

Federal Court



Cour fédérale

**Date: 20191115**

**Docket: T-1169-19**

**Citation: 2019 FC 1432**

**Ottawa, Ontario, November 15, 2019**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

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

**Plaintiffs/  
Moving Parties**

**and**

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

**Defendants**

**and**

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

**Third Party Respondents**

**ORDER IN T-1169-19**

**THIS COURT ORDERS that:**

1. Within fifteen (15) days of the issuance of this Order, the Third Party Respondents shall block or attempt to block access by at least their residential wireline Internet service customers to the websites or online services identified at Schedule 1 to this Order (the “Target Websites”), by blocking or attempting to block access to all of the Target Websites’ domains, subdomains and IP addresses identified therein. For clarity, the GoldTV.ca Service is a Target Website for the purpose of this Order. Schedule 1 to this Order is empty for the GoldTV.ca Service as of the date of issuance of this Order, and may be supplemented by the Plaintiffs if and when appropriate in accordance with paragraph 2 of this Order.
  
2. If the Plaintiffs are made aware of any other domain, subdomain or IP address that has as its sole or predominant purpose to enable or facilitate access to the Target Websites:
  - a) the Plaintiffs may serve and file an affidavit and proposed amended Schedule 1:
    - (i) identifying the additional domain(s), subdomain(s) or IP address(es);
    - (ii) stating such additional domain, subdomain or IP address has as its sole or predominant purpose to enable or facilitate access to the Target Websites and that any additional IP address is not associated with any other active domain; and

- (iii) proposing to supplement Schedule 1 to this Order to include such additional domain, subdomain, and IP address;
  - b) any Third Party Respondent may bring a motion to object to the additional proposed domain, subdomain and IP address by serving and filing a motion record within ten (10) business days of service of the Plaintiffs' affidavit and proposed amended Order;
  - c) if no Third Party Respondent brings a motion to object within ten (10) business days in accordance with paragraph 2(b), the Court may grant the Order without further proceedings.
- 3. The Third Party Respondents have no obligation to verify whether the Plaintiffs' updates to Schedule 1 to this Order are correct, and are wholly reliant on the Plaintiffs accurately identifying the domains, subdomains or IP addresses associated with the Target Websites.
- 4. If and once they become or are made aware of the following situations, the Plaintiffs must notify the Third Party Respondents as soon as reasonably practicable:
  - a) any domain, subdomain or IP address contained in Schedule 1 to this Order (as updated) no longer has for sole or predominant purpose to enable or facilitate access to the Target Websites, in which case the Plaintiffs shall provide to the Third Party Respondents and file with the Court an updated Schedule 1 removing said domain, subdomain or IP address and the Third Party Respondents shall no longer be ordered to block or attempt to block access to said domain, subdomain, or IP address; and

- b) any IP address contained in Schedule 1 to this Order (as updated) hosts one or more active website(s) other than the Target Websites, in which case the Third Party Respondents shall no longer be ordered to block or attempt to block access to said IP address.
5. Notices and service of documents under this Order may be made by the Plaintiffs, the Third Party Respondents and their agents to one another by electronic means at addresses to be determined and agreed upon by them. Service and filing of documents pursuant to paragraph 2 may be made no more frequently than every ten (10) business days.
6. To the extent practicable, where access to a Target Website is blocked by a Third Party Respondent pursuant to this Order, that Third Party Respondent must take reasonable steps to make available the following information to its residential Internet service customers who attempt to access the Target Website and whose access is blocked:
  - a) that access has been blocked by this Order;
  - b) the identity of the Plaintiffs and the Federal Court File for this matter; and
  - c) a statement to the effect that the operators of the Target Websites (i.e. the John Doe Defendants), the operators of any other website who claim to be affected by this Order, and any Internet service customer affected by the Order, may apply to the Court to seek a variation of this Order pursuant to paragraph 10 below.
7. A Third Party Respondent will be deemed to have complied with paragraphs 1 and 2 of this Order if it uses the technical means set out in Schedule 2 to this Order, or alternative or equivalent technical means, provided that the Third Party Respondents notify the Plaintiffs of the change.

8. If a Third Party Respondent, in complying with this Order, is unable to implement one of the steps referred to in Schedule 2 of this Order, that Third Party Respondent must, within fifteen (15) business days of service of this Order, or of the expiry of the ten (10) business day period referred to in paragraphs 2 b) and c) of this Order, notify the Plaintiffs of the step or steps it has taken and why it could not comply with the Order.
9. A Third Party Respondent shall not be in breach of this Order if it temporarily suspends, for no longer than is reasonably necessary, its compliance with paragraphs 1 and 2, in whole or in part, when such suspension is necessary to: correct or investigate potential over-blocking that is caused or suspected to be caused by the steps taken pursuant to paragraphs 1 and 2; maintain the integrity or quality of its Internet services or the functioning of its blocking system(s); upgrade, troubleshoot or maintain its Internet services or blocking system(s); prevent or respond to an actual or potential security threat to its network or systems; provided that the Third Party Respondent (i) gives notice to the Plaintiffs ahead of (or, if necessary, as soon as reasonably practical following) such suspension and provides the reason for such suspension and an estimate of its duration or (ii) if the suspension does not last longer than 48 hours, uses commercially reasonable efforts to maintain a record of the suspension and provides that record to the Plaintiffs upon request. The Plaintiffs shall treat any information received pursuant to this paragraph confidentially and shall use it solely for the purposes of monitoring and ensuring compliance with this Order.
10. The operators of the Target Websites (i.e. the John Doe Defendants), the operators of any other website who claim to be affected by this Order, and any Internet service customer of the Third Party Respondents affected by the Order, may bring a motion to seek a variation

of this Order insofar as this Order affects their ability to access or distribute non-infringing content by serving and filing a motion record within thirty (30) days of the first occurrence of the event that allegedly effects them and that results from this Order.

11. The Plaintiffs shall indemnify and save harmless the Third Party Respondents for:
  - a) the reasonable marginal cost of implementing paragraphs 1 and 6 of this Order and updating the implementation of this Order in response to notifications and/or service from the Plaintiffs pursuant to paragraphs 2 and 4; 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.
  
12. With respect of the costs referenced in paragraph 11 a) of this Order:
  - a) The Third Party Respondents shall provide the Plaintiffs with an invoice setting out the claimed cost elements and the total cost claimed after having complied with one or more terms of this Order;
  - 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; and

- c) In the event the Plaintiffs fail to pay the invoice or serve and file the motion referred to in paragraph 12 b), the Third Party Respondents shall no longer be required to comply with terms of this Order with respect to the domains, subdomains, or IP addresses to which the invoice relates.
13. This Order shall terminate two (2) years from the date of issuance, unless the Court orders otherwise.
14. All 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.
15. There shall be no costs on the motion.

"Patrick Gleeson"

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Judge





## **Schedule 2 – Technical Means**

1. For domains identified in Schedule 1 (as updated): DNS blocking, or alternatively DNS re-routing to comply with paragraph 6 of the Order.
2. For domains, subdomains or specific paths identified in Schedule 1 (as updated): DNS blocking or DNS re-routing, or at the Third Party Respondent's election URL path blocking, to the extent that the Third Party Respondent's existing technical infrastructure allows this blocking method. For certainty:
  - (a) for domains and subdomains identified in Schedule 1 (as updated), the Third Party Respondents do not need to implement URL path blocking if they implement DNS blocking or DNS re-routing in accordance with paragraph 1 of this Schedule 2.
  - (b) no Third Party Respondent shall be required to acquire the hardware and software necessary to put in place URL path blocking.
3. For the IP addresses identified in Schedule 1 (as updated): IP address blocking or IP address re-routing. For certainty, IP address blocking, or IP address re-routing, shall only be required to block IP addresses in respect of which the Plaintiffs or their agents notify the Third Party Respondents that, to the best of their knowledge, the server associated with the notified IP address does not also host an active website other than the Target Websites.