

Federal Court



Cour fédérale

Date: 20230628

Docket: T-1176-20

Citation: 2023 FC 907

Ottawa, Ontario, June 28, 2023

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

WARNER BROS. ENTERTAINMENT INC.  
AMAZON CONTENT SERVICES LLC  
BELL MEDIA INC.  
COLUMBIA PICTURES INDUSTRIES, INC.  
DISNEY ENTERPRISES, INC.  
NETFLIX STUDIOS, LLC  
NETFLIX WORLDWIDE  
ENTERTAINMENT, LLC  
PARAMOUNT PICTURES CORPORATION  
SONY PICTURES TELEVISION INC.  
UNIVERSAL CITY STUDIOS  
PRODUCTIONS, LLLP

Plaintiffs

and

TYLER WHITE DBA BEAST IPTV  
COLIN WRIGHT DBA BEAST IPTV

Defendants

**ORDER AND REASONS**

I. Overview

[1] On September 20, 2021, the Defendant, Mr. Tyler White, was found guilty of contempt for disobeying numerous provisions of an interim order issued by Justice Yvan Roy on November 17, 2020 [Interim Order] after pleading guilty to the charges levelled against him.

[2] At the sentencing phase of the contempt proceedings, the parties presented evidence to be considered by this Court in determining a fit sentence for Mr. White's conviction of contempt of court.

[3] The Plaintiffs recommend that the Court impose upon Mr. White a sentence of incarceration for a period of 60 days in light of numerous aggravating factors that have been established at the hearing. They also request that Mr. White be required to pay their costs of the contempt proceedings fixed on a solicitor-client basis.

[4] Mr. White submits that it would be grossly disproportionate to incarcerate him given his personal circumstances. He contends that a fine of \$20,000 would be a more appropriate penalty, and that costs should be fixed at \$20,000, with both amounts made payable over a two-year period.

[5] The two issues to be determined before me are what is the appropriate sentence to be imposed on Mr. White and what costs award should be granted to the Plaintiffs.

[6] As explained further below, I consider the Plaintiffs' sentencing recommendation to be both reasonable and warranted in light of Mr. White's blatant, defiant and obstructionist conduct that completely frustrated the fundamental purposes of the Interim Order and amounted to an affront to the administration of justice.

[7] As for costs, I see no reason on the particular facts of this case why the customary practice in contempt cases, to impose costs on a solicitor-client basis, should not apply.

## II. Background Facts

[8] The facts that gave rise to the contempt proceedings against Mr. White are set out in great detail in the decision of Justice Roy in *Warner Bros Entertainment Inc et al v White (Beast IPTV)*, 2021 FC 53 [*Warner Bros*].

[9] In summary, the Plaintiffs commenced an action on October 2, 2020 against Mr. White and his co-defendant, Mr. Colin Wright, alleging that they infringed the Plaintiffs' copyright in the Plaintiffs' Works by developing, operating, maintaining, promoting, and selling subscriptions to the "Beast IPTV Service."

[10] The Plaintiffs brought an *ex parte* motion for an interim injunction, which was granted by Justice Roy on November 17, 2020. Justice Roy was satisfied that separate interim orders should issue against Mr. White and Mr. Wright after the Plaintiffs established: (1) a serious issue to be tried, (2) irreparable harm if the motion was not granted, and (3) the balance of convenience favoured the Plaintiffs.

[11] The preamble to the Interim Order, entitled “Notice to the Defendant”, reads in part as follows:

2. This Order contains, *inter alia*, an “interim injunction”. The interim injunction orders you to cease engaging in certain specified activities, and authorizes an independent supervising solicitor, assisted notably by computer forensic experts, to take control of certain Internet domains, subdomains, servers, and hosting provider accounts, as further described in this Order, for a period of fourteen (14) days following the date of service of this Order upon you. This Order also orders you to provide certain information to the independent supervising solicitor and to the Plaintiffs’ solicitors. You are advised to read the terms of the interim injunction very carefully and to comply with them.

3. You are entitled to seek the advice of counsel before complying with the terms of the Order, provided that such advice is sought and obtained within a reasonable time not exceeding two (2) hours from the time the Order has been explained to you. If you are unable to pay for legal fees, legal aid may be available to you by contacting a legal aid office.

4. You are entitled to have the Plaintiffs’ solicitors, in the presence of the independent supervising solicitor who served you with a copy of this Order, explain to you what the Order means in plain, everyday language.

5. When the Order is explained to you, only the independent supervising solicitor, a process server and/or bailiff, a videographer, and Plaintiffs’ solicitors, plus such law enforcement officers as may be required, may enter your premises. However, after the Order has been explained, the persons designated in the terms of the Order, below, may participate in the enforcement of the Order, as described below.

6. You are required to permit entry onto the premises to the persons specified below on any business day starting at 8:00am, or earlier if necessary to enforce this Order, and until such time is reasonable and necessary to complete the execution of this Order, within fourteen days of the date of service of this Order upon you.

7. This is a civil proceeding and not a criminal one. You have the right to refuse entry to the premises for the execution of the Order, but if you refuse the Court may draw adverse inferences from your refusal, and you will be in breach (contempt) of a Court Order under Rule 466(b) of the *Federal Courts Rules* and subject to a

fine and/or imprisonment under Rule 472 of the *Federal Courts Rules*. Copies of the Federal Courts Rules may be obtained on request to the Administrator of the Federal Court in Ottawa, Ontario (telephone 613- 922-4238) or at any local office.

8. You are entitled to remain silent and to refuse to answer questions other than the questions specified in the Order below.

[12] The relevant provisions of the Interim Order required Mr. White:

- a. to disclose technical information about Beast IPTV Service (paragraph 2B of the Interim Order);
- b. to not communicate with third parties during the execution of the Interim Order for the purposes of interfering with the execution of the Interim Order, and to not conceal evidence (paragraphs 2I), 3A), 3B) i. of Interim Order);
- c. to disclose a variety of relevant financial information (paragraph 2J) of the Interim Order); and
- d. to authorize his financial providers to disclose information to the Plaintiffs (paragraph 2K of the Interim Order).

[13] The Interim Order specifically prohibited Mr. White from communicating with Mr. Wright and other third parties within 48 hours of being served with the Interim Order (paragraph 3B) i. of the Interim Order) and from operating, maintaining, and/or updating the Beast IPTV Service and corresponding applications and domains (paragraph 2A of the Interim Order).

[14] Paragraph 2M of the Interim Order further enjoined and restrained Mr. White, by himself or by any company, partnership, trust, entity, with which he is associated or affiliated, or person under his authority or control, from directly or indirectly selling, assigning, alienating, transferring, or otherwise disposing of his assets.

[15] On November 24, 2020, Mr. White was personally served with the Interim Order at his residence in accordance with its terms.

[16] The Interim Order provided that it would remain valid for a period of not more than 14 days, within such time the Plaintiffs were required to bring a motion to review the execution of the Order and consider any application to convert the interim relief into interlocutory relief.

[17] At the time of service of the Interim Order, and during its execution, the terms of the Interim Order were explained to Mr. White by Mr. David Hutt, the Independent Supervising Solicitor (ISS) and by Plaintiffs' counsel, including those relating to his right to consult with counsel, his obligations under the Interim Order, and the potential of an adverse inference being drawn in case of non-compliance.

[18] Mr. White was informed by the ISS, in particular, that failure to comply with the provisions of the Interim Order would put him in breach of its terms and subject him to facing a motion for contempt of court, which could result in a fine and/or imprisonment.

[19] Mr. White was given the opportunity to ask questions about the Interim Order. Mr. White was also informed that he was entitled to seek advice from his own counsel before deciding whether to comply with the Interim Order provided that such advice was sought and obtained within a reasonable time and did not exceed two (2) hours from the time the Interim Order had been explained.

[20] During the execution of the Interim Order, Mr. White claimed to have no knowledge or involvement with the Beast IPTV Service.

[21] Mr. White was provided an opportunity to contact a lawyer, but was unable to reach one during the window of time provided in the Interim Order. Eventually, someone from the execution team put Mr. White in touch with a lawyer, Mr. Barry Mason. After receiving some legal advice from Mr. Mason, Mr. White refused to permit entry to his residence or provide any information required by the Interim Order.

[22] On November 25, 2020, Mr. White sought legal advice from another lawyer, Mr. Paul Lomic. That same day, Mr. White took the Beast IPTV Service offline, including the Beast IPTV.tv site and the web player accessible at watch.BeastIPTV.tv.

[23] On November 30, 2020, Mr. White retained new counsel, Mr. Howard Knopf, who then proceeded to request an adjournment of the review motion scheduled for December 7, 2020. Justice Roy granted the adjournment request and ordered that the Interim Order would remain valid and be continued until a judgment on the review motion was rendered.

### III. Contempt Charges

[24] The review motion was heard on December 18, 2020. On January 14, 2021, Justice Roy issued his decision in *Warner Bros* granting an interlocutory injunction and charging Mr. White and Mr. Wright with five counts of contempt of court pursuant to Rule 466(1)(b) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], namely:

- i. Mr. White and Mr. Wright, disobeying paragraph 2B) of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose any of the technical information about the Beast IPTV Service as required at paragraphs 2B) of the Interim Orders, and by instead falsely claiming to have no knowledge of the Beast IPTV Service;
- ii. Mr. White and Mr. Wright, disobeying paragraphs 2I), 3A) and 3B)i. of the Interim Order, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by communicating with third parties with their phones or other electronic devices during the execution of the Interim Orders in order to interfere with the execution of the Interim Orders and conceal evidence, notably by instructing third parties to delete websites, infrastructure or evidence related to this proceeding;
- iii. Mr. White and Mr. Wright disobeying paragraph 3B)i. of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by communicating with one another and with third parties regarding the existence of this proceeding and of the Interim Order within forty-eight (48) hours after the service of the Interim Orders upon them;
- iv. Mr. White and Mr. Wright disobeying paragraphs 2J) and 2K) of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by refusing to disclose to the



independent supervising solicitor and the Plaintiffs' solicitor any of the financial information, as required at paragraphs 2J) of the Interim Orders, and by refusing to provide any consent to authorize financial institutions or other service providers to make such disclosures, as required at paragraphs 2K) of the Interim Orders;

v. Mr. White and Mr. Wright disobeying paragraph 2A) of the Interim Orders, thereby constituting contempt of Court under Rule 466(1)(b) of the *Federal Courts Rules*, by:

1. developing, operating, maintaining, promoting, providing support, selling subscriptions, or authorizing anyone to sell subscriptions to unauthorized IPTV services, including the Beast IPTV Service;
2. developing, maintaining, updating, hosting, distributing, promoting or selling any software application that provides access to unauthorized IPTV services, including the Beast IPTV Service;
3. operating, maintaining, updating, hosting, promoting or selling access to the Internet domains and subdomains through unauthorized IPTV services, including the Beast IPTV Service;

by themselves or by their employees, representatives and agents, or by any company, partnership, trust, entity, or person under their authority or control, or with which they are associated or affiliated, and by failing to take the necessary steps to ensure that such persons would cease these activities after service of the Interim Orders upon the Defendants.

IV. Contempt Hearing

[25] The contempt hearing was scheduled for September 20, 2021. In early September 2021, Mr. White indicated he would be entering a plea of guilty with respect to the charges of contempt. The parties subsequently produced an Agreed Statement of Facts.

[26] On September 20, 2021, Mr. White formally pleaded guilty to all the charges of contempt. The facts supporting the contempt charges, all admitted by Mr. White, are broken down below into three categories: A) Non-disclosure of Beast IPTV servers and domains; B) Non-disclosure of financial information and; C) Communications with others.

A. *Non-disclosure of Beast IPTV servers and domains*

[27] Mr. White acquired and paid for various servers and hosting services used in association with the Beast IPTV Service, including from server/hosting providers, Mach Host, Zenex Five, reliablesite, and Datapacket/DataCamp [the “Beast IPTV Servers”].

[28] At the time of the execution, Mr. White and six other individuals all had possession of, or access to, the identity, location and login credentials of the Beast IPTV Servers and possession of, or access to, the credentials to access the server/hosting provider accounts associated with the Beast IPTV Servers. The six other individuals were Mr. Wright, and individuals identified as “Q”, “Slip”, “Andrew”, “Sal” and “Jay Stevens”.

[29] During the execution, Mr. White did not disclose to the ISS or to the Plaintiffs any information relating to the identity, location or login credentials of the Beast IPTV Servers or any other servers, nor the server/hosting provider accounts associated therewith.

[30] At the time of the execution, Mr. White, Mr. Wright and Jay Stevens all had knowledge of at least some of the registrar accounts associated with the following domains used in association with the operation or promotion of the Beast IPTV Service [the “Beast IPTV Domains”]:

- a. BeastIPTV.tv
- b. Beasthosts.net
- c. Beasthosts.org
- d. Powergraphics.shop
- e. Powergraphicsiptv.shop
- f. Beasttv.io
- g. Beasttv.cc
- h. BeastIPTV.cc
- i. Beasthosts.com
- j. Beasthosting.org
- k. BeastIPTV.com
- l. Strikeforceseo.com

[31] At the time of the execution, Mr. White, Mr. Wright and Jay Stevens all had possession of, or access to, the login credentials for the registrar accounts associated with the Beast IPTV Domains.

[32] During the execution of the Interim Order, Mr. White did not disclose to the ISS or to the Plaintiffs, the registrar accounts and corresponding login credentials for the Beast IPTV Domains or any other domain or subdomain.

B. *Non-disclosure of financial information*

[33] At the time of the execution, Mr. White, Mr. Wright and Sal all had possession of, or access to, invoices relating to the Beast IPTV Servers.

[34] During the execution, Mr. White did not disclose to the ISS or to the Plaintiffs the invoices associated with the Beast IPTV Servers.

[35] At the time of execution, Mr. White and Mr. Wright both had control of, or access to, PayPal accounts associated with email addresses [strikeforceseo@protonmail.com](mailto:strikeforceseo@protonmail.com) and [beasthosts@protonmail.com](mailto:beasthosts@protonmail.com) [Beast IPTV PayPal Accounts], which were used in association with the operation of the Beast IPTV Service.

[36] During the execution of the Interim Order, Mr. White did not identify or disclose any information to the ISS or to the Plaintiffs related to the Beast IPTV PayPal Accounts.

[37] During the execution of the Interim Order, Mr. White did not disclose to the ISS or to the Plaintiffs the existence of any assets, revenues, or any financial documentation related to him or to the Beast IPTV Service.

[38] During the execution of the Interim Order, Mr. White did not disclose the identity of any bank, financial institution, or other financial service provider responsible for any asset related to him or the Beast IPTV Service.

[39] On September 3, 2021, Mr. White provided his written consent to authorize any bank, financial institution or other financial service provider to disclose to the Plaintiffs' solicitors any information pertaining to assets that are directly or indirectly owned or controlled by him.

C. *Communications with others*

[40] At the time of service of the Interim Order and during the execution, Mr. White was informed that once he was served with the Interim Order, he could only use electronic devices under the supervision of the ISS. He was also informed that he should not be communicating about this matter with anyone for 48 hours, except with counsel for the purpose of seeking and obtaining legal advice.

[41] During the morning of the execution, Mr. White breached the Interim Order by instructing a Beast IPTV server manager, known as Jay Stevens, to delete the powergraphicsiptv.shop and Beast IPTV.cc domains.

[42] By 12:30 pm EST, the Beast IPTV.cc and powergraphicsiptv.shop domains had been suspended or otherwise taken offline.

[43] Subsequent to Mr. White taking the Beast IPTV Service offline, a third party brought the service back online and changed the credentials needed to access the domain registrar.

[44] In breach of the Interim Order, Mr. White also communicated with Mr. Wright within the first 48 hours of being served with the Interim Order about each having been served with the Plaintiffs' claim and the Interim Order, and the difficulties each were having with respect to retaining a lawyer.

[45] On November 25, 2020, Mr. White also breached the Interim Order by disclosing the existence of the proceeding and execution of the Interim Order with another third party associated with the Beast IPTV Service known as Sal.

[46] At about 10:17 pm EST on November 25, 2020, Mr. White had a telephone conversation with Jay Stevens. During the 31-minute call, Mr. White rambled on about the execution of the Interim Order and how he planned to respond to the proceedings.

V. Sentencing Hearing

[47] At the parties' request, the sentencing phase of the contempt proceeding was adjourned pending the adjudication of an appeal by Mr. White from the Judgment of Justice Roy dated

January 14, 2021. The appeal was dismissed from the bench by the Federal Court of Appeal on February 23, 2022: *White (Beast IPTV) v Warner Bros Entertainment Inc*, 2022 FCA 34.

[48] In accordance with my Order dated May 13, 2022, the Plaintiffs filed a sentencing hearing record that contains the parties' affidavit evidence, the Agreed Statement of Facts, read-ins from the examination for discovery of Mr. White, and copies of the documents identified and/or authenticated in the Agreed Statement of Facts and the discovery read-ins. The evidence also includes the audio recording of the telephone conversation between Mr. White and Jay Stevens on November 25, 2020 referred to in paragraph 46 above.

A. *The Plaintiffs' Evidence*

[49] The Plaintiffs rely on the affidavits of Mr. Jason Vallée Buchanan, Ms. Martine Guy, Mr. Anthony J. Martin and Mr. Andrew McGuigan for the purposes of sentencing. Both Mr. Martin and Mr. McGuigan were cross-examined at the sentencing hearing.

[50] Their evidence can be summarized as follows.

[51] Mr. Buchanan is a paralegal employed by the Plaintiffs' solicitors of record. He identifies and attaches various documents to his affidavit, including Mr. White's affidavit of documents affirmed April 16, 2021 and a copy of the confidential affidavit of Mr. White sworn on July 21, 2022 in relation to an earlier motion by Mr. White for leave to sell assets.

[52] Ms. Guy is a legal assistant employed by the Plaintiffs' solicitors of record. She explains in her original and supplemental affidavits how legal fees and disbursements pertaining to the contempt proceedings related to Mr. White are accounted for under the law firm's internal file and how they are divided between the Motion Pictures Association [MPA] Plaintiffs and Bell Media Inc. [Bell Media]. Attached to her three affidavits are copies of the invoices sent to the Plaintiffs that relate to the contempt proceedings.

[53] Mr. Martin is an investigator in the Corporate Security Department of BCE Inc. [BCE], the parent company of Bell Media. He states in his affidavit that media content piracy is "an age-old problem faced by rightsholders," including the Plaintiffs. He explains how the rapid expansion of television piracy has caused significant harm to, and has attacked the viability of, copyright creators and owners in Canada, including Bell Media. From his experience, those who illegally reproduce and distribute infringing copies of protected works often go to great lengths to conceal their identity and the true nature of their activities to avoid the legal consequences of their actions. Mr. Martin states that Bell Media and its affiliates have invested a significant amount of dedicated resources in launching and prosecuting legal actions against individuals and businesses engaged in such forms of piracy. He then goes on to outline a history of non-compliance with court orders among the content piracy community in Canada.

[54] Mr. McGuigan is the Director of the Global Content Protection department [GCP] of the Motion Picture Association-Canada [MPA-Canada], an affiliate of the MPA and was personally involved in the GCP's efforts to investigate the allegedly infringing activities of Beast IPTV.



[55] Mr. McGuigan explains that the online infrastructure of the Beast IPTV Service consisted of a number of domains and content delivery servers that were critical to its functionality.

According to Mr. McGuigan, if the requested credentials were provided to the ISS at the time the Interim Order was executed on November 24, 2020, it would have been possible to lock the registrar accounts and shutdown servers, rendering the Beast IPTV Service inoperable and avoid any potential of them being taken over by a third party.

[56] Mr. McGuigan describes in great detail how the GCP was monitoring the Beast IPTV Service during the execution of the Interim Order, and in the following days, for any activities or changes to the Beast IPTV Service related to these enforcement efforts.

[57] On November 25, 2020, the GCP observed the Beast IPTV Service, including the core beashtv.tv domain, had been taken offline. However, on the next day, the GCP observed that certain aspects of the Beast IPTV Service were functioning again, including the Beast IPTV reseller/admin portal, which is the control panel used to manage user accounts and subscriptions.

[58] On December 1, 2020, the GCP was able to confirm through testing that subscribers were still able to access and view content through the Beast IPTV via a web-based player, the Beast IPTV Android Application, and the Beast IPTV Perfect Player media player. The GCP also became aware through the Beast IPTV Telegram group that subscribers were complaining about not being able to renew their subscriptions.

[59] While the GCP initially suspected on December 5, 2020 that Beast IPTV administrators were manually renewing subscription via PayPal as a stop-gap measure in response to some issue with Beast IPTV payment portals, it became apparent by about December 10, 2020 that those administrators were covertly attempting to enroll some of Beast IPTV's subscriber base into a new spin-off service.

[60] Following the shutdown of the Beast IPTV Service, messages were posted on the domain beastsoftware.net, a domain that the GCP had identified as being associated with payment support for the Beast IPTV Service prior to the execution of the Interim Order. The GCP obtained a screenshot from a social media post on December 26, 2020 of what appears to be a message posted on a Beast IPTV website the previous day. An excerpt of the screenshot is reproduced below.

**BEAST IPTV HAS BEEN FORCED TO SHUT DOWN**

We wanted to get this message out before the court order to take over the Beast domains is completed and all forms of communication with its customers will cease.

U.S. & Canadian Authorities served legal documents to Beast and its service providers from companies such as Disney, Netflix, Bell Media, Warner Bros, and other companies. The court order states all domains, servers, client data etc. will be seized. It further states that Beast IPTV and its providers must shut down its service immediately while the court orders go into effect.

**BEAST HAS CLOSED ALL CLIENT ACCOUNTS**

Beast was left with no choice but to CLOSE everyone's account and TURN OFF all services to protect its data. Please DO NOT CHARGE BACK because you will be at RISK of exposing your personal information to the authorities. Any account that is refunded or if a Chargeback occurs, it will trigger the payment processor to send info back to the domain which will be in the hands of US and Canadian authorities

As many of you know Credit Card Processing was shut down over 3 weeks ago and, most users have already received the service they've paid for.

If you still want to be refunded PROCEED AT YOUR OWN RISK

Beast sincerely apologizes for any inconvenience that this may have caused you, and wanted to say THANK YOU VERY MUCH for being such a loyal customer. It was a great ride but "All good things must come to an end"

RIP Beast

**REFUND INFO NEEDED TO PROCESS REFUNDS:**

Please send an email to: [BeastRefunds@gmail.com](mailto:BeastRefunds@gmail.com) with the following info:

- First and Last Name and Email (you used when joining the site)
- Amount Paid (if you paid for 3 or 6 months, what is your prorated refund amount?)
- Last four digits of your credit card number

P.S. Please allow up to 48 hours to respond to emails as Beast has a small team and they will work diligently to respond to every email.

[61] According to Mr. McGuigan, the message appears to be a tactic employed to retain whatever funds had already been collected by the service and/or to potentially encourage users to contact the parties directly at the email provided to facilitate the subscribers' migration to an alternative service. A similar message was posted on the billing.beastsoftware.net domain on December 26, 2020.

**BEAST IPTV HAS BEEN FORCED TO SHUT DOWN**

We wanted to get this message out to let everyone know that the service is gone for good and will not be returning. If someone is telling you beast has moved or become another service this is untrue and we are advising you to take caution when dealing with these people.

We cannot get into details as to why the service has been shut down.

**BEAST HAS CLOSED ALL CLIENT ACCOUNTS**

Beast was left with no choice but to CLOSE everyone's account and TURN OFF all services to protect its data. Please **DO NOT CHARGE BACK** because you will be at **RISK** of exposing your personal information to the authorities. Any account that is refunded or if a Chargeback occurs, it will trigger the payment processor to send info back to the domain which will be in the hands of the authorities.

As many of you know Credit Card Processing was shut down over 3 weeks ago and, most users have already received the service they've paid for.

Beast sincerely apologizes for any inconvenience that this may have caused you, and wanted to say THANK YOU VERY MUCH for being such a loyal customer. It was a great ride but "All good things must come to an end"

**RIP Beast**

[62] Mr. McGuigan states that over the last several years, the GCP has observed a pattern of those involved in the operation of unauthorized IPTV services to attempt to circumvent its enforcement efforts by transitioning subscribers to an alternative unauthorized service using data associated with the targeted data.

[63] He provides as an example an authorized IPTV service known as Vader Streams that was the subject of a GCP investigation beginning in 2018. On March 11, 2019, eight months before the execution of the Interim Order in the present case, the MPA-Canada sent a cease and desist letter to Mr. White demanding that he take immediate steps to address the extensive copyright infringement of television programs and motion pictures that was occurring by virtue of his operation of the Internet website “Vaders.cc.” Mr. White was specifically warned that multiple judgments and orders had been issued by Canadian courts that provide for injunctive relief and important damage awards in cases dealing with the unauthorized dissemination of works owned by the major motion picture studios and other rightsholders that MPA-Canada represented.

[64] Mr. McGuigan had several conversations with Mr. White following service of the cease and desist letter. Mr. White admitted to Mr. McGuigan that he operated several re-seller sites for Vader Streams and agreed to shut them down. However, Mr. White denied having any ties with the Beast IPTV Service and indicated that he was no longer involved with the sale of subscriptions or with the operation of unauthorized IPTV services.

[65] The Vader Streams service was effectively shut down by the summer of 2019 following the commencement of litigation in this Court.

[66] During his examination for discovery, Mr. White admitted that the Beast IPTV subscriber base grew significantly by transferring a large portion of his prior Vader Streams customers onto the Beast IPTV Service after the shutdown.

[67] Mr. McGuigan concludes his affidavit by noting that individuals and companies involved in the operation of unauthorized IPTV services targeted by the GCP's enforcement efforts have been able to use data associated with the targeted services to facilitate the migration of subscribers to alternative services. As a result, disruptions to subscribers are minimized and the targeted acts of infringement are essentially shifted elsewhere, rather than actually being shut down.

B. *Mr. White's Evidence*

[68] Mr. White filed his own affidavit, along with the affidavit of Karen Laroque.

[69] Ms. Laroque is a litigation law clerk with the law firm representing Mr. White. Attached to her affidavit are documents showing the continued efforts made by Mr. White to comply with the financial disclosure provisions of the Interim Order. These include supplemental affidavits of documents provided to the Plaintiffs over the course of a year. Ms. Laroque was not cross-examined.

[70] In his affidavit, Mr. White expresses remorse for his actions that led to contempt of the Court. He states that he now fully understands the importance of court orders and the requirement to obey them in all respects.

[71] Mr. White states that while he does not offer any excuses for his failure to fully comply with the Interim Order, he claims that it was due in "significant measure" to his reliance on inadequate legal advice from Mr. Mason. Mr. White states that he refused to provide the required

information after he was advised by Mr. Mason “that the team of lawyers could not do anything to [him] that day” and that he “did not need to take any actions and just wait until [he] found proper legal representation.”

[72] Mr. White sets out in his affidavit some personal circumstances that he wishes the Court to consider in mitigation of the sentence, including his son’s medical condition, his guilty plea, and the fact that this is the first time he has been charged with civil contempt.

[73] At the hearing, Mr. White repeated his apology to the Court. He acknowledged that his decision not to follow the court order was “serious” and was “a horrible error of judgment” on his part. He was then cross-examined extensively by Plaintiffs’ counsel.

[74] Mr. White admitted in cross-examination that he was a registered member of the BlackHatWorld Forum going by the name “Activeits” and started a thread on March 14, 2018, entitled “How I make 1k a day or more” under the heading “Making Money.”

[75] Although only a screenshot of page 4 of 5 of the thread was adduced in evidence, I infer from the title of the thread and the responses that are posted in the screenshot that Mr. White’s original post related to making money online by reselling IPTV subscriptions and that he was getting ready to share some tips online with like-minded people. The excerpts referred below, taken from the thread, are reproduced exactly as written.

[76] On September 4, 2018, a member of the forum congratulated Mr. White for his work: “Looking forward for your step-to-step post! Good work on achieving 1k per day and I hope your keep on being successful!” However, on September 5, 2018, another member had this to say: “yeah proper jail time in the uk for this shit now. Get ready for some butt f\*ucking.” On September 9, 2018, a third member posted a comment in the same vein.

Watching an **IPTV** service (a legal one or **illegal** one) is not illegal in the US. Rebroadcasting copyright restricted content is though If you where to download and redistribute content you acquire from an **illegal** source, such as **IPTV** (but not limited to), and shared it, then that is **illegal**

So what you were doing was safe IMO since you were not technically broadcasting anything, you were merely reselling subscriptions Are you now broadcasting? If so, even though there may be more profits, are you concerned about legal ramifications

[77] Mr. White responded to the post on October 2, 2018. Apparently unfazed by the warnings, he bragged that he was not concerned about the legality of his actions and was well aware of potential consequences:

No not concerned everything i do i do carefully i also recently found a payment gateway that actual accept credits cards and pays out in BTC or PP or anything i need they also can pay bills for me so i have no problems with tracing

BTC is a mans best friend in this market also people have to remember that you do need to take precautions and also know the things that can happen if shit goes south just gotta play things smart there is a TON of money to be made in IPTV and I’m just getting started!

Thanks for the support everyone!

[78] On cross-examination, Mr. White admitted that he was holding at least \$744,000 across several bank accounts at the time he was served with the Interim Order. He also admitted that

immediately after the execution of the Interim Order, he went to the bank and withdrew \$10,000 in hundred-dollar bills.

[79] Mr. White also acknowledged that up to the date of the sentencing hearing, he had still not identified, nor disclosed, details of various investment accounts with WealthSimple and Questrade and a Coinbase cryptocurrency account, the existence of which the Plaintiffs were only able to identify by scouring the hundreds of pages of banking transaction records provided by Mr. White.

C. *Credibility of the Witnesses*

[80] Mr. White submits that the evidence of Mr. Martin and Mr. McGuigan is almost entirely hearsay, speculative or irrelevant and should be given little, if any, weight. I disagree.

[81] Mr. Martin provides useful context to the Court to better understand the piracy problem faced by rightsholders in Canada, the harm such piracy has created to the viability of copyright creators and owners, and the significant amounts of dedicated resources these creators and owners have expended over the years in launching and prosecuting legal actions against individuals and businesses engaged in some forms of piracy. His evidence is well supported and not contentious.

[82] As for Mr. McGuigan, I am satisfied that given his role as Director of the GCP and his personal involvement in the GCP's efforts to investigate the infringing activities of the Beast IPTV Service, he was in a position to know the facts sworn in his affidavit to be true: see



*O'Grady v Canada (Attorney General)*, 2016 FC 9, aff'd 2016 FCA 221 at paras 18 to 20. There is no speculation on his part. In fact, much of his evidence is corroborated through documentary evidence and, in many cases, by Mr. White's own admissions. Moreover, he was not shaken on cross-examination on any material point.

[83] I find the evidence of these two witnesses both credible and reliable.

[84] As for Mr. White, suffice it to say that he came across as a totally unreliable witness. He was evasive and vague throughout his entire testimony, as well as conveniently forgetful on any matters that might tend to incriminate him, even when confronted with incontrovertible evidence.

[85] Plaintiffs' counsel put to Mr. White a number of statements that he made to Jay Stevens regarding the legal advice that he received from Mr. Lomic. Counsel for Mr. White objected to this line of questioning and argued that communication of the legal advice to a key member of Beast IPTV did not constitute an explicit or implicit waiver of the solicitor-client privilege. I disagree.

[86] There is no indication that Mr. Lomic was retained to represent any members of the Beast IPTV Service, other than Mr. White. He freely talked about the legal advice he received from Mr. Lomic with Jay Stevens and expressed frustration because it was not what he wanted to hear. In any event, even if privilege was not waived, Mr. White placed the legal advice he received at issue by stating at paragraph 32 of his affidavit that: "I now realize that following this advice (from Mr. Mason) resulted in me not complying with all the provisions of the November 17,

2020 Order, which led to the finding that I was in contempt.” By relying on the fact of taking legal advice as a defence or excuse for his conduct, Mr. White necessarily put in issue all the legal advice he received when he breached the terms of the Interim Order in such a way that it would be unfair to shield those communications from disclosure: *Apotex Inc v Canada (Minister of Health)*, [2004] 2 FCR 137, aff’d 2004 FCA 280, at para 44.

## VI. Principles for Sentencing for Civil Contempt

[87] The power of courts to enforce their process is a cornerstone of the rule of law. For the judicial process to function, orders of the Court must be respected.

[88] The Supreme Court of Canada in *United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 901 at 931 explained the principle underlying the importance of complying with court decisions:

Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

[89] This principle was reiterated by Chief Justice Paul Crampton in the recent case of *Bell Media Inc v Macciachera (Smoothstreams.tv)*, 2023 FC 801 at para 1: “Those who decide when and under what circumstances they will comply with a court order essentially take the law into their own hands. That cannot be countenanced in a society governed by the rule of law.”

[90] This Court's authority to impose penalties on a contemnor is governed by Rules 466 to 472 of the *Rules*.

[91] Rule 472 sets out the penalties that may be issued in contempt proceedings.

<b>Penalty</b>	<b>Peine</b>
<b>472</b> Where a person is found to be in contempt, a judge may order that	<b>472</b> Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :
<b>(a)</b> the person be imprisoned for a period of less than five years or until the person complies with the order;	<b>a)</b> qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;
<b>(b)</b> the person be imprisoned for a period of less than five years if the person fails to comply with the order;	<b>b)</b> qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
<b>(c)</b> the person pay a fine;	<b>c)</b> qu'elle paie une amende;
<b>(d)</b> the person do or refrain from doing any act;	<b>d)</b> qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
<b>(e)</b> in respect of a person referred to in rule 429, the person's property be sequestered; and	<b>e)</b> que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
<b>(f)</b> the person pay costs.	<b>f)</b> qu'elle soit condamnée aux dépens.

[92] Mr. Justice John Norris provides a helpful and comprehensive overview of the general principles of sentencing for civil contempt in *Bell Canada et al v Red Rhino Entertainment Inc*, 2021 FC 895 [*Red Rhino*] at paras 6-13.

[93] As noted by Justice Norris, a judge has wide discretion to determine the appropriate sanction for civil contempt (*Red Rhino* at para 9; *Tremaine v Canada (Human Rights Commission)*, 2014 FCA 192 [*Tremaine*] at para 26).

[94] Sentencing principles in criminal law are applicable to cases of civil contempt (*Tremaine* at para 19). The Federal Court of Appeal in *Tremaine* outlines the framework for determining a “fit” sentence and emphasizes the importance of deterrence and proportionality as the objectives of sentencing:

[21] In order to determine what is a “fit” sentence in a particular case, the sentencing judge must consider the range of sentences for similar offences set out in prior jurisprudence and adjust the sentence depending on the objectives of sentencing and any aggravating and mitigating factors applicable to the case at hand (*R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206 at paragraph 43; *Professional Institute of the Public Service of Canada v. Bremsak*, 2013 FCA 214, [2013] F.C.J. No. 1009 at paragraph 33 [*Bremsak*]).

[22] Courts also ought to consider the importance of specific and general deterrence for preserving public confidence in the administration of justice, while maintaining proportionality in sentencing (*Canada (Minister of National Revenue) v. Marshall*, 2006 FC 788, [2006] F.C.J. No. 1008 at paragraph 16 [*Marshall*]).

[95] There are a number of aggravating and mitigating factors a court can consider when determining a sentence for civil contempt. Aggravating factors, which must be established beyond a reasonable doubt by the prosecutor (the Plaintiffs in this case), include:

- a. Whether the offending conduct was a prolonged course of conduct as opposed to an isolated incident;
- b. The scope or scale of the offending conduct;

- c. Whether the offending conduct continued even after it was found to constitute contempt;
- d. The offender's motivation;
- e. Whether the offender has previously been found guilty of contempt.

(*Red Rhino* at para 13.)

[96] Mitigating factors, which must be established on a balance of probabilities by the party relying on them (Mr. White in this case), include:

- a. A genuine expression of remorse by the offender;
- b. Acceptance of responsibility;
- c. Taking steps towards rehabilitation;
- d. Good faith efforts to comply with the order in question;
- e. Personal circumstances such as youthfulness or addiction that reduce the offender's degree of responsibility for the wrongful conduct

(*Red Rhino* at para 13.)

[97] Justice Norris also notes in *Red Rhino* at paragraph 14 that the profitability of the offending conduct is a relevant consideration in a commercial context. This can impact the quantum of the fine and whether it meaningfully denounces the wrongful conduct and protects the administration of justice through specific and general deterrence. If the motive was greed, this can be an aggravating factor.

[98] He emphasizes “[n]one of these objectives will be achieved if a fine is simply a bearable cost of doing business in breach of a court order.” The burden is on the moving party to establish the offender’s ability to pay on a balance of probabilities (*Red Rhino* at para 15).

[99] In summary, the following must be considered when determining an appropriate sentence:

- a) the proportionality of the sentence to the wrongdoing;
- b) the presence of aggravating factors;
- c) the presence of mitigating factors;
- d) deterrence and denunciation;
- e) the similarity of sentences in like circumstances; and
- f) the reasonableness of a fine and the reasonableness of incarceration.

## VII. Analysis

[100] The Supreme Court of Canada has repeatedly expressed that sentencing is “one of the most delicate stages of the criminal justice process in Canada:” *R v Lacasse*, 2015 SCC 64 at para 1; *R v Friesen*, 2020 SCC 9 at para 31; *R v Parranto*, 2021 SCC 46 [*Parranto*] at para 9. The same applies to sentencing in contempt proceedings.

[101] As stated by the Supreme Court in *Parranto* at para 10: “The goal in every case is a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal.”

[102] In order to produce proportionate sentences, sentencing must be highly individualized (*Parranto* at para 12). Sentencing judges must determine which objectives of sentencing merit greater weight and evaluate the importance of the mitigating and aggravating factors.

A. *Aggravating and Mitigating Factors*

[103] In deciding on a sentence, I have taken the following factors into account.

- (1) The Contempt was knowing

[104] Mr. White claims that when the Interim Order was executed at his home, he was “confused, frustrated, and at a significant disadvantage, having no knowledge of, or experience with, these types of civil court proceedings.” I find this assertion to be wholly lacking in credibility.

[105] Mr. White was no stranger to the IPTV piracy world before the execution team came knocking at his door. Based on his post on the BlackHatWorld Forum, it is clear he had been involved in selling pirated IPTV channel subscriptions since at least 2018 and was aware of the legal ramifications of his activities. He publicly thumbed his nose at any potential court process, making it clear that he was not concerned about the consequences of his actions and that his motivation was purely greed.

[106] To the extent that Mr. White may not have been fully aware of the seriousness of this conduct and the potential legal consequences, any possible confusion would have been dispelled

by the cease and desist letter from the MPA in 2019 and his subsequent discussions with Mr. McGuigan.

[107] It is clear Mr. White was fully aware of the risks he was taking by continuing to be involved in the operation of an unauthorized IPTV service, as further evidenced by his lament expressed to Jay Stevens during their telephone conversation on November 25, 2020.

MR. TYLER WHITE: No, well you know man. I don't, listen, I don't even look for sympathy. We did it ourselves. We knew what, what the risks are, right?

[108] In the circumstances, Mr. White's pleas of "confusion" and ignorance of the court process are untenable. Based on the overwhelming evidence before me, the acts of contempt were committed by Mr. White with full knowledge of their unlawfulness. They were objectively and subjectively wrong.

(2) The Contempt was deliberate

[109] Mr. White claims that Mr. Mason advised him that he did not need to take any action and could wait until he found proper legal representation. I have trouble believing that this would have been the extent of the legal advice provided by Mr. Mason. In any event, it does not serve to excuse Mr. White's conduct. To the contrary, rather than heed Mr. Mason's advice and refrain from taking any action, Mr. White immediately embarked on a course of contemptuous conduct, that continued over the next few days and months.



[110] Mr. White was reminded in cross-examination that he had retained Mr. Paul Lomic, a copyright lawyer on November 25, 2020, that he had discussed the case with Mr. Lomic on that day, and that Mr. Lomic had advised him to abide by the terms of the Interim Order. His advice was ignored.

[111] Mr. White was clearly unwilling to follow any legal advice that did not suit his purposes.

[112] Mr. White proceeded to contact a number of individuals associated with the Beast IPTV Service in flagrant breach of the Interim Order. Mr. White was aware, as he admitted on cross-examination, that others within the Beast IPTV Service were going ahead with moving to other servers and trying to migrate their subscribers to new platforms. Those parties were able to access the Beast IPTV subscriber lists, and in the days and weeks following the attempted enforcement, they were able to use subscribers' email addresses and other contact information to control the messaging provided to subscribers. This information facilitated the efforts of third parties to move Beast customers to other unauthorized IPTV services.

[113] In turning away the execution team without providing any of the technical information required of him under the terms of the Interim Order, Mr. White acted in a manner calculated to frustrate one of the fundamental purposes of the Interim Order, namely, to gain immediate control of the Beast IPTV infrastructure and stop any further copyright infringement.

[114] Mr. White's conduct frustrated another of the fundamental purposes of the Interim Order, specifically to stop his potentially unlawful gains from being dissipated. Over time, he depleted as much of his assets as possible to keep them out of the reach of this Court and the Plaintiffs.

[115] By the time Mr. White disclosed the identity of some of his bank accounts in April of the following year, most of the money in the accounts had been withdrawn, except for approximately \$50,000. While it appears that \$400,000 went towards legal fees, no valid explanation has been provided by Mr. White as to what happened to the remaining \$295,000.

[116] The only clue as to what did transpire with the missing funds is found in the recorded call between Mr. White and Jay Stevens. In the following exchange, Mr. White contemplates falsely claiming to be bankrupt to shield himself and using the money that was intended to be frozen by the Interim Order to keep himself "going for a while."

MR. TYLER WHITE: I think if I -- if I just friggen, you know, think of what I've got and then they can sue me for whatever, but like claim bankrupt and say I don't have it. At least then I know ---

MR. JAY STEVENS: Well ---

MR. TYLER WHITE: --- the amounts that I can take out. I know that it's -- you know, I'm good.

MR. JAY STEVENS: I don't know how it works up there. Down here the judgments -- certain court judgments you can't ---

MR. TYLER WHITE: No, it says I can't, but what are they going to do.

MR. JAY STEVENS: Well, I mean, you ruin your credit, you know, and you'll never be able to finance stuff.

MR. TYLER WHITE: I mean, the amounts could keep me going for a while, right.

[117] By not disclosing the financial information required of him in November 2020, Mr. White benefitted to the tune of hundreds of thousands of dollars.

(3) The Contempt has not been purged

[118] Mr. White submits that he has used his best efforts to purge his contempt. I disagree.

[119] Mr. White claims that as of November 25, 2020, he caused the Beast IPTV system to be shut down to the extent he could and ceased having any control, involvement, and authority over the system. Mr. White points out that, as of September 7, 2021, he provided all known and available technical information to the Plaintiffs' solicitors.

[120] These efforts were obviously too little, too late. The harm had already been done and the situation was beyond repair.

[121] Mr. White also claims that as of November 2, 2021, he made "to the best of his ability" detailed disclosure of all requested financial information in his possession and updated Plaintiffs' counsel with additional financial information obtained from his bank on February 25, 2022.

[122] However, Mr. White did not disclose all of his accounts, as he claims. In fact, up to the date of the sentencing hearing, he was still in breach of paragraphs 2J) and 2K) of the Interim Order. As noted earlier in these reasons, Mr. White acknowledged on cross-examination, he had still not identified nor disclosed details of various investment accounts.

(4) The Contempt caused irreparable harm to the Plaintiffs

[123] Mr. White submits that the delayed disclosure of the technical information relating to Beast IPTV, including domain login and related information, did not harm the Plaintiffs or prejudice their case. I disagree.

[124] The consequence of Mr. White's failure to comply with the terms of the Interim Order within the window of time provided therein was that the ISS was not able to secure, deactivate and take custody of the Beast IPTV Infrastructure.

[125] At paragraphs 10 and 11 of his affidavit, Mr. McGuigan explains the importance of securing online infrastructure:

10. [...] it is not unusual for operators of unauthorized IPTV Services to move control over online infrastructures between different partners in different jurisdictions in order to avoid detection and prosecution, and that the transferring control of such infrastructure can occur in a very short period of time.

11. Requesting that domain and server credentials be handed over as part of an enforcement effort are therefore critical to:

- a) ensure that the unauthorized IPTV service targeted by the enforcement effort is shutdown as quickly as possible;
- b) avoid any parts of the infrastructure being transferred to third parties that may be outside the jurisdiction of Canadian courts; and
- c) prevent use of the infrastructure by a defendant or third party subscribers to facilitate the migration or enrollment of subscribers of the targeted service to an alternative unauthorized IPTV service, thereby circumventing the enforcement effort.

[126] While Mr. White may have taken the Beast IPTV Service offline on November 25, 2020, it was a hollow gesture as someone else had already taken it over. This would not have occurred were it not for Mr. White contacting Jay Stevens the morning of the execution of the Interim Order and instructing him to delete two domains, in flagrant breach of the Interim Order. As the saying goes “the cat was out of the bag.”

[127] The Beast IPTV Service was not effectively shut down for about one month after the Interim Order was executed on Mr. White, and only after a concerted effort by Beast IPTV personnel and re-sellers to migrate subscribers from the Beast IPTV Service to one of several unauthorized replacement or successor IPTV services.

[128] In the end, all the substantial time, resources and energy invested by the Plaintiffs in marshalling evidence, seeking and obtaining interlocutory relief from this Court, and going through the process of executing the Interim Order were for naught. The Plaintiffs are now forced to start again playing the never-ending *whack-a-mole* game against content piracy sites.

(5) Mitigating factors

[129] Mr. White submits that there are mitigating circumstances that call for a fine rather than imprisonment, and for a proportionate award of costs rather than solicitor-client costs.

[130] Mr. White’s guilty plea is certainly a positive factor. As a result, there was some saving of Court time and no witnesses were required to testify at the contempt hearing.

[131] It also appears to be the first time that Mr. White has been found in contempt. The absence of a prior conviction for contempt is a mitigating factor.

[132] Mr. White apologized for his conduct and expressed remorse to the Court, and to the Plaintiffs, for disobeying the provisions of the Interim Order with which he was charged. However, to my ears, the words of apology ring hollow given that aspects of Mr. White's contempt are ongoing or cannot be purged. There can be little to no value in an apology presented in the context of a sentencing hearing, offered seemingly for the sole purpose of attempting to reduce the sentence to be imposed.

[133] As for Mr. White's expression of remorse, I question his sincerity. He appeared to me to be more sorry for himself, and the plight he now finds himself in, than he was for the Court or the Plaintiffs. I find that Mr. White's statements to Jay Stevens on November 25, 2020 shows his true colours and attests to what he really thinks about the Plaintiffs and this Court.

[134] Mr. White adopted an approach, which, in his words, would entail "sticking it to the plaintiffs - just a little." He also showed a disdainful attitude toward this Court, dismissing it as nothing more than a "civil court."

MR. TYLER WHITE: (Inaudible) to the bank, took everything I could out, and then, you know, obviously they'll see that and they'll be like where's that, and I'll be like I don't know, I spent it, sorry, I fucked up, whatever. It's a civil court, it's not criminal, right. He's like well then they'll come after you harder and take everything. But I'm saying well buddy I'll still have what I took out. You know what I mean?

[135] Mr. White claims that he has learned his lesson, and that he will never disobey a court order again. However, during his conversation with Jay Stevens, Mr. White is defiant despite receiving proper legal advice and mused about declaring bankruptcy to avoid paying any judgment awarded against him. Even though Mr. White may not have taken any steps in furtherance of his scheme, it suggests to me that he will continue to frustrate the Plaintiffs' ability to obtain justice from this Court by whatever means, legal or otherwise.

[136] Mr. White provided evidence concerning his own health and that of his son and the personal circumstances of his partner and parents. He states that he is the primary caregiver and sole legal guardian for his son and that any duration of jail time will significantly affect his care and disrupt his life. However, there is nothing exceptional about this.

[137] Courts, and more particularly criminal courts, are routinely required to sentence individuals who are caregivers to periods of incarceration. Mr. White has not established that he has any serious medical condition, let alone a condition that could not be accommodated in prison. Moreover, Mr. White has not adduced any evidence from his son's mother, his girlfriend, or his son's grandparents establishing that they would be unwilling or unable to look after his son.

[138] Mr. White points out that he is finally employed full-time after almost two years of being largely unemployed. He is currently on probation and is eager to keep his job and to use his modest income to support his partner and son, acquire health benefits, pay off his debts and

defend this action. He says that any jail sentence will likely result in his losing his job. Once again, there is nothing exceptional about this.

[139] To the extent mitigating factors have been established, they pale in comparison to the numerous aggravating factors established beyond a reasonable doubt by the Plaintiffs.

B. *Sentence to be imposed*

[140] Both parties agree that this Court must consider the principle of parity, which requires that similar offenders who commit similar offences in similar circumstances receive similar sentences. Looking at comparable cases is important to determine an appropriate sentence because they serve as helpful benchmarks: *Red Rhino* at para 51.

[141] Mr. White submits none of the sentencing cases of this Court involving contempt in the intellectual property context involve a sentence of immediate incarceration, but rather fines ranging from \$1,000 to \$50,000. He argues that unlike the facts in *Bell Canada et al v Vincent Wesley DBA MtlfreeTV.com*, 2018 FC 66 [Wesley] and *Red Rhino*, where fines of \$30,000 and \$40,000 were imposed respectively, the seriousness of Mr. White's contempt is not at the high end of the scale. In my view, it is an "apples and oranges" exercise to compare the two decisions with the case at hand.

[142] I agree that the conduct of the defendants charged with contempt in *Wesley* and *Red Rhino* was serious indeed. However, each case must be decided on its own facts and in light of the unique circumstances of the contemnor.



[143] In *Wesley*, Justice Roy noted that defendant came across as being rather reckless and naïve. He found that there was no evidence of the profits that might have been generated by the defendant, but they could not have been significant. As for deterrence of others, he concluded that it could be achieved by the imposition of a significant fine commensurate with the financial means of the defendant.

[144] In *Red Rhino*, Justice Norris accepted as sincere the defendant's statement that he recognized the error of his ways, that he had not engaged in conduct contrary to the injunction ever since, and that he would not do so in the future. He also noted that there was little direct evidence of the defendant's present financial circumstances or obligations.

[145] None of the factors or deficiencies in evidence in these two cases are present here. More importantly, neither *Wesley* nor *Red Rhino* involved breaches of an Anton Piller order, which, by its very nature, requires immediate compliance to be effective.

[146] An Anton Piller order derives its name from the case of *Anton Piller KG v Manufacturing Processes Ltd*, [1976] 1 All ER 779 (CA) the English Court of Appeal approved a practice which had recently been adopted in the Chancery Division, in infringement of propriety rights cases, of making orders which Master of the Rolls, Lord Denning, noted "have some resemblance to search warrants," but with a difference. At p. 60 he pointed out:

Let me say at once that no court in this land has any power to issue a search warrant to enter a man's house so as to see if there are papers or documents there which are of an incriminating nature, whether libels or infringements of copyright or anything else of the kind. No constable or bailiff can knock at the door and demand entry so as to inspect papers or documents. The householder can

shut the door in his face and say “Get out.” That was established in the leading case of *Entick v. Carrington* (1765) 2 Wils.K.B. 275.

Unable to authorize the plaintiffs or their agents to enter the defendants’ premises against their will, the court, employing a kind of Catch 22 logic, fashioned an order compelling the defendants to give permission to the plaintiffs to enter, inspect, copy and seize or remove documents and things. The defendants’ refusal to comply does not entitle the plaintiffs to enter forcibly; but it makes the defendants liable to punishment for their contempt.

[147] As Justice Roy noted in *Warner Bros* at paras 79 and 80, the interim orders issued against the Defendants were “not of the typical Anton Piller variety” as they were not search warrants; however, they had “by their nature, a measure of intrusiveness similar to that of the typical Anton Piller.”

[148] Ordinarily, the contemnor is given an opportunity to purge their contempt. At the penalty hearing, if the contempt has been purged, this is a significant mitigating factor with respect to the penalty imposed. However, the extraordinary nature of the Interim Order issued in this case was premised on immediate compliance with its terms and grounded on the coercive threat of contempt proceedings. Its purpose was to preserve the Court’s jurisdiction by preventing the Defendants from avoiding this Court’s jurisdiction by transferring the ownership or control of the Beast IPTV Service outside this Court’s jurisdiction and to stop Mr. White’s potentially unlawful gains from being dissipated.

[149] It is impossible for Mr. White to purge the contempt in this case. By the time he disclosed any credentials to the former Beast IPTV Service, some four months after the execution of the

Interim Order, the damage had been done and was beyond repair. Moreover, substantial assets were depleted and are unaccounted for.

[150] An important objective of sentencing is to denounce the unlawful conduct and the need for specific and general deterrence must be considered, especially in content piracy matters.

[151] By Mr. White's own admission, "there is a TON of money to be made in IPTV." On cross-examination, Mr. White acknowledged that the IPTV piracy community has come to understand that the "go to" fine for infringement was payment of about \$50,000, more than double the fine he now proposes to this Court.

[152] There is obviously a significant financial incentive in the illicit IPTV industry to not comply with the Court's orders. These actors are after all nothing more than digital content thieves who reap big profits by stealing the intellectual property of others. They are motivated by greed, pure and simple. In my view, imposing a fine in an amount that is perceived as being nothing more than the "cost of doing business" would not send a correct message of deterrence.

[153] Based on a screenshot of exchanges from a Beast IPTV support group between December 7 and 11, 2020, and messages posted on Beast IPTV website later that month, it is reasonable to expect that the satellite piracy community is aware of the present case. The Plaintiffs argue that the sentence imposed should be one that ensures that those involved in satellite piracy understand that these types of orders cannot be ignored or circumvented without serious consequence.

[154] The credibility of the threat of contempt and the Court's willingness to impose hefty penalties when its orders are ignored must go hand in hand in order to provide meaningful and effective justice.

[155] In the present case, the amount of a fine that might achieve deterrence remains elusive, in large part due to Mr. White's non-compliance with the Interim Order. As discussed earlier in these reasons, due to Mr. White's acts of contempt, various aspects of the Beast IPTV service were migrated elsewhere and significant evidence has either been destroyed or withheld. Further, as established on cross-examination, Mr. White frustrated the Plaintiffs' ability to prevent the dissipation of at least \$344,000, not including \$400,000 paid to his counsel. Mr. White also failed to provide disclosure relating to his cryptocurrency and investment accounts by the time of sentencing.

[156] Mr. White argues that he does not have the means to pay a substantial fine. I do not believe him. Mr. White's own evidence establishes that he has substantial equity in four real estate properties, including his personal residence. Moreover, the inference I take from Mr. White's post on the BlackHatWorld Forum about the advantage of using BTC (bitcoin), and his statement to Jay Stevens that the amounts he could take out "could keep (him) going for a while," is that he socked away a substantial amount of money that cannot be traced. Unfortunately, the exact amount that can be accessed by Mr. White cannot be ascertained due to his continued failure to come clean about his financial circumstances.

[157] Mr. White has hindered the Court's ability to determine a meaningful fine that achieves deterrence. I am therefore left to consider what other penalty would serve to drive home the message that this Court takes breaches of its orders seriously and deters others from engaging in similar conduct.

[158] In terms of parity, I agree with the Plaintiffs that, in the absence of any cases on point in this Court, the sentences imposed by the Ontario Courts in similar cases of breaches of Anton Piller Orders ought to guide this Court's consideration. These include *Echostar Communications Corp v Rodgers*, 2010 ONSC 2164 [*Echostar*]; *DIRECTV Inc v Boudreau*, 2005 CarswellOnt 7026 (Ont SC) [*Boudreau*], varied in [2006] OJ No 1583, 2006 CarswellOnt 2391 (Ont CA); and *Bell Expressvu Limited Partnership v Rodgers*, Court No. 06-CL-6574, an unreported decision dated May 18, 2010 [*Rodgers*].

[159] In *Echostar*, the defendants each received periods of incarceration of four months for contempt of Anton Piller Orders. The Superior Court of Ontario considered incarceration to be appropriate "where the refusal to comply with an Order frustrates the gathering of important information necessary for the resolution of a complex situation, with adverse consequences to the plaintiff" (*Echostar* para 55). The Court added at para 56:

[56] Imprisonment is also appropriate where non-compliance with the Court Order has had and will continue to have extremely serious consequences for the plaintiff. Incarceration can serve as an inducement or an incentive for a person to change his or her attitude and begin to appreciate and respect the legal system. Incarceration sends a clear message that non-compliance with Court Orders will not be tolerated or taken lightly and is therefore consistent with the sentencing goals of denunciation and specific and general deterrence.

[160] In *Boudreau*, the Court ordered the defendant to be incarcerated for nine months (reduced on appeal to three months) for failing to grant access to a web site, which resulted in the loss of evidence and severe prejudice to the plaintiffs.

[161] In *Rodgers*, the Court ordered a defendant to be incarcerated for four months for failing to grant access immediately to a premises and several web sites, and for implementing a complicated scheme designed to conceal his activities.

[162] Although the facts in the Ontario cases cited above are somewhat distinguishable from those in this case, the common theme is that the sentence imposed should address general deterrence, so that others do not mimic the contemnor's wrongdoing: see also *Echostar Satellite Corporation et al v Megill et al*, unreported reasons of Pepall J dated April 19, 2007, docket 06-CL-6619, 06-CL-6618.

[163] Breaches of court orders are taken seriously by the courts in Ontario. It matters not that the contemnor is a first time offender: *Mercedes-Benz Financial (DCFS Canada Corp) v Kovacevic*, 2009 CanLII 9423 (ONSC) at para 41. In that case, the sentencing judge found that the defendant that had deliberately and willfully disobeyed the court's order, that he displayed disdain for the court and its authority, and that his defiance of the court was palpable, unrepentant, and unremitting. Even though it was the defendant's first offence and had purged his contempt, the judge sentenced him to serve 5 days in a provincial correctional institution.

[164] In her dissenting reasons in *Bell Canada v. Adwokat*, 2023 FCA 106 [*Adwokat*], Justice Nathalie Goyette noted that there was a conflict in approach between the Federal Courts and those in Ontario, at para 58.

[58] [...] In all likelihood, incarceration would have been imposed by the Ontario courts on Mr. Adwokat had this matter been adjudicated by these courts: *Dish Network* at p. 14; *DIRECTV*. Federal courts, including our Court, have been much more lenient. In civil contempt cases involving copyright matters, I am only aware of three Federal court cases that ordered incarceration, but only if certain conditions were not met: *Lari v. Canadian Copyright Licensing Agency*, [*Lari*]; *P.S. Knight*; *Polsat*. This conflict in approach between these courts should no longer continue. The Federal Court should not be a safe haven for persons in contempt.

[165] I agree with Justice Goyette that courts in Canada should be consistent in their approach to sentencing in contempt proceeding involving copyright matters. It is important to dispel the notion that this Court, the go-to forum for intellectual property litigation, is more lenient than provincial superior courts.

[166] Despite the principle of restraint in the use of incarceration, I consider a sentence of incarceration to be warranted in this case. The evidence against Mr. White in this case is overwhelming and damning. Numerous aggravating factors have been established by the Plaintiffs beyond a reasonable doubt, based largely on Mr. White's own admissions, including his words caught on tape and posted online.

[167] I reject the community service alternative proposed by Mr. White because it would send the wrong message that restitution is being made. The traditional penalty of imprisonment makes it clear to the satellite piracy community, as well as their enablers, that Mr. White has committed

serious contempt to which attaches a moral opprobrium. A clear message should be sent to those who would ever contemplate frustrating the execution of an order of this Court that jail time is not only a possibility but also a likelihood.

[168] As for the length of incarceration, I accept the Plaintiffs' recommendation of two months, notwithstanding that I consider it to be at the lower scale of the spectrum. I should add that were it not for Mr. White's guilty plea, I would have been inclined to impose a longer sentence.

[169] Counsel for Mr. White suggested at the hearing that if the Court was inclined on imposing a sentence of incarceration, there were options available to the Court to minimize the impact of a jail sentence, such as making a corresponding order that the sentence be served intermittently in accordance with s 732(1) of the *Criminal Code*. I note that Mr. White is now finally gainfully employed full-time on weekdays after almost two years of being largely unemployed. In the circumstances, I am prepared to allow Mr. White to serve his custodial sentence intermittently, which will enable him to maintain his job and use his income to support his partner and son.

[170] Mr. White is therefore sentenced to incarceration at the provincial correctional facility in Halifax, Nova Scotia for a period of 60 days, to be served intermittently from Friday evenings at 6 p.m. until Monday mornings at 6 a.m.



[171] At Mr. White's request, and in the absence of any objection on the part of the Plaintiffs, I will suspend the issuance of a warrant of committal for a period of 45 days to afford Mr. White sufficient time to file an appeal and seek a stay of this Order from the Federal Court of Appeal.

C. *Costs*

[172] The Plaintiffs seek an order that costs be granted to them on a solicitor-client basis. It is customary practice in contempt cases to impose costs on a solicitor-client basis. As stated by Justice Gilles Létourneau in *Canadian Copyright Licensing Agency v U-Compute*, 2007 FCA 127 at para 38, citing *Pfizer Canada Inc v Apotex Inc*, [1998] CanLII 8951 at para 8: "[...] The policy underlying that jurisprudence is clear: a party who assists the Court in the enforcement of its orders and in the enforcement of respect for its orders should not, as a rule, be put out of pocket for having been put to that trouble." On the facts of this case, I see no reason to deviate from the general rule.

[173] The invoices adduced at and immediately following the sentencing hearing establish that the Plaintiffs have incurred significant legal costs of approximately \$187,000, in relation to the preparation of materials for the contempt and sentencing hearings and the attendance of counsel at the hearings.

[174] Mr. White submits that this was not a very complicated case and the costs demands of the Plaintiffs are manifestly excessive. He argues that Bell Media and the law firm retained in this case have been involved in numerous cases in this Court of alleged copyright infringement, piracy and contempt proceedings that are similar in many ways to the present case. While every

case is different, Mr. White contends that there is clearly a certain amount of repetitive elements in these cases, especially in terms of legal research, the collection and marshalling of evidence, and arguments regarding contempt.

[175] I am somewhat hampered in assessing whether the costs being sought by the Plaintiffs are reasonable as they have not produced of a Bill of Costs. As a result, I cannot determine what services were provided by counsel, by whom and at what rate, or even what disbursements were incurred. It is also unclear whether there was some overlap between these contempt proceedings and others that preceded this one, as alleged by Mr. White.

[176] Despite the paucity of evidence, the affidavits of Ms. Guy do establish that costs were incurred and invoiced to the Plaintiffs in the preparation and for the purposes of the contempt proceedings. The amounts invoiced by Plaintiffs' counsel may at first blush appear excessive; however, this is not surprising as intellectual property litigation is inherently expensive because it is a specialized area of the law. Mr. White knows this all too well, having paid a retainer of \$400,000 himself.

[177] Mr. White had the opportunity to cross-examine on Ms. Guy's affidavits and demand details about the services provided as well as production of any supporting documents. He chose not to do so. I therefore find that the Plaintiffs have established the reasonableness of their costs on a *prima facie* basis.

[178] In my opinion, it is in the interests of justice for both parties and consistent with Rule 3 of the *Rules* that the matter of the Plaintiffs' costs and disbursements be remitted to an assessment officer pursuant to Rule 405 to be assessed on a solicitor-client basis. I will remain seized of this matter in the event the parties require directions from the Court for the purpose of the assessment.

**ORDER IN T-1176-20**

**THIS COURT ORDERS that:**

1. The Defendant, Tyler White, is hereby sentenced to incarceration at the provincial correctional facility in the city of Halifax, Nova Scotia for a period of 60 days, to be served intermittently from Friday evenings at 6 p.m. until Monday mornings at 6 a.m., commencing on a day to fixed by the Court.
2. In the event Mr. White fails to obtain a stay of this Order from the Federal Court of Appeal within 45 days of the date of this Order, the Plaintiffs may apply informally on an *ex parte* basis for the issuance of a Warrant of Committal.
3. Costs of the contempt proceedings shall be paid by Mr. White to the Plaintiffs on a solicitor-client basis. The matter is referred to an assessment officer for the determination of a specific award of costs.
4. This Court shall remain seized of this matter to address any issue arising from the terms of this Order.

“Roger R. Lafrenière”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1176-20

**STYLE OF CAUSE:** WARNER BROS. ENTERTAINMENT INC., AMAZON CONTENT SERVICES LLC, BELL MEDIA INC., COLUMBIA PICTURES INDUSTRIES, INC., DISNEY ENTERPRISES, INC., NETFLIX STUDIOS, LLC, NETFLIX WORLDWIDE ENTERTAINMENT, LLC, PARAMOUNT PICTURES CORPORATION, SONY PICTURES TELEVISION INC., UNIVERSAL CITY STUDIOS PRODUCTIONS, LLLP v TYLER WHITE DBA BEAST IPTV, COLIN WRIGHT DBA BEAST IPTV

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 12, 2022, DECEMBER 13, 2022

**ORDER AND REASONS:** LAFRENIÈRE J.

**DATED:** JUNE 28, 2023

**APPEARANCES:**

Evan Nuttall  
Ryan T. Evans  
Denise Felsztyna

FOR THE PLAINTIFFS

Dino Clarizio  
Howard P. Knopf  
Meika Ellis

FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

Smart & Biggar LLP  
Montréal, Quebec

FOR THE PLAINTIFFS

Ridout & Maybee LLP  
Montréal, Quebec

FOR THE DEFENDANTS