Neutral Citation Number: [2022] EWHC 2403 (Ch)

Case No: IL-2022-000055

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

Royal Courts of Justice, 7 Rolls Buildings, London EC4A 1NL

Date: 15th July 2022

Before:

THE HONOURABLE MR. JUSTICE MEADE

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Between:

(1) COLUMBIA PICTURES INDUSTRIES, INC.
(2) DISNEY ENTERPRISES, INC.
(3) NETFLIX STUDIOS, LLC
(4) PARAMOUNT PICTURES CORPORATION
(5) UNIVERSAL CITY STUDIOS PRODUCTIONS, LLLP
(6) WARNER BROS. ENTERTAINMENT, INC.
(suing on their own behalf and on behalf of all other companies that are controlled by them or under their common control (the "Group Companies") that are the owners, or exclusive licensees, of the copyright in motion pictures and television programmes)

Applicants

- and -

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

Respondents

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MR. RICHARD SPEARMAN, QC (instructed by **Wiggin LLP**) for the **Applicants**

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APPROVED JUDGMENT

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MR. JUSTICE MEADE :

1. This is an application by a number of movie studios for an order under section 97A of the Copyright Designs and Patents Act 1988. It is in two parts, one part is against what are referred to as the part 1 target websites and the other is in relation to what are referred to as the part 2 target websites.

2. As against the part 1 target websites, what is sought is along exactly the same lines as has been granted by the High Court on a number of occasions previously, and in particular I was referred to, and refreshed my memory of, the decision of Falk J in *Columbia Pictures v BT* [2021] EWHC 2799 (Ch).

3. I was notified of this application through CE file and after reading the papers I concluded that a hearing was appropriate. It was obvious to me that in relation to the part 1 target websites this was conventional relief and did not require a hearing, but because the part 2 target websites relief is an extension of what has been sought before, I thought it was appropriate to have a hearing.

4. Mr. Richard Spearman, Queen's Counsel, appears for the applicants today. The respondents, as is usual in these situations, do not appear and are not represented but have indicated that they do not oppose the relief sought. I am very grateful to Mr. Spearman for his detailed skeleton. That points out at paragraph 10 that the court has various procedural ways of dealing with these applications. Sometimes there is a hearing, sometimes there is a reasoned judgment following it. Sometimes the application is dealt with on paper and occasionally, perhaps more than occasionally, applications are simply granted on the papers without a written judgment.

5. Obviously, this is a matter for a judicial decision by whichever judge comes to deal with an application, and as I say I am holding a hearing today because of the part 2 target websites representing something of an extension of the relief that has been granted previously.

6. Mr. Spearman organised his submissions today in relation to the part 2 target websites first by identifying the problem with relief in the form granted, for example by Falk J previously. That is no criticism of her, it is simply a practical problem with the relief granted that has arisen in the real world; secondly, by explaining to me what the solution is; and thirdly by addressing me on why the solution is appropriate. I think that is a helpful and principled way to look at the matter.

7. The problem is that when an order in the form granted by Falk J or indeed by Adam Johnson J (as he did in December 2021 and which I will touch on again shortly), the reaction of people willing to infringe this kind of copyright is to start up a website with a different but very similar domain name. In the evidence in support of the application, which is the confidential witness statement of Ms. Alexander of Wiggin, a good illustration is given at paragraph 30 with a graph that appears below it, showing that when the websites the subject of Adam Johnson J's Order (which had the names 123 Movies and other similar ones) were blocked, their traffic diminished, as one would expect, but other websites with very similar names picked up the slack and either increased the previous

traffic or started from zero and moved to significant traffic, with the effect that although the specifically-targeted websites were throttled back to a significant degree, overall traffic through websites with 123 Movies in their name was not restricted very much if at all.

8. So that is the problem, and I should say that it is unknown and would probably be very difficult to find out whether the copycat websites are run by the same people as those specifically targeted or not. It does not really matter: the problem clearly exists and is of real impact. To my mind this illustrates not only that the commercial problem facing the applicants is not addressed, but that the court's order, while effective, is much less effective than it might otherwise be.

9. The solution proposed by the applicants and explained to me today by Mr. Spearman is to allow blocking against what I have referred to as the part 2 target websites which have similar but not identical names, and a number of precautions are put in place when the applicants want to notify such other websites to the respondents. In particular, it must be certified that the part 2 target websites are solely used for infringement, that they have the same mode of operation as the part 1 target websites, that they involve infringement of the applicants' copyright, and that certain conditions in a confidential part of the order apply which Mr. Spearman submits, and I accept, limit certification to websites using a colourably similar name to an existing restricted website.

10. So that is the solution proposed and I move on to consider the third part of Mr. Spearman's submissions which is to consider to what extent and for what reasons the solution is appropriate. I am invited to consider this and I do consider it under the general rubric of discretion and proportionality identified by judges of this court in a number of cases. In particular I refer to paragraph 25 of the decision of Falk J that I have touched on already, where she quoted the decision of Mr. Justice Arnold as he then was in *Nintendo* [2019] EWHC 2376 (Ch) at [41], where he said that the injunction must be necessary, effective, dissuasive, not unduly costly or complicated, avoid barriers to legitimate trade and strike a fair balance between fundamental rights, be proportionate and be safeguarded against abuse.

11. I have considered what is proposed under these headings. In particular, I accept the submissions in paragraph 65 of Mr. Spearman's skeleton that (a) the injunction sought is necessary to prevent or reduce damage. I have explained why that is so by reference to the shortcomings of the order against part 1 target websites. Secondly, that the order will be efficacious because it strikes directly at the part 2 target websites; whether it will be a complete protection remains to be seen, but clearly it can be inferred that it is tailored to and ought to have a substantial effect at least on the problem.

12. I am satisfied that the extension of relief sought will be dissuasive. Mr. Spearman points out that the ISPs are required to display information about the block and that supports that conclusion. Furthermore, these injunctions will not be difficult for the ISPs to implement. That can be inferred in part from the fact that they do not oppose the making of the order but in any event are described by the certification that has to take place and be communicated to them and that is evidently, in my view, simple and straightforward. Therefore, as Mr.

Spearman submits in his skeleton, the relief sought is certainly proportionate between the parties.

13. The injunction is targeted only to websites that carry out infringing activities overwhelmingly and will not, therefore, have an impact on legitimate trade. I am satisfied that taking all these matters together, the injunction strikes an overall fair balance. I mention, although it is not a big part of the picture, that some tweaks to the safeguards sought were amended to address concerns raised by the sixth defendant to make extra sure that legitimate websites are not caught.

14. I should say that Mr. Spearman submitted to me that the relief sought is more modest than it might have been and that it is, for example, more modest than the relief granted in similar situations in relation to live streams where the speed of action by the rightsholders means that they can change the targeted websites on a dynamic basis. It may be that that is so. All of these orders evolve over time and in due course perhaps the applicants or other similar rightsholders will seek to go further than the regime that is proposed to me today, and if so no doubt I or another judge of this division will consider that in the light of the principles that I have outlined.

15. However, for today's purposes it is sufficient for me to say that I am satisfied that this is an extremely modest but important extension of relief that has come to be well understood and conventionally granted. So I will make the order as it has been put before me.

This judgment has been approved by the Judge.