



Neutral Citation Number: [2021] EWHC 3438 (Ch)

Case No: IL-2021-000073

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
INTELLECTUAL PROPERTY LIST (ChD)

Royal Courts of Justice
Rolls Building
Fetter Lane
London

Date: 20/12/2021

Before :

MR JUSTICE ADAM JOHNSON

Between :

- (1) COLUMBIA PICTURES INDUSTRIES, INC.
- (2) DISNEY ENTERPRISES, INC.
- (3) NETFLIX STUDIOS, LLC
- (4) PARAMOUNT PICTURES CORPORATION
- (5) UNIVERSAL CITY STUDIOS PRODUCTIONS
LLP
- (6) WARNER BROS. ENTERTAINMENT INC.

Applicants

- and -

- (1) BRITISH TELECOMMUNICATIONS PLC
- (2) EE LIMITED
- (3) PLUSNET PLC
- (4) SKY UK LIMITED
- (5) TALKTALK TELECOM LIMITED
- (6) VIRGIN MEDIA LIMITED

Respondents

Richard Spearman QC (instructed by Wiggin LLP) for the Applicants

Approved Judgment

I direct no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This Judgment was handed down remotely by circulation to the parties' representatives by email and released to Bailii.

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Mr Justice Adam Johnson:

1. The Applicants are the owners of the copyright in motion pictures and television programme content. They seek an Order from the Court designed to prevent the infringement of their copyright in such content. They do so by means of an application made on the papers. In support of the application, I have received detailed written submissions from Mr Richard Spearman QC.
2. The infringers are not the Respondents, who are all internet service providers (“ISPs”). Instead, the infringers are said to be certain websites, referred to in the application made to me as the “*Target Websites*”. The business of the Target Websites involves making available audio-visual content to end-users in the manner I shall describe briefly below. As to the Respondents, they have all been notified of the present application and have indicated they do not oppose it.
3. According to the evidence, the Target Websites are currently located at the following domains:
 - i) 0123movies.net ;
 - ii) 1-2-3movies.com;
 - iii) 123movies.vu / 123-movies.gy;
 - iv) 123moviesfree.love;
 - v) cmovies.ac / cmovies.online;
 - vi) flixhq.ru;
 - vii) fmovies.co;
 - viii) gototub.com;
 - ix) hurawatch.ru;
 - x) onionplay.se;
 - xi) sflix.to;
 - xii) soap2day.video;
 - xiii) tvshows88.com;
 - xiv) watchserieshd.ru; and
 - xv) zoechip.com.
4. The Applicants seek relief under section 97A(1) Copyright, Designs and Patents Act 1988 (“*CDPA*”). The relief is in the form of an order directed to the Respondent ISPs, requiring them to block (or at least attempt to block) access to the Target Websites.
5. Section 97A(1) provides as follows:

“(1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.”

6. There is no doubt that the Respondents are “*service providers*”, within the meaning of this subsection. In order to grant the relief sought, I therefore need to be satisfied (1) that the Target Websites are infringing the Applicants’ copyright, (2) that the Target Websites use the Respondents’ services to do so, and (3) the Respondents are aware of such infringement. If those conditions are satisfied, then I need to consider whether the Order sought is proportionate and should be made as a matter of discretion.
7. In support of their application, the Applicants rely on the Witness Statement of Rachel Lesley Alexander, a partner in the firm of Wiggin LLP. Ms Alexander in her evidence describes the business of the Target Websites.
8. They all have essentially the same mode of operation. They enable users to stream motion pictures and television programme content. This is in fact achieved by the Target Websites indexing and aggregating links to unauthorised copies of such content hosted on third party locations. Thus, technically speaking, the Target Websites do not themselves host or transmit the content. Instead, it is accessed by users through an embedded player on the Target Website. The Target Websites though arrange and index the available content in a user-friendly way, so that it can be searched for and accessed easily. And from the user perspective, the content appears to stream directly through the Target Website.
9. The available content includes copyright works that are owned by the Applicants or their group companies. None of the Target Websites, however, has been licensed or authorised by any of the Applicants to make their motion pictures and/or television content available to the public. All of the target Websites generate profit through advertising, and thus operate for profit.
10. Turning then to address issue (1) identified at [6] above, I am satisfied on the basis of this evidence that the Target Websites are infringing the Applicants’ copyright.
11. The Applicants’ case on copyright infringement was put on a number of possible bases, but it is sufficient if I deal with just two of them.
12. The first is that there is infringement by means of the Target Websites *communicating to the public* copyright works owned or controlled by the Applicants or their affiliates, contrary to s.20 CPDA. I agree there is such infringement.
13. The purpose of the Target Websites is actively to engage with end-users and to provide ready access to copyright materials in a straightforward way. That is “*communication*”: see TuneIn Inc v. Warner Music UK Ltd [2021] EWCA Civ. 441, and the further cases cited by Falk J at [12] of her recent judgment in another application brought by these same Applicants, reported at [2021] EWHC 2799 (Ch). There is little doubt that such *communication is to the public*: the Target Websites are generally available, and have been accessed by many users. Indeed, that is their purpose. I refer again to the decision of Falk J at [2021] EWHC 2799 (Ch), [14]-[16].

14. I understand that in some cases, i.e. where the same technical means is being used as for an original, authorised communication, it is necessary for an applicant to show that the communication he complains of is to a “*new public*.” I am not persuaded that the present is such a case, however, because as Mr Spearman QC has argued in his written submissions, any original communication here (by making the relevant work(s) available on the hosting sites – see [8] above) was not authorised. The present facts seem to me more naturally consistent with the situation addressed in Case C-160/15 GS Media BV v. Sanoma Media Netherlands BV [2016] Bus LR 1231, so that the operators of the Target Sites, who operate them for profit, are presumed to know of the protected nature of the works and of the lack of consent by the copyright owners vis-à-vis the hosting sites. No attempt has been made by the Target Websites to rebut that presumption, although they were all served with copyright infringement notices before the present Application was issued. No responses were received.
15. I am also satisfied that there is the requisite targeting of UK end-users: all are English language websites and according to the available data are popular in the UK. In many cases they display advertisements which have prices in Sterling.
16. The Applicants’ second point was that the Target Websites infringe copyright by *authorising infringing acts of copying* by their users. I agree. That is because the streaming process causes the user’s computer or device to create copies of the content in the memory of the device, which is an act of infringement under section 17(1) CDPA: see FAPL v. BT [2017] EWHC 480 (Ch). There is authorisation in the relevant sense, because the activities of the Target Websites involve the purported grant of the right to access the materials they make available: see TuneIn Inc at [166], approving the statement of the law on authorisation given by Kitchen J (as he then was) in Twentieth Century Fox Film Corp. v Newzbin Ltd [2010] EWHC 608 (Ch), at [90].
17. As I have noted, the Applicants made certain other arguments as to copyright infringement, but given my conclusions on their two points above, it is not necessary for me to express any view about them.
18. In light of the above, I then turn to points (2) and (3) identified at [6] above. As to point (2), it is clear that the operators of the Target Websites use the services of the Respondent ISPs to infringe copyright: see Paramount Home Entertainment International Limited & Ors v. British Sky Broadcasting Limited & Ors [2013] EWHC 3479 (Ch), at [39]. It is reasonable to infer that subscribers to the Respondents’ broadband services use them to access the Target Websites, given their popularity in the UK and the ISP’s market share (see again Falk J’s reasoning at [2021] EWHC 2799 (Ch) [24], which I agree with and gratefully adopt).
19. As to point (3), the Respondents have knowledge of the use of their services to infringe copyright, having been given notice of the present application and served with the supporting evidence.
20. Finally, I am satisfied as a matter of discretion that I should make the Order sought. It is necessary to prevent or reduce damage; it should not be costly or difficult to implement; it is the most effective means available of impeding the infringing activity; and any interference with the rights of the Respondents or of the public is justified by the legitimate aim of preventing copyright infringement. Overall, I therefore consider

it proportionate to make the Order sought (see per Arnold J in Nintendo v. Sky [2019] EWHC 2376 (Ch) at [41]), and I will do so.