

Privacy Rights, Copyright Holders' Rights, and the Internet



A recent decision of the Federal Court of Canada in a [motion brought by Voltage Pictures LLC](#) in a copyright infringement case provides an interesting insight into the way in which the Court will balance privacy rights, on the one hand, and the rights of copyright holders on the other hand.

Voltage owns the copyright in a number of popular movies, including *The Hurt Locker*. In this case, Voltage had a complaint about the unauthorized copying and distribution of its movies by about 2,000 subscribers of an Internet Service Provider (ISP) known as TekSavvy Solutions Inc. Since Voltage knew that the activity was going on but did not know the names and addresses of the subscribers involved in it, Voltage brought a motion to the Court for what is referred to as a [Norwich Order](#). This is an order that requires people who are not parties to a lawsuit to be made to either provide information or attend for an examination for discovery. This order was sought against TekSavvy, to force it to provide the names and addresses of these 2,000 subscribers to Voltage so that Voltage could sue them.

TekSavvy took no position on the motion. However, by order of the Court, the [Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic](#) (CIPPIC) intervened to provide arguments and evidence to help the Court by putting the dispute into an appropriate context.

Essentially, the CIPPIC took the position that Voltage's true intentions were not motivated by concerns about copyright infringement. Rather, Voltage was interested mainly in intimidating individuals into quick settlements by issuing demand letters and threatening litigation. The CIPPIC argued that most individuals put into that position would make payments whether they were involved in unauthorized copying and distribution or not.

The CIPPIC also insisted that TekSavvy should not be required to release any information because this would infringe on the privacy rights of its subscribers and might affect the scope of protection offered to anonymous on-line activity. Furthermore, this type of order might serve as a precedent for the Court to order information about whistle-blowers and other confidential sources of documents made public in the public interest.

The case involved the need to strike the right balance between competing interests. The Court had to determine whether or not this was something more than a fishing

expedition on the part of Voltage, and particularly whether there was a real prospect of these subscribers having been involved in an improper activity. As the Court said, “privacy considerations should not be a shield for wrongdoing” provided, of course, that the protection of copyright is the sole motivating factor supporting the request for the order.

In the result, the Court decided that Voltage’s rights as a copyright holder outweighed the privacy interests of the subscribers, and the order was granted.

This case has very important ramifications for copyright owners as well as those breaching the rights of copyright owners on the internet by improperly downloading movies and other forms of entertainment on the assumption that their identities will never be disclosed. As this case demonstrates, such individuals cannot assume that they will remain anonymous and immune from having to account for their actions.

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About the Author

Irvin is a senior partner and Chair in the Minden Gross Litigation Group. He also served in management on the firm’s Executive Committee for over 10 years. Additionally, Irvin is chair of the Class Action Group and Vehiculaw – the Minden Gross motor vehicle dealers group.

Irvin has acted as counsel in a vast number of areas including: shareholders’ rights and remedies, applications for injunctive relief and judicial review, wrongful dismissal, defamation, corporate and commercial disputes, international litigation, including jurisdictional disputes, negligence and tort claims, sexual abuse litigation, real property litigation including commercial development disputes and commercial leasing disputes, pension and employment benefits disputes, prosecution and defence of solicitors’ negligence and professional malpractice claims, and environmental litigation.[/author]