a simplified action; or

c) les parties conviennent de procéder par voie d'action simplifiée;

(d) on motion, the Court orders that the action be conducted as a simplified action.

d) la Cour, sur requête, ordonne de procéder par voie d'action simplifiée.

[14] Leaving aside any questions regarding the quantum of the plaintiff's claim in this case, the relief sought in the statement of claim includes injunctive relief and declaratory relief. That puts this matter outside of the ambit of Rule 292(a), and none of (b), (c) or (d) are applicable. As a result, this matter is not a Simplified Action and Rules 294 to 299 do not apply, and therefore, Rule 298(1) is not an impediment to these motions being determined.

III. Norwich Order Test

[15] The applicable test on a motion for a *Norwich* order was reviewed by the Federal Court of Appeal in *Seismotech IP Holdings Inc v Ecobee Technologies ULC*, 2024 FCA 205

[*Seismotech*]:

[6] In the Federal Court, a *Norwich* order can be sought pursuant to that Court's equitable jurisdiction (*Glaxo* at para. 33), or pursuant to Rule 238 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules) (*BMG Canada Inc. v. John Doe*, 2005 FCA 193 at para. 23 (*BMG*)). Whatever the source of the Federal Court's authority, the test for the issuance of such an order is the same (*BMG* at paras. 30–36). This test requires the plaintiff to show that:

a) a *bona fide* claim exists against the alleged wrongdoer;

b) the person from whom discovery is sought is: (i) more than an innocent bystander, meaning that that person is in some way involved in the matter in dispute; (ii) the only practical source of information available to the plaintiff; and (iii) reasonably

compensated for the expenses, including legal costs, arising out of compliance with the disclosure order; and

c) the balancing of the public interests for and against disclosure of the information sought from that person favours disclosure.

[16] In *ME2 Productions* Justice Pentney discussed the type of the evidence required when seeking a *Norwich* order:

[104] The starting point for my analysis is that the notice and notice regime did not displace the requirement to obtain a *Norwich* order. As the SCC declared, the two must now operate “in tandem.” Disclosure of the names and other information of subscribers who are alleged to have infringed copyright is under the control of the courts through the granting – or refusal – of *Norwich* orders. So what does this mean in relation to the type of evidence that should be required?

[105] As I have noted earlier, the initial threshold to obtain a *Norwich* order is not generally a high bar – all that is required is to demonstrate that the applicant has a *bona fide* case (*BMG; Rogers Communications*). On the other hand, it has long been recognized that a *Norwich* order is extraordinary equitable relief and courts must exercise a degree of caution in granting such orders (*GEA Group*).

[106] In a case such as this, consistent with the decision in *Rogers Communications*, this must involve a consideration of the interests of copyright owners in quick and effective enforcement of their rights. It must also involve a consideration of the privacy interests of individual subscribers whose names are subject to disclosure – and who may thereby be exposed to the challenges, costs and inconvenience of defending a claim of copyright infringement, together with the potential public exposure and embarrassment such an action may bring.

[...]

[111] I find that the CMJ made a palpable and overriding error in finding that the evidence submitted by the Plaintiffs was sufficient to support the granting of a *Norwich* order. The CMJ rejected the arguments on the sufficiency of evidence in the following terms: “TekSavvy is not prejudiced by the evidence and the Court has

accepted this evidence in support as have other ISPs who have provided the names and addresses of alleged infringers. The purposive approach to the legislation is required as noted by Justice Stratas in *Voltage*” (p 16).

[112] I find this is in error in several respects. First, the question of whether TekSavvy is prejudiced by this evidence may be pertinent, but it is far from determinative of the essential question. As is made clear in *BMG*, and resoundingly affirmed in *Rogers Communications*, the Court must consider the interests of the copyright owner, but it must also be concerned to protect the interest of the individual subscribers whose names are subject to disclosure.

[113] Second, while a “purposive” interpretation of the *Act* is undoubtedly important, that legislation does not govern the granting of a *Norwich* order. The two regimes must operate “in tandem,” but the ultimate protection against wrongful disclosure of subscribers’ names, and the breach of privacy and public exposure that may be associated with it, rests with the Court. This is reflected in the final element of the test in *BMG*: “... the public interest in favour of disclosure must outweigh the legitimate privacy concerns of the person sought to be identified if a disclosure order is made” (para 36).

[114] These are weighty matters and the Court is entitled to demand the best available evidence to be filed in support of a motion seeking the extraordinary equitable relief of a *Norwich* order.

[Emphasis added]

IV. Does a *bona fide* claim exist against the alleged wrongdoer?

[17] As noted above, the first element of the test to obtain a *Norwich* order is to show that “a *bona fide* claim exists against the alleged wrongdoer”. The Federal Court of Appeal in *Seismotech* considered the analysis that is to be conducted to determine if there is a *bona fide* claim:

[20] The appellants argue that the evidence filed in *BMG* was not merit-based and only served to establish a connection between the

alleged infringers and the alleged infringement, as opposed to actual infringement.

[21] I disagree. The *BMG* evidence consisted of: (i) details of the investigation conducted by the copyright owners; (ii) screenshots of the files being offered by the impugned IP addresses; (iii) copies of the files requested and received from the non-party respondents; and (iv) confirmation from the copyright owners that the files correspond to the copyrighted songs. It went, at least in part, to the merits of the claim against the alleged copyright infringers. As the Motion Judge put it, it provided a “plausible basis for assuming that there was a copyright infringement” (Motion Judge’s Reasons at para. 36), which is entirely consistent with the requirement that a legitimate claim against the alleged infringers be shown to exist.

[22] Read in its proper context, *BMG* merely cautions against adjudicating the actual merits of a claim at the early stage of a *Norwich* motion (see also: *Bluemoon Capital* at para. 7). This was perfectly understood by the Motion Judge both in identifying the applicable test and in applying it to the facts of the case.

[23] I am therefore satisfied that the Motion Judge correctly directed himself on the law. Although the *bona fide* standard is not as demanding as the *prima facie* case standard, it nevertheless requires some minimal analysis of the merits of the claim, as evidenced by the case law, including *BMG*.

[Emphasis added]

[18] An analysis of the merits of the claim in this case includes some minimal analysis of whether copyright subsists in the Work, and whether the plaintiff has standing to assert a claim for copyright infringement. In the context of this case, the issue of standing is whether plaintiff is the owner of the copyright in the Work, which is asserted in paragraph 4 of the statement of claim.

V. Copyright Subsistence and Ownership

[19] The plaintiff’s evidence did not include a certificate of copyright registration. The plaintiff’s evidence on copyright subsistence and ownership is limited to the following in the Law Clerk Affidavit (which is the same for each of the three motions):

- 3. The relevant movie for this matter that our client has located on P2P networks is set out below (the “**Work**”). The Plaintiff, the party who owns the copyright in the film, is also listed in the table below.

Title	Copyright Owner
<i>Hellboy: The Crooked Man</i>	Hellboy Productions, Inc.

- 4. Attached hereto as **Exhibit “A”** is a copy of the credits page confirming that the Plaintiff is the owner of the copyright in the Work.

[Emphasis in original.]

[20] Exhibit “A” to the Law Clerk Affidavit is the following image:



[21] The plaintiff in its written representations relies on the above-noted evidence in the Law Clerk Affidavit, and the presumption in section 34.1 of the *Copyright Act*, RSC 1985, c C-42 [Section 34.1], to assert that the plaintiff is the owner of the copyright in the Work. Specifically, the plaintiff's written representations state (para 43 in the motion relating to Telus; para 42 in the motions relating to Cogeco and Bell):

The Plaintiff is listed in the credits of the Work as owning the copyright. Accordingly, copyright is presumed to subsist in the Work, the Plaintiff is presumed to be the maker of the Work, and is therefore presumed to be the owner of its copyright.

Plaintiff's Affidavit at paras. 3 and 4, Motion Record, Tab 2, page 11

Copyright Act, ss. 34.1(a)–(b), 34.1(2)(c), Plaintiff's BOA, Tab 1

[22] Leaving aside any potential hearsay issues for the purposes of this analysis, can the plaintiff rely on the presumptions in Section 34.1? The applicable portions of that provision provide that:

Presumptions respecting copyright and ownership

34.1 (1) In any civil proceedings taken under this Act in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff to it,

(a) copyright shall be presumed, unless the contrary is proved, to subsist in the work, performer's performance, sound recording or communication signal, as the case may be; and

Présomption de propriété

34.1 (1) Dans toute procédure civile engagée en vertu de la présente loi où le défendeur conteste l'existence du droit d'auteur ou la qualité du demandeur :

a) l'oeuvre, la prestation, l'enregistrement sonore ou le signal de communication, selon le cas, est, jusqu'à preuve contraire, présumé être protégé par le droit d'auteur;

(b) the author, performer, maker or broadcaster, as the case may be, shall, unless the contrary is proved, be presumed to be the owner of the copyright.

b) l'auteur, l'artiste-interprète, le producteur ou le radiodiffuseur, selon le cas, est, jusqu'à preuve contraire, réputé être titulaire de ce droit d'auteur.

Where no grant registered

Aucun enregistrement

(2) Where any matter referred to in subsection (1) is at issue and no assignment of the copyright, or licence granting an interest in the copyright, has been registered under this Act,

(2) Dans toute contestation de cette nature, lorsque aucun acte de cession du droit d'auteur ni aucune licence concédant un intérêt dans le droit d'auteur n'a été enregistré sous l'autorité de la présente loi :

[...]

[...]

(c) if, on a cinematographic work, a name purporting to be that of the maker of the cinematographic work appears in the usual manner, the person so named shall, unless the contrary is proved, be presumed to be the maker of the cinematographic work.

c) si un nom paraissant être celui du producteur d'une oeuvre cinématographique y est indiqué de la manière habituelle, cette personne est présumée, jusqu'à preuve contraire, être le producteur de l'oeuvre.

[23] The plaintiff in its written representations does not refer to or discuss any of the cases that have considered the presumptions in Section 34.1. Also, the plaintiff makes no submissions as to why it says the criteria set out in Section 34.1(1) is met such that the presumptions can apply.

[24] For subsistence of copyright, the pertinent provision of Section 34.1 is subsection (1)(a). In this case, for ownership of copyright the pertinent subsections are (1)(b) and (2)(c). As there is no direct admissible evidence in this case from, or about, the maker of the Work, the plaintiff

needs the presumption in subsection 2(c) to apply – that it is the maker – so that it can then benefit from the presumption in subsection (1)(b) that the maker is the owner of the copyright (if the presumptions apply).

[25] The wording of Section 34.1(1) sets out a precondition for the engagement of the presumptions, namely that “the defendant puts in issue either the existence of the copyright or the title of the plaintiff to it”. At this stage of the proceeding when the identity of the defendants is not known, can the presumption be engaged? A number of cases have considered the presumption in Section 34.1, although I was not able to identify any reported decisions that have analyzed Section 34.1 in the context of a request for a *Norwich* order.

[26] There are a number of cases that have applied the presumption in favour of the maker of a cinematographic work. See, for example: *Vidéotron Ltée v Konek Technologies Inc*, 2023 FC 741 at paras 24-35; *Demirören TV Radyo Yayincilik Yapimcilik A.Ş. v. General Entertainment and Music Inc*, 2024 FC 1127 at paras 36 and 37; *Bell Canada v L3D Distributing Inc (INL3D)*, 2021 FC 832 [L3D] at paras 47-49; and *Voltage Holdings, LLC v Doe#1*, 2022 FC 827 [Voltage] at para 28, aff’d 2023 FCA 194, leave to appeal to SCC refused, 2024 CanLII 58470.

[27] Two of those cases, *L3D* and *Voltage*, involved motions for default judgment. In *L3D*, Justice Fuhrer described the presumption, and explained the rationale for applying the presumption even though the defendants in question had not defended:

[47] [...] In civil proceedings where the defendant puts the existence of copyright or the plaintiff’s title in issue, copyright is presumed to subsist in the relevant works and the maker (in the case of cinematographic works) is presumed to be the copyright

owner, unless the contrary is shown: *Copyright Act* section 34.1(1).
[...]

[48] Although the Respondent Defendants have not defended the action and, therefore, technically they have not put the subsistence of Plaintiffs' Copyright and their title in issue, nonetheless I find that subsection 34.1(1) acts in favour of the Plaintiffs in the circumstances because the Plaintiffs' claims are deemed denied by reason of the *FCR* Rule 184.

[28] If the presumption in Section 34.1 can apply on a motion for default judgment, I must consider whether it can also apply on a motion for a *Norwich* order. As the information sought on these motions is in respect of unknown potential defendants, there is not, and cannot be, a "defendant [who] puts in issue either the existence of the copyright or the title of the plaintiff to it" as per the wording of Section 34.1. There is also no defendant who has the opportunity to test the evidence relied upon by a plaintiff seeking to rely on the presumptions in Section 34.1(2). This is different from a motion for default judgment where there is a known defendant, who has been served with the statement of claim, and chooses not to participate. Having regard to the foregoing, and the privacy interests of the alleged infringers, I conclude that although the presumptions in Section 34.1 can apply on a motion for default judgment, they do not apply in the context of the present motions for a *Norwich* order.

[29] Having concluded that the presumptions in Section 34.1 do not apply, there is no need to consider whether the evidence in the Law Clerk Affidavit is sufficient to meet the requirements set out in Section 34.1(2)(c).

[30] Since the presumptions in Section 34.1 do not apply, it is necessary to consider whether the evidence in paragraphs 3 and 4 of the Law Clerk Affidavit is sufficient to establish

subsistence and ownership of copyright in the Work. It is not. First, the Law Clerk Affidavit only deals with the matter of ownership of copyright. There is no evidence on subsistence of copyright. Second, the evidence on ownership of copyright is at best, hearsay evidence for which the source is not specified, nor is the basis for the statement that the plaintiff is the owner of the copyright. For example, there is no specific evidence as to the identity of the “maker”. Third, in any event, it is not “best available evidence” on the issue of ownership of copyright. As was stated in *ME2 Productions*, “the Court is entitled to demand the best available evidence to be filed in support of a motion seeking the extraordinary equitable relief of a *Norwich* order” (para 114, quoted above). I also note the concerns expressed by Justice Pentney in *ME2 Productions* regarding an affidavit provided by a law clerk employed by plaintiff’s counsel (see paragraph 98).

[31] As the presumptions in Section 34.1 do not apply, and the plaintiff has put forward no evidence on subsistence of copyright, nor any admissible evidence on ownership of copyright, the plaintiff is unable to show a *bona fide* claim for copyright infringement.

[32] As a result, the plaintiff’s request for a *Norwich* order fails on the first requirement of the test, that a *bona fide* claim exists against the alleged wrongdoer (as set out in *Seismotech*, para 6 a)).

[33] Having regard to my conclusions on the questions of subsistence and ownership of copyright, it is not necessary to consider any of the other requisite elements of a claim for copyright infringement in assessing the merits of the plaintiff’s claim.

VI. Is Telus, Cogeco or Bell the ISP for the alleged wrongdoers?

[34] The second requirement in the test for a *Norwich* order includes the following (as set out in *Seismotech*, para 6 b)):

b) the person from whom discovery is sought is: (i) more than an innocent bystander, meaning that that person is in some way involved in the matter in dispute; (ii) [...]

[35] In the present context, this includes showing that Telus, Cogeco or Bell is the ISP for the alleged wrongdoers.

[36] It appears that the evidence on this point, namely that Telus, Cogeco or Bell is the ISP, was supposed to be in the Nowak Affidavit (see paragraphs 8 and 25 of the plaintiff's written representations which point to paragraphs 24 and 25 of the Nowak Affidavit). Paragraph 24 of the Nowak Affidavit is key for present purposes. In the motion relating to Telus, that paragraph states:

24. I confirmed that MaverikMonitor located the IP addresses set out at Exhibits "A" and "B" which, at various times, were associated with the making available for download or streaming of the Work. Through our usual methods, I confirmed that MaverikMonitor traced these IP addresses [sic] a reliable database of IP addresses to the ISP set out in Exhibits "A" and "B", each a Canadian ISP. [...]

[Emphasis added]

[37] Paragraph 24 of the Nowak Affidavit in the motions relating to Cogeco and Bell is virtually identical. The only difference, which is not material, is that for those motions the Nowak Affidavit does not have an Exhibit "B", and as a result, paragraph 24 only refers to Exhibit "A".

[38] However, despite what is stated in paragraph 24 of the Nowak Affidavit, none of the exhibits referred to in that paragraph identify any ISP, let alone Telus, Cogeco or Bell.

[39] This deficiency in the Nowak Affidavit is not overcome by the Law Clerk Affidavit. As there are some differences in the Law Clerk Affidavit on this point as among the three motions, each is addressed separately.

A. *Law Clerk Affidavit on the motion relating to Telus*

[40] The Law Clerk Affidavit on the motion relating to Telus states in paragraphs 12 and 13 that Exhibit B to that affidavit is comprised of the notices sent to the “Schedule 1 Defendants” by “their ISP”. Similarly, that affidavit in paragraph 15 states that Exhibit C is comprised of the notices “in respect of each unknown Schedule 2 Defendant and the communications from the Non-Party Respondent indicating that the notices were not forwarded”.

[41] For the notices included in Exhibit “B”, it appears that at least for those that I reviewed, there was a corresponding email from the email address abuse@telus.com to the email address notice@airdandberlis.org that contains the following statements which appear to confirm that the Schedule 1 Subscriber was a Telus customer:

TELUS recently received a notice from you alleging that one of our customers infringed your (or your clients) copyright.

[...]

This message is to confirm that the notice has been forwarded to the customer to whom the IP address noted above was assigned at the time.

[Emphasis added.]

[42] Leaving aside any potential hearsay issues with paragraphs 13 and 14, and Exhibit “B”, the emails that I reviewed, that are stated to be from abuse@telus.com, appear to confirm that those particular IP addresses were associated with customers of Telus. However, it appears that there are almost 200 Schedule 1 Subscribers. I did not review and confirm that for each one of them there was the notice and the corresponding email from the email address abuse@telus.com. As stated by Justice Pentney in *ME2 Productions*, “it is incumbent on an applicant seeking a *Norwich* order to ensure that it has disclosed all relevant information to the Court, and that its material is organized in a manner which can be easily understood and verified” (at para 73). Paragraphs 13 and 14, and Exhibit “B”, of the Law Clerk Affidavit, do not establish through material “organized in a manner which can be easily understood and verified” [emphasis added] that Telus is the ISP for Schedule 1 Subscribers.

[43] For the Schedule 2 Subscribers, of which there appear to be more than 500, there is also another issue. The emails stated to be from the email address abuse@telus.com do not contain the same type of language referred to above which, if admissible, confirms that the subscriber was a customer of Telus at the time.

[44] In addition, the difficulty in attempting to understand this evidence is compounded by other issues with the Law Clerk Affidavit relating it. The Law Clerk Affidavit refers to the “Schedule 1 Defendants” and the “Schedule 2 Defendants”, which the affidavit defines as those defendants (i.e., IP addresses) listed in schedules 1 and 2 to the statement of claim. The statement of claim lists over 900 defendants in its Schedule 1 and over 1,400 in its schedule 2. In other words, the Schedule 1 Defendants and Schedule 2 Defendants are much broader than the

Schedule 1 Subscribers and Schedule 2 Subscribers. It appears that the Law Clerk Affidavit may be conflating these terms.

B. *Law Clerk Affidavit on the motion relating to Cogeco*

[45] The Law Clerk Affidavit on the motion relating to Cogeco states the following:

12. The Defendants listed on Schedule 1 in this action were all sent first and second notices. In each case, their ISP indicated that they had forwarded both the first and second notice to their subscriber.

13. I have reviewed Aird & Berlis LLP's records and attach as Exhibit "B" the first and second notices for each unknown Defendant and the communications from the Non-Party Respondent indicating that the notices were forwarded.

[46] Leaving aside any potential hearsay issues with paragraphs 12 and 13, and Exhibit "B", for the emails that I reviewed that are stated to be from the email address security@cogeco.net, the problem is that the responses are unintelligible. This is in addition to not being material that is "organized in a manner which can be easily understood and verified" (see *ME2 Productions* at para 73).

C. *Law Clerk Affidavit on the motion relating to Bell*

[47] Paragraphs 12 and 13 of the Law Clerk Affidavit on the motion relating to Bell are the same as on the motion for Cogeco, quoted above.

[48] Leaving aside any potential hearsay issues with paragraphs 12 and 13, and Exhibit "B", the emails that I reviewed that are stated to be from the email address copyright.noreply@bell.ca state "We have successfully forwarded the above notice of claimed infringement" and refer to a case ID number (there is a similar French statement). Leaving aside whether it can be inferred

from this that it relates to a Bell subscriber, these emails appear to relate to over 350 Doe defendants and suffer from the same issue noted above of not being material that is “organized in a manner which can be easily understood and verified” (see *ME2 Productions* at para 73).

D. *Conclusion regarding ISPs*

[49] As a result, the plaintiff has failed to show that Telus, Cogeco or Bell was the ISP for the alleged wrongdoers and the motions for a *Norwich* order fail for that reason as well.

VII. Conclusion and Costs

[50] As the plaintiff has failed to show a *bona fide* claim for copyright infringement, or that Telus, Cogeco or Bell was the ISP for the alleged wrongdoers, it is not necessary to consider any of the other elements of the test as set out in *Seismotech*.

[51] As a result, the plaintiff’s motions are dismissed, but without prejudice to further motions with better evidence.

[52] The plaintiff sought costs of the motions. Having regard to Rules 400(1) and (3), and in particular, the result of these motions, there is no award of costs to the plaintiff.

[53] As Schedules 1 and 2 to the statement of claim list over 2,400 Doe defendants, pursuant to Rule 67(5) a short style of cause is being used on this Order and Reasons.

ORDER in T-768-25

THIS COURT ORDERS that:

1. The plaintiff's motions are dismissed.
2. This Order does not preclude further motions by the plaintiff for similar relief.
3. There is no award of costs.

"John C. Cotter"

Case Management Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-768-25

STYLE OF CAUSE: HELLBOY PRODUCTIONS, INC. v. DOE #1 and others

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

ORDER AND REASONS: COTTER A.J.

DATED: OCTOBER 31, 2025

WRITTEN SUBMISSIONS BY:

Kenneth R. Clark
Lawrence Veregin

PLAINTIFF

SOLICITORS OF RECORD:

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PLAINTIFF