

Federal Court



Cour fédérale

Date: 20250709

Docket: T-206-21

Citation: 2025 FC 1107

Ottawa, Ontario, July 9, 2025

**PRESENT:** The Honourable Madam Justice Aylen

**BETWEEN:**

**YELDA HABER VE GÖRSEL YAYINCILIK A.S.**

**Plaintiff**

**and**

**GLWiZ INC. and GOLD LINE  
TELEMANAGEMENT INC.**

**Defendants**

**PUBLIC JUDGMENT AND REASONS**  
**(Confidential Judgment and Reasons issued June 19, 2025)**

[1] The Plaintiff, Yelda Haber Ve Görsel Yayincilik A.S., is one of Turkey's largest broadcasters. It creates, owns, broadcasts and streams original, award-winning Turkish television series. It also broadcasts a free-to-air live television channel within Turkey.

[2] In 2021, the Plaintiff commenced this action against the Defendants who operate an Internet Protocol Television [IPTV] service, commonly known as streaming services, from their

premises in Canada. The Plaintiff asserted that the Defendants had infringed, and had induced, enabled or authorized others to infringe, its copyright in twenty-two of its programs (2,974 episodes in total) and its live television channel.

[3] In the weeks leading up to trial, the Defendants conceded all liability issues, leaving only the issue of remedies for the Court's determination. The Plaintiff seeks: (a) an award of statutory damages in the amount of \$15,000 per episode of each program plus \$20,000 for the live television channel, for a total statutory damages award of \$44,630,000; (b) an award of punitive damages in the amount of \$500,000; and (c) a wide injunction.

[4] The Defendants assert that a fair and proportionate statutory damages award would be in the range of \$200 to \$300 per each episode of the programs and the live television channel, for a total statutory damages award of \$595,000 to \$892,500. Further, the Defendants assert that no amount of punitive damages should be awarded and that the Plaintiff has not demonstrated that a wide injunction is warranted.

[5] For the reasons that follow, I find that: (a) the Plaintiff is entitled to an award of statutory damages in the amount of \$2,000 per episode of each program plus \$10,000 for the live television channel, for a total statutory damages award of \$5,958,000; (b) no award of punitive damages is warranted; and (c) the Plaintiff has not demonstrated that it is entitled to a wide injunction.

## I. Background Facts

[6] The background facts are primarily taken from the Revised Agreed Statement of Facts [RASf] prepared by the parties and filed with the Court on January 29, 2025.

### A. The Plaintiff

[7] The Plaintiff is a broadcasting undertaking and enterprise headquartered in Istanbul, Turkey. It creates, owns, broadcasts and streams original television programs, including the following 22 programs that are at issue in this proceeding [collectively referred to as the Programs, and individually (where applicable) as a Program]:

English Name	Turkish Name	Persian Name	Former Name	First Publication Date	No. of Episodes at Issue
Love Trap	Afili Aşk	Eshghe Tajamolati	Kotu Kiz	Dec. 6, 2019	118
Ruthless City	Zalim İstanbul	Istanbul Zalem	Artvinli	Jan. 4, 2019	112
Price of Passion	Siyah Beyaz Aşk	Eshghe Siah O Sefid		Oct. 16, 2017	96
Time Goes By	Öyle bir Geçer Zaman Ki	Dar Entezare Aftab	Roozi Roozegari	Sept. 14, 2010	348
Meryem	Meryem	Maryam	Kirik Bir Aşk Hikayesi	Aug. 2, 2017	90
Sweet Revenge	Tatlı İntikam	Entegham Shirin		Mar. 26, 2016	88
Sunshine Girls	Güneşin Kızları			Jun. 18, 2015	113
Waves	Bodrum Masalı	Full Bölüm		Aug. 18, 2016	114
Flames of Desire	Hayat Şarkısı	Maxira		Feb. 9, 2016	186

For My Son	Poyraz Karayel	Poyraz Karayel		Jan. 7, 2015	241
Matter of Respect	Şeref Meselesi	Sherafat		Nov. 23, 2014	76
War of the Roses	Güllerin Savaşı	Nabard e golha	Askta ve Savasta	Jul. 8, 2014	168
Love	Aşk	Eshgh		Sept. 25, 2013	30
Leaf Cast	Yaprak Dökümü	Barg Rizan		Sept. 13, 2006	346
Fatmagül	Fatmagül Suçu Ne?		Fatmagül'ün Suçu Ne?	Sept. 16, 2010	169
Kuzey Guney	Kuzey Güney		Ikey Kardes	Sept. 7, 2011	160
Mercy	Merhamet	Marhamet	Kahverengi	Feb. 13, 2013	88
Waiting for the Sun	Güneşi Beklerken	Dar Entezare Aftag		Jul. 2, 2013	147
Forbidden Love	Aşk-I Memnu	Eshgh Mamnoo		Sept. 4, 2008	158
Secrets	Kayıp	Gomshodeh		Sept. 13, 2013	36
Lost City	Kayıp Şehir			Sept. 4, 2012	60
Fallen Angel	Kötü Yol	Birahe		Jul. 26, 2012	30
			<b>TOTAL:</b>		<b>2,974</b>

[8] Each of the Programs is a high-quality, multi-episode Turkish-language television series (primarily drama). They are among the most popular in the world (next to English-language programming) and have won numerous awards in Turkey. In 2018, the cost of creating a single episode of one of the Programs ranged from [REDACTED].

[9] As detailed in the chart above, there are 2,974 episodes of the Programs at issue in this proceeding. When some of the Programs were originally created for the Turkish audience, each episode was of longer length. It was later determined by the Plaintiff that international markets preferred shorter episodes and as such, starting in 2015, the Plaintiff began creating and releasing

shorter episodes (approximately 40–45 minutes in length) of certain Programs for distribution outside of Turkey. As such, the first season on a Program released in 2012 may have had 20 episodes but, by 2016, that same first season had 40 episodes (the original 20 episodes cut into 40 shorter episodes).

[10] The Plaintiff owns the copyright and reproduction right of the Programs, including the right to make them available on-demand. The Plaintiff makes the Programs available free-to-air and on-demand, including by making them available for streaming on its proprietary app for iOS and Android devices.

[11] The Plaintiff also broadcasts in Turkey on a free-to-air Turkish-language live channel known as Kanal D [Live Channel]. It ranks in the top five of more than 500 live Turkish television channels. The Plaintiff operates the same channel, under the name Euro D, outside of Turkey.

[12] The Plaintiff is a subsidiary of Demirören Medya Group [DM], Turkey's largest media company and one of Europe's largest media companies. Under Turkish law, a company may only operate one television channel and one radio station. As such, DM operates its various channels and radio stations through several businesses, including the Plaintiff.

## **B. The Defendants**

[13] The Defendants, GLWiZ Inc. [GLWiZ] and Gold Line Telemanagement Inc. [Gold Line], are incorporated in, and operate from, Canada. They are both members of the Group of Gold Line Inc. and operate from the same premises.

[14] Gold Line was founded in 1991 by Ata Moeini and his wife Neda Moeini and currently employs approximately 100 people out of its office in Markham, Ontario. The company's initial business activities focused on long-distance calling cards but, over time, expanded to other lines of business including telephone services, cloud data storage and IPTV. The Defendants' IPTV service is the focus of this proceeding.

[15] IPTV refers to media/television content that is delivered over an Internet Protocol network rather than through satellite or cable television formats. GLWiZ is the entity responsible for running the software and IT components of the IPTV service (including the servers) whereas Gold Line is responsible for selling advertising, which is added to content made available on the IPTV service, as well as promotion and revenue collection.

[16] The Defendants' IPTV service [GLWiZ Service] was commenced in 2006 and enables subscribers around the world to watch on-demand and linear streamed programming. The GLWiZ Service is available on several platforms, including a mobile app (available from time to time via iOS and Google devices), an Android set-top box and the internet at [www.glwiz.com](http://www.glwiz.com). It can be accessed on computers, televisions and smart devices (such as phones and tablets).

[17] The Defendants do not charge viewers to use the mobile app, but they do generate advertising revenue via the content available on the mobile app. The Defendants also charge subscribers on all other platforms (with the average subscription fee being \$8 USD per month), who then have unlimited access to all the content on the GLWiZ Service. As of 2018, the total

number of paid subscribers was approximately 65,000. The Defendants also have unpaid subscribers in Iran, whom the Defendants cannot charge due to “financial and political reasons”.

[18] The on-demand portion of the GLWiZ Service allows users to stream TV channels and video content over an internet connection from the Defendants’ servers. Over time, the Defendants obtained their on-demand content through various means (including satellite signals), then copied the content and stored it on their servers, which are primarily located in Canada. All of the Programs at issue in this proceeding were stored on the Defendants’ servers in Canada.

[19] The live content available through the GLWiZ Service is not stored on the Defendants’ servers. Rather, the Defendants acquire and simultaneously rebroadcast the original signal for that content so that subscribers can watch it at the same time the original broadcaster is showing the content.

[20] The majority of the content available through the GLWiZ Service is in Farsi (either as originally recorded content or via dubbing/translation). The GLWiZ Service is the world’s largest supplier (or source) of streamed Persian media content. The GLWiZ Service’s target audience is the Farsi-speaking community outside of the Middle East, which comprises approximately four to five million people. Accordingly, their marketing targets potential viewers in the United States of America, Canada, Australia and some European countries. The GLWiZ Service is available, and has customers, in more than 50 countries with the majority located in North America and Europe.

[21] The promotional material for the GLWiZ Service, as prepared by the Defendants, states that it offers “millions of worldwide customers multicultural programming on all major platforms”. The Group of Gold Line Inc. website provides a number of “quick facts” statements about the GLWiZ Service, including that it “receives approximately 2 million visitors/month and over 5 million page views” and has “over 500,000 registered paid and unpaid subscribers worldwide”.

**C. Ava Telecom Limited**

[22] Ava Telecom Limited [Ava] is a Bermuda-based company related to the Group of Gold Line Inc. Ava owns the intellectual property and equipment connected to the GLWiZ Service and, as detailed below, executed agreements intended to acquire content for the GLWiZ Service.

[23] Shawn Reyhani was Vice-President of Operations for Ava. Anissa Moeini, Mr. Moeini’s daughter, was affiliated with Ava and also held the position of Director, Business Development with Gold Line. In those capacities, Ms. Moeini reported back to her father.

**D. Dealings between the Plaintiff and Ava**

[24] The Plaintiff and Ava never entered into any business relationship, despite at least two interactions aimed at the possibility thereof.

[25] In April 2012, Ms. Moeini spoke with a representative of the Plaintiff at a business conference in Cannes, France, regarding a possible business relationship. An email exchange followed the meeting, in which Ms. Moeini: (a) expressed an interest in Farsi and Arabic language



programming for global digital distribution on the GLWiZ Service; and (b) was provided with a copy of the Plaintiff's drama series catalogue and a link to program trailers on the Plaintiff's website.

[26] In 2013, representatives of Ava sent an email to the Plaintiff in which Ava proposed acquiring Turkish-language programming from the Plaintiff to be made available on a service called GLTurk. While the email was written in Turkish, the parties have agreed to the accuracy of an English translation thereof. The email stated, in part, as follows:

With Kanal D, Euro D, CNN Turk, CN Cartoon, Boing Tv Turkey and Eko Tv, which are among the most watched TV channels in Turkey and have fans in every corner of the world, we offer you the chance to reach Turks all over the world and all other nations who love this sweet language through the GLTurk platform.

GLTurk can be watched in high quality on the internet, directly on the TV via our GLBoxes, on iPhone and all Android phones and most importantly on all Smart Samsung televisions, no matter where in the world they are purchased. Very soon all of these programs will be available on all other phones and smart TVs.

Our company, AVA, works directly with GoldLine, a company with more than 20 years of experience in broadcasting and technological products for its channels and programs.

AVA has successfully created the GLWiz and GLArab websites, bringing more than 550 television channels to more than 2 million viewers in a short period of time. AVA reaches viewers all over the world in Persian, Arabic, Kurdish, Afghan, Tajik and dozens of other ethnic languages.

**E. General Entertainment and Media, Co. and General Entertainment and Music Inc.**

[27] There was limited evidence led at trial about the specific operations of the corporations known as General Entertainment and Media, Co. [GEM Media] and General Entertainment and

Music Inc. [GEM Music], and the legal relationship between these two corporations. No witnesses were called from any GEM entity and all evidence about the corporations was given by the Defendants' witnesses, based on their understanding of the companies' operations and structure.

[28] Accordingly, GEM Media is a broadcaster with over 20 specialty channels whose programs are broadcasted through subscription satellite services to viewers in Iran and other Farsi-speaking communities around the world. GEM Media was founded and operated by Saeed Karimian, who was Mr. Moeini's close friend. According to Mr. Moeini, he was "like an elder brother to Mr. Karimian."

[29] GEM Media was operated by the Karimian family from Dubai and Turkey. However, following Mr. Karimian death in 2017, the Karimian family relocated to Canada.

[30] GEM Music was described in the pleadings in Federal Court File No. T-410-21 (discussed further below) as GEM Media's successor-in-title. GEM Music is a Canadian company operated by relatives of Mr. Karimian.

**F. Dealings between the Plaintiff and GEM Media/GEM Music**

[31] Between 2012 and 2015, the Plaintiff entered into licensing agreements with GEM Media, which granted GEM Media a limited right to dub/subtitle a set number of episodes of some of the Programs into Farsi, to be broadcast within Iran only [GEM Licences]. The agreement also granted rights to broadcast other content, which are not at issue in this proceeding. Under the GEM Licences, GEM Media obtained the Programs from the Plaintiff and paid for the cost of

dubbing/subtitling the programs into Farsi. GEM Media also replaced the Turkish-language advertising in the original Programs, as provided by the Plaintiff, with Farsi advertising. The GEM Licences gave GEM Media no rights to use the Programs outside of Iran and no rights to sublicense.

[32] The GEM Licences were each for a licensing period of two years and had per episode licensing fees ranging from [REDACTED] to [REDACTED], depending on the Program, with the fees generally being higher in the licences issued in 2015. The per episode licensing fees were for the long-form Turkish episodes of the Programs, not the subsequently-made shorter international versions of the episodes.

[33] All of GEM Media's licensing rights of the Plaintiff's content expired at the end of 2017 and were not renewed.

[34] The Plaintiff never entered into any licences with GEM Music.

[35] In April of 2023, the Plaintiff commenced an action against GEM Music bearing Federal Court File No. T-749-23 for, among other things, copyright infringement for dubbing, translating, streaming and making available, the Programs and Live Channel (including by satellite and on its "GEM TV" IPTV service). In that proceeding, the Plaintiff described GEM Music as the legal successor to GEM Media. In defending the action, GEM Music did not deny that the Plaintiff's content was made available and streamed on the GEM TV website but did deny that it owned or

operated the website. GEM Music further denied that it had made available the Programs or Live Channel.

[36] The Plaintiff brought a motion for summary judgment, which was not defended. By way of Judgment and Reasons issued on July 18, 2024 (2024 FC 1127), Justice Whyte Nowak found that GEM Music had directly infringed the Plaintiff's copyright in 2,729 episodes of the Programs by unlawfully allowing users of its GEM TV service, and its IPTV service at [www.GEMOnline.tv](http://www.GEMOnline.tv), to access and watch the Plaintiff's Programs by means of telecommunication contrary to paragraphs 3(1)(a), (d) and (f) and subsection 27(1) of the *Copyright Act*, RSC, 1985, c. C-42. Justice Whyte Nowak awarded the Plaintiff statutory damages in the amount of \$10,000 per episode, for a total award of \$27,290,000 [GEM Judgment].

[37] The Plaintiff obtained writs of seizure and sale against GEM Music, and at least one Notice of Garnishment, in its attempt to enforce the GEM Judgment.

## **G. Relationship between the Defendants, GEM Media and GEM Music**

### **(1) Contractual relationship**

[38] On April 18, 2012, Ava signed a Memorandum of Understanding [First MOU] with GEM Media, pursuant to which GEM Media permitted Ava to "broadcast worldwide, over the Internet through Ava's website [www.GLWiz.com](http://www.GLWiz.com), all of the television programs available through" GEM Media's cable network. The First MOU did not provide for any payment by Ava to GEM Media

for these broadcasting rights, but contemplated the ultimate execution of a subsequent broadcasting contract that would include financial terms.

[39] On December 26, 2012, Ava signed a second Memorandum of Understanding [Second MOU] with an entity called GEM TV, pursuant to which GEM TV permitted Ava to “broadcast worldwide, over the Internet, through Ava’s website [www.GLWiz.com](http://www.GLWiz.com), all of the television programs available through” GEM TV’s cable network. The terms of the Second MOU were similar to those of the First MOU.

[40] On October 3, 2013, Ava and GEM Media signed a Content Acquisition and Licensing Agreement [CLA], pursuant to which GEM Media (who was identified in the CLA as the Licensor) agreed to grant Ava a worldwide licence to market, distribute, broadcast and otherwise exhibit the “Licensor Content” via the internet related to the GLWiZ Service.

[41] The CLA defined “Licensor Content” as “all television programs produced or broadcast” by GEM Media and any other audio, video or programs provided by GEM Media to Ava. GEM Media warranted that it had all necessary rights, authorizations, clearances and licences related to the “Licensor Content” and Ava’s use thereof.

[42] The CLA included financial terms, pursuant to which Ava was to pay to GEM Media: (a) its pro-rata share of ten percent of all revenues collected from subscribers of the GLWiZ Service, to be calculated based on the percentage of viewing time of the GEM Media content

versus all other content on the GLWiZ Service; and (b) fifty percent of all revenues from pay-per-views.

[43] The CLA included a clause permitting either party to terminate the CLA for cause under certain prescribed conditions, as well as without cause, at any time, on six months' notice. It further provided that any variations to the CLA had to be in writing and signed by both parties.

[44] On April 16, 2014, Ava and GEM Media executed Addendum No.1 to the CLA to add certain payment terms. Specifically:

2. Payment Terms. Content Provider understands and agrees that it may owe certain sums to Ava's partners, entities from the Group of Gold Line (the "Amounts owing to Gold Line"). Content Provider further agrees that Ava may offset any Content Provider invoices against Amounts owing to Gold Line. Ava shall provide to Content Provider, along with any offset payment, a detailed accounting of the offset amounts, include [sic] the name of the entity to whom Content Provider owes money, the invoice number and amount being offset.

[45] The addendum was executed as a means for the Group of Gold Line Inc. to collect on GEM Media's then current indebtedness of approximately \$300,000, by offsetting any revenue sharing earned by GEM Media under the CLA until such time as the indebtedness was paid in full.

## **(2) The Defendants' Use of the GEM Media Content**

[46] In 2014, the Defendants began to make available and stream content acquired from GEM Media on the GLWiZ Service, including the Programs. All of the Programs that the Defendants

acquired from GEM Media were already dubbed or translated into Farsi and included advertising inserted by GEM Media.

[47] The CLA provided that GEM Media would deliver to Ava digital, high-quality content on hard drives. However, that did not occur. Rather, the Defendants acquired the GEM Media content by way of a password-protected file transfer protocol [FTP] site set up by GEM Media. This FTP site continued to be the manner in which the Defendants obtained content from GEM Media, until some time in 2018.

[48] By 2018, the Defendants had begun acquiring content from GEM Media/GEM Music via the latter's satellite signal. The Defendants would record the entirety of GEM Media/GEM Music's satellite signal and then cut and copy that recording into individual episodes which they then stored and made available on the GLWiZ Service. This is the manner by which the Defendants obtained the Programs at issue in this proceeding, from 2018 onward.

### **(3) Breakdown in the Relationship Between the Defendants and GEM Media**

[49] In October of 2015, there was a personal falling out between Mr. Karimian and Mr. Moeini. Immediately after the falling out, on October 17, 2015, Mahan Karimian, the General Manager of GEM Media, sent an email to Ava purporting to terminate the CLA. It provided:

Despite many wonderful years of corporation [*sic*] with your great company, we are forced to suspend all of our agreements and corporations with GLWIZ effective immediately. In consideration and pursuit [*sic*] to the recent events, we kindly ask Ava Telecom LTD (operator of GLWIZ Platform) to Suspend broadcast of all of our content, which includes both Video on Demand (VOD) and Live Streaming of our TV channels.

This notice revokes and cancels all right previously granted to Ava Telecom LTD / GLWiZ including and not limited to “Content acquisition and Licensing Agreement” signed on October 3rd 2013 and “memorandum of Understanding” signed on December 26th 2012.

[50] On October 22, 2015, Mr. Reyhani responded, stating:

We are in receipt of your letter dated October 17, 2015 regarding the suspension of our agreements. After careful consideration, unfortunately we cannot accept your notice to immediately suspend our Content Acquisition and Licensing Agreement. As per our agreement we are to receive 6 months’ notice for termination. In addition AVA telecom has already prepaid for your services as per your own request to trade off the below list of work and equipment that was provided to your company:

[...]

Taking the above into consideration we will continue to broadcast your content until either you pay the outstanding invoices that were provided in full or we continue to broadcast until your account has been cleared. Only then you can [*sic*] provide a termination notice according to the terms of our original Content Acquisition and Licensing Agreement dated September 25, 2013.

[51] On November 17, 2015, a letter was sent by Mr. Moeini to Saied and Mahan Karimian in which he proposed a new business arrangement between the Defendants/Ava and “GEM” (the exact entity is unclear), pursuant to which there would be a splitting of income generated from the GEM websites and the GLWiZ Service. There is no documented response to this letter.

[52] On December 18, 2015, an attorney for GEM Media wrote to Ava stating that his letter constituted seven days’ notice of termination of the First MOU. The parties agreed in the RASF that this letter constituted a purported notice of termination of the CLA.



[53] On January 27, 2016, an attorney for “GEM Movie Channel” wrote to Ava, with the subject line of “Termination of MOU with [GEM Media]”, stating that the MOU entered into between the parties on April 25, 2012, was being terminated and that his letter would serve as seven days’ notice as provided therein. It is not clear to the Court which MOU this is referring to, as there was no MOU executed on April 25, 2012.

[54] There is no evidence before the Court of any further communication between the parties about the purported termination of the CLA, until 2018. On May 8, 2018, Pouneh Rahimi, counsel for Ava, sent a letter to counsel for GEM Media in response to an April 24, 2018 letter (which is not before the Court). In her letter, Ms. Rahimi stated:

We acknowledge that your client entered into a Memorandum of Understanding (“MOU”) with Ava Telecom Ltd. (“Ava”) in April 2012, and communicated their desire to terminate the MOU in in [sic] October, 2015.

As you may be aware, GEM signed a Reseller Agreement with Gold Line Telemanagement Inc. (“Gold Line”) dated June 14, 2013, whereby GEM resold the GLBox set top boxes to its clients, including both monthly and unlimited subscriptions. GEM further heavily promoted the GLWiz website and services on its programs, thus assisting Ava in increasing its viewership.

As previously discussed with the owners of GEM by Gold Line and Ava, fully stopping the broadcasting of the GEM contents on the GLWiz platforms may lead to significant liability to Ava from customers who have purchased subscriptions based on the sales and marketing efforts of GEM.

While Ava is prepared to stop broadcasting GEM contents, GEM must understand that Ava will hold GEM responsible for any liability arising therefrom. [...]

In order to avoid the afore-mentioned liability, as previously proposed to GEM, Ava is prepared to work with GEM on a localized ad replacement solution and share in the revenues from such ads. While Ava has spent millions of dollars to create and operate the GLWiz platform and has not yet been able to recuperate all of its

costs, it believes that it may soon be finally able to generate profits by means of localized ad insertion. Please note that Ava is not currently using such localized ad insertion on the GEM contents but believes that with GEM's approval and cooperation, the parties can have a mutually beneficial and lucrative relationship.

[55] On June 8, 2018, counsel for GEM Music responded to Ms. Rahimi stating, in part, as follows:

We have been advised by our client that Mahan Karimian did not have authority to enter into the said agreement on behalf of GEM TV.

In any event, we understand that only 20-30 set top boxes were sold by GEMTV and the rest of the boxes were returned to Goldline.

Furthermore, on October 17, 2015, Mr. Karimian sent an email to Ata Moeni [*sic*] and Leila Moeini at Ava Telecom which clearly revoked and cancelled all rights previously granted to Ava Telecom and GLWiz. After that time, your clients had no right to continue to broadcast any of our client's programs on their set top boxes or otherwise.

Your clients have infringed our client's copyright pursuant to sections 3 and 21 of the Copyright Act. Your clients must take immediate steps to cease and desist their extensive copyright infringement of our client's content. [...]

[...]

We again demand that your clients immediately cease and desist from in any way broadcasting any of our client's content.

[56] On June 20, 2018, Ms. Rahimi responding by requesting, among other things, proof that GEM Music had authority to license and distribute the content in question.

[57] At no point in time did GEM Media/GEM Music send a written communication to the Defendants that stated that it was withdrawing or cancelling its purported termination of the CLA.

**(4) GEM Music's Litigation Against the Defendants**

[58] On March 3, 2021, GEM Music commenced an action against the Defendants (and others), bearing Federal Court File No. T-410-21, for copyright infringement for streaming and making available GEM Music's content on the GLWiZ Service without permission or authority. The Defendants filed a Statement of Defence in which they pleaded that GEM Media is the predecessor-in-title of GEM Music. Among the various responses to the allegations made in the Statement of Claim, the Defendants pleaded that this Court lacked jurisdiction to entertain the action as the parties were bound by an arbitration agreement contained in the CLA.

[59] Following a number of motions and an appeal to the Federal Court of Appeal, GEM Music's action against the Defendants was ultimately stayed in favour of arbitration in Bermuda.

**H. Dealings between the Plaintiff and the Defendants**

[60] In November of 2017, a representative of the Defendants contacted the Plaintiff by email to arrange a meeting to discuss business opportunities. The parties agree that one purpose of the email was to see if the Plaintiff was willing to authorize or license the Defendants to make the Plaintiff's content available on the GLWiZ Service, after the Defendants had dubbed or translated the content into Farsi.

[61] Representatives of both parties met in Istanbul on November 8, 2017. The only representative of the meeting who gave evidence at trial was Mr. Moeini. He stated that, during that meeting, he demonstrated the GLWiZ Service on his phone which revealed that the

Defendants were making the Plaintiff's content available on the GLWiZ Service. He stated that the representatives of the Plaintiff "indicated that GEM did not, you know, purchase the right for that program." Mr. Moeini asked the representatives of the Plaintiff to write him a letter so that he could check and if "GEM" had not paid for the program, the Defendants would remove it. Mr. Moeini's evidence was that no follow up correspondence was sent to the Defendants by the Plaintiff.

[62] The Defendants also included, as part of their discovery read-ins, the evidence given by Kerim Emrah Turna (as a representative of the Plaintiff) who had also attended the meeting. Mr. Turna stated that during that meeting, he downloaded the GLWiZ Service app to his phone and was shocked to discover that it had most of the Plaintiff's then available content available on the service. He stated that he told the Defendants that they did not have a licence for that content and asked them to remove it. He described this discovery as a "turning point" for the meeting, as the Plaintiff was not going to do business with a company airing their Programs illegally. After the meeting he, along with his colleagues, periodically checked to see if the content had been removed from the GLWiZ Service and it had not been.

[63] The parties agree that at no point in time did the Plaintiff authorize or license the Defendants to broadcast or make available any of the Plaintiff's content.

[64] On March 20, 2019, the Plaintiff sent to the Defendants, through the Plaintiff's Turkish lawyer, a "Notice to Cease and Desist" [2019 Cease and Desist Letter]. The letter stated in part as follows:

1. It has been determined that, without our Client's [...] authorization, you are currently announcing and broadcasting My Client's TV series listed below which are copyrighted in accordance with applicable laws.

*“Appendix 1: notarized POA”*

**This warning letter includes all parts and sections of the above listed series and all related links which has [sic] not been written above.**

Price of Passion  
Meryem  
Sweet Revenge  
Sunshine Girls  
Crossroads  
Flames of Desire  
For my [sic] Son  
Matter of Respect  
War of the Roses  
Love  
Leaf Cast  
Fatmagul  
Kuzey Guney  
Mercy

*My Client's Programme and TV Series are listed at “appendix 2”  
(Archive PDF)*

[Emphasis in original.]

[65] The body of the letter expressly referenced 14 of the Programs at issue in this proceeding, which the parties agree were available for on-demand streaming on the GLWiZ Service at the time the letter was sent. Appendix 2 to the letter was a list of approximately 300 programs belonging to the Plaintiff, written in Turkish [Archive]. The Archive included four additional Programs at issue in this proceeding — namely, Time Goes By, Waiting for the Sun, Forbidden Love and Secrets. The parties agree that at the time the 2019 Cease and Desist Letter was written, two of the Programs at issue in this proceeding — Love Trap and Ruthless City — had not yet been released. The

remaining two Programs — Lost City and Fallen Angel — were not referred to in the body of the 2019 Cease and Desist Letter, nor in the Archive.

[66] On March 20, 2019, Mr. Reyhani forwarded the 2019 Cease and Desist Letter with the Archive attachment to Arash Bafekr (a Manager at GLWiZ) and Javad Shahbazi (of Group of Gold Line Inc.) and instructed them to remove the “below movies” from the GLWiZ Service. Mr. Bafekr’s evidence is that he took steps to have the Programs disabled.

[67] By email dated March 25, 2019, Mr. Reyhani advised the Plaintiff that “GEM TV” had provided the Defendants with the Programs referred to in the 2019 Cease and Desist Letter. There was no mention of a licence granted to the Defendants by “GEM TV”, or to any other entity, to use the Programs.

[68] By email dated March 27, 2019, counsel for the Plaintiff confirmed that he was waiting for “your license [*sic*] agreement and the updates.” The Defendants did not forward the CLA to counsel for the Plaintiff.

[69] In June of 2019, Meryem Hürmüz, identified as an Informatics Expert, issued a document in Turkish, the title of which translates in English to “Expert Report” [2019 Expert Report]. The details of the 2019 Expert Report are detailed later herein, but the parties agree that the 2019 Expert Report stated that the following Programs were available on the GLWiZ Service: Forbidden Love, Time Goes By, Secrets, Waiting for the Sun and Fallen Angel. However, the 2019 Expert Report goes on to state that her attempts to access Forbidden Love and Time Goes By produced error

messages “due to either temporary or permanent reasons” instead of opening a stream of those Programs.

[70] On August 28, 2019, the Plaintiff sent the Defendants a copy of the 2019 Expert Report (in Turkish only) as an attachment to a further warning letter following up on the 2019 Cease and Desist Letter [2019 Warning Letter]. The Plaintiff asserted that the Defendants had not taken any steps to the respond to the 2019 Cease and Desist Letter.

[71] On August 29, 2019, Mr. Reyhani responded to the 2019 Warning Letter stating that the Defendants had previously removed the Plaintiff’s content and asked counsel for the Plaintiff to confirm same. The Plaintiff did not respond to this email.

[72] The Defendants admit that after Mr. Reyhani’s response to the 2019 Warning Letter, the Defendants did, in fact, make some of the Programs available on-demand on the GLWiZ Service and continued to rebroadcast the Live Channel.

[73] In 2020, the Plaintiff retained the services of Integra Investigation Services Ltd., a private investigation firm [Integra]. On October 13, 2020, one of the investigators, Rachel Barker, purchased a GLWiZ set-top box and subscribed to the GLWiZ Service that same day. As set out in a report from Integra dated January 28, 2021, Integra was instructed to look for certain Programs (Leaf Cast, Time Goes By, War of the Roses, For My Son, Ruthless City and Love Trap) on the GLWiZ Service (set-top box, [www.glwiz.com](http://www.glwiz.com) and desktop platform) and determine if they were available for viewing. Ms. Barker searched for and found the Programs, saved them in her

favourites folder and then later captured videos and screenshots of a sampling of the content and prepared the January 28, 2021 report. Ms. Barker confirmed (and the Defendants agreed) that dubbed or translated versions of episodes of all six Programs were available on the GLWiZ Service, in January 2021.

[74] On February 3, 2021, the Plaintiff commenced this action against the Defendants. Thereafter, the Defendants ceased any streaming of the Live Channel and any use of the Programs.

### **I. The Defendants' Admitted Acts of Copyright Infringement**

[75] The trial of this action was originally scheduled to commence in November 2024. At that time, infringement was a live issue and the Defendants took the position that they had an oral licence from the Plaintiff in relation to the Programs and the Live Channel, granted by a former employee of the Plaintiff's named Suleyman Sarilar. The November 2024 trial date was adjourned due to the serious illness of the instructing representative of the Defendants and the trial was rescheduled to February 2025.

[76] In early January, the Defendants advised that they were no longer contesting the allegations of infringement, were no longer asserting that they had been granted a licence by the Plaintiff and would not be calling Mr. Sarilar as a witness at trial. Rather, the Defendants advised that they had reasonably, but mistakenly, believed that they were authorized to utilize the Programs by way of their agreement with GEM Media. As such, all issues related to infringement were no longer at issue and the RASF was prepared to reflect that agreement. The Defendants confirmed additional concessions during the course of their closing arguments.



[77] During the relevant time — namely, February 2018 to February 2021 [Relevant Period] — the Defendants admit that all 2,974 episodes of the Programs were made available on-demand on the GLWiZ Service at some point, but that not every episode was available at all times during the Relevant Period. The Defendants admit that they copied and stored, on their servers, the Farsi-dubbed or translated versions of the Programs that they acquired from the GEM Media or GEM Music satellite signals and made that content available on demand to their subscribers.

[78] The Defendants also admit that they simultaneously rebroadcasted the Live Channel 24 hours per day, 7 days per week, in the original Turkish language, alongside the Plaintiff's broadcast throughout the Relevant Period. The Defendants do not assert that they believed that GEM Media had licensed or authorized the rebroadcasting of the Live Channel.

[79] The following chart shows the number of sessions and hours that the Defendants' subscribers viewed the Plaintiff's content on the GLWiZ Service during the Relevant Period (as well as before and after, as the Defendants admit that the Plaintiff's content was added to the GLWiZ Service beginning in 2014). However, there is a dispute between the parties as to whether the data includes both on-demand viewing of the Programs and the Live Channel or only the on-demand viewing of the Programs. The Defendants assert the former and the Plaintiff asserts the latter.

## Kanal D

Start Date	End Date	Sessions	Hours	Hours share %
1/15/2014	12/31/2014	113,539	59,927.76	0.10
1/1/2015	12/31/2015	281,090	136,455.50	0.15
1/1/2016	12/31/2016	678,469	323,547.53	0.31
1/1/2017	12/31/2017	714,291	375,345.39	0.37
1/1/2018	12/31/2018	731,785	332,896.85	0.31
1/1/2019	12/31/2019	559,418	345,280.04	0.25
1/1/2020	12/31/2020	474,382	320,076.84	0.21
1/1/2021	12/29/2021	12,345	10,354.56	0.01
1/1/2022	7/12/2022	0	0.00	0.00
<b>TOTAL</b>		<b>3,565,319</b>	<b>1,903,884.46</b>	<b>0.21</b>

[80] The parties agree that the actions of the Defendants contravened numerous provisions of the *Copyright Act*. Specifically:

- A. The Defendants infringed the Plaintiff's copyright in each of the 2,974 works comprising the Programs by copying, downloading, uploading and making available the Programs on the GLWiZ Service, contrary to sections 2.4(1.1), 3(1)(a), 3(1)(f) and 27(1) of the *Copyright Act*.
- B. The Defendants authorized the communication and infringement of the Plaintiff's copyright in the Programs and have induced those using its GLWiZ Service to infringe the copyright in the Programs.

- C. The Defendants distributed copies of the Programs which they knew or should have known infringe the copyright therein, in a manner that has prejudicially affected the Plaintiff as the copyright owner, contrary to section 27(2)(b) of the *Copyright Act*.
- D. By way of trade, the Defendants distributed, exposed or offered for sale or rental, or exhibited in public, copies of the Programs which they knew or should have known infringe the copyright therein, contrary to section 27(2)(c) of the *Copyright Act*.
- E. The Defendants possessed, for the purposes of doing those things referred to in subsections 27(2)(b) and 27(2)(c) of the *Copyright Act*, copies of the Programs which they knew or should have known infringe the copyright therein, contrary to section 27(2)(d) of the *Copyright Act*.
- F. The Defendants infringed the Plaintiff's copyright in its communication signal for the Live Channel by retransmitting or rebroadcasting it to the public simultaneously with the Plaintiff's own broadcast of that communication signal, contrary to section 21(1) of the *Copyright Act*.

[81] On the consent of the parties, declaratory relief reflecting the above will be issued, together with a declaration that the Plaintiff owns the copyright in the 2,974 episodes of the Programs.

## **II. Witnesses**

[82] The Plaintiff called six fact witnesses and the Defendants called five fact witnesses. No expert witnesses were called.

[83] The Defendants did not dispute the credibility of any of the Plaintiff's witnesses nor the reliability of their evidence.

[84] I find that all of the Plaintiff's witnesses are credible and their evidence is reliable.

[85] In their written submissions, the Plaintiff disputed the credibility of certain witnesses called by the Defendants and the reliability of their evidence and urged the Court that, where the trial testimony diverged, the Court should prefer the testimony of the Plaintiff's witnesses over that of the Defendants' witnesses. The Defendants did not respond to these criticisms in their written submissions and, despite my invitation to do so, they also did not address these criticisms during their oral closing submissions.

[86] The Plaintiff's specific criticisms and my findings in relation to each witness are set out below.

[87] The Plaintiff also made a general criticism of the Defendants and their senior management (Mr. Moeini, Mr. Reyhani and Shala Yazdani) based on the Canada Revenue Agency's determination that Gold Line falsely reported more than \$320 million in "sham transactions" and submitted false invoices in order to obtain tens of millions of dollars in unwarranted tax credits [CRA Issue]. The Plaintiff asserts that this conduct of the Defendants, with involvement of their senior management, challenges and undermines the integrity, veracity, credibility and reliability of the Defendants as a whole and, by extension, these witnesses in particular. The Plaintiff asserts

that this should give the Court pause in accepting the evidence of these witnesses, particularly where it varies from the Plaintiff's witnesses and is inconsistent with the documentary evidence.

[88] As detailed more fully below, there is a dispute regarding the admissibility of evidence related to the CRA Issue. During the trial, I admitted into evidence a letter dated January 21, 2021, from the CRA to Ms. Yazdani. For the reasons given below, I give no weight to the January 21, 2021 letter and I find that the balance of the evidence related to the CRA Issue is inadmissible. As such, I decline to make any global finding regarding the credibility of the Defendants' witnesses or the reliability of their evidence based on the CRA Issue.

**A. The Plaintiff's Fact Witnesses**

**(1) Duygu Bayam**

[89] Ms. Bayam, who is a lawyer in Turkey, joined DM, the Plaintiff's parent company, in May of 2019 as the Business and Legal Affairs Director. She is also involved in licensing content for the Plaintiff.

[90] Ms. Bayam testified regarding: (a) the Plaintiff's general business practices related to the licensing of content; (b) the Plaintiff's ownership of the Programs and their related producer agreements; (c) the cost to create an episode of the Programs at the Relevant Time and how those costs are recovered through advertising and licensing revenues; (d) the licensing of the Programs for dubbing or translation into more than 20 languages; (e) the absence of any authorization for the Defendants to use the Programs by way of a licence from the Plaintiff or a sublicense from

GEM Media; (f) the nature of the Turkish Court Documents (as defined below), how they were obtained and what they state; (g) the 2019 Cease and Desist Letter and the 2019 Warning Letter sent to the Defendants and the Defendants' responses thereto; (h) the April 2012 email exchange with Ava; and (i) the Plaintiff's unsuccessful efforts to collect on the GEM Judgment, to date.

**(2) Rachel Barker**

[91] As noted above, Ms. Barker is a private investigator with Integra. Integra was retained to investigate the business activities of the Defendants and, in particular, the GLWiZ Service.

[92] Ms. Barker testified that: (a) she purchased a GLWiZ set-top box and subscribed to the GLWiZ Service on October 13, 2020; (b) she personally searched for and found the Programs Leaf Cast, Time Goes By, War of the Roses, For My Son, Ruthless City and Love Trap (which are the only Programs she was instructed to search for) on the GLWiZ Service, saved them in her favourites folder on both the set-top box and web platform and then, in January 2021, captured videos and screenshots of a sampling of the content, which were entered into evidence; (c) the dubbed or translated versions of episodes of all six Programs were available on the GLWiZ Service in January 2021; (d) she also viewed the "GEM TV" website and recorded videos of herself watching the Programs thereon, which were entered into evidence.

**(3) Elif Tatoğlu**

[93] Ms. Tatoğlu is the Plaintiff's Director of Sales and International Distribution. In that role (which she assumed in March of 2024), she focuses on, among other things, international

distribution which involves the negotiation and renegotiation of licences and contracts. She has similar responsibilities for related companies, which include the negotiation and renegotiation of licences and contracts for the channels like CNN Turk, TV2 or music channels. Her prior work experience at TRT and Türk Telekom also involved licence negotiations, including negotiating licences with the Plaintiff for its content.

[94] She testified that the Programs are among the most popular shows in the Plaintiff's catalogue of about 100 programs and some Programs (such as Time Goes By, Price of Passion, Ruthless City and Love Trap) are considered "evergreen" (like one would consider the TV program Friends to be) in that they still sell quite well and never get old.

[95] She testified that the Plaintiff has authorized third parties to dub or translate its content into approximately 20 different languages, including Spanish, Arabic, Urdu, Portuguese, French, Romanian, Serbian and Hungarian. With the exception of some of the Spanish content, it is the licensees who would pay to dub/translate the programs, which cost would be separate and apart from the licensing fees charged by the Plaintiff for the Programs.

[96] In terms of Persian language programming, she testified that in 2018, the Plaintiff was not making its Programs available in Farsi (leaving aside the conduct of GEM Media and the Defendants). That changed in 2020, when the Plaintiff entered into a partnership with a third party to dub all episodes of all 22 of the Programs into Farsi and make them available for free to viewers over YouTube and for monetization through advertising revenues (which revenues are shared with the third party). As the person at the Plaintiff responsible for the YouTube channel, Ms. Tatoğlu

testified that the Plaintiff was motivated to enter this arrangement for free viewing on YouTube because the episodes had lost their first-run value for Farsi viewers outside of Iran as they were available on the GLWiZ Service. She testified that the activities of “GEM” and the Defendants thereby impacted the revenues the Plaintiff could make from this content.

[97] She testified that the Plaintiff earns approximately [REDACTED] per year from the YouTube channel for their entire catalogue of library content (older content). The revenues earned from the YouTube channel are dependent on the location of the viewer. Advertising revenues are based on costs per minute [CPM] and CPMs are higher in markets such as Canada, the United States of America and the United Kingdom. More viewers in those markets would have increased the revenues earned by the Plaintiff. She testified that she believes the Plaintiff would have been able to earn more revenues from the YouTube channel but for the conduct of the Defendants. Had the Farsi-speaking viewers not already been exposed to the Programs in Farsi, there would be more views of the Plaintiff’s YouTube channel, which would have resulted in higher earnings.

[98] While the Plaintiff has never translated and made available the Programs in Farsi (other than on YouTube), Ms. Tatoğlu testified that the Plaintiff has a successful Spanish service, whereby the Plaintiff operates a Spanish-speaking “pay TV” channel where it dubs its content, as well as a Kanal D Spanish application, and makes them available on a subscription basis. The Spanish content is also available on Euro D, which is the international feed for the Live Channel outside of Turkey, and D-Smart, which is a paid TV service of DM’s operated in Turkey.



[99] She also testified regarding the Plaintiff's licensing revenues for international (outside of Turkey) broadcasting licences, for the entire catalogue of programs. During the Relevant Period, the total revenues were as follows:

- 2018 – \$ [REDACTED]
- 2019 – \$ [REDACTED]
- 2020 – \$ [REDACTED]
- 2021 – \$ [REDACTED]

[100] She testified that none of the licensing revenues were for the Canadian market, but that some did involve the US market.

[101] She explained an Excel spreadsheet (Exhibit 126) that recorded information for the years 2018 through 2021 about the individual international broadcasting licences, including the name of the Program, the customer's name (which would reveal the territory of the licence), the fee paid for the licence and the number of episodes of the Program covered by the licence. Based on that spreadsheet, it is possible to determine the licensing fee charged per episode of each of the Programs, for each of the Plaintiff's customers, during the Relevant Period.

[102] In terms of the price for a licence, Ms. Tatoğlu testified that the per episode price is dependent on whether the episodes are first-runs or reruns, the territory the licence is for, the language the licence is for, the Plaintiff's relationship with the customer, the volume of business (past and present) with that customer and the competition in the market. The Excel spreadsheet

revealed that the per episode price varied across territories, customers, time and Programs. She testified that a per episode fee of [REDACTED] or [REDACTED] was relatively common. While the per episode fee is lower in some countries, she testified that due to the high production quality of the content, even in smaller markets, there is always a minimum value and she would not license the content for as low as \$100 USD per episode. She testified that she is not aware of any licences granted in relation to the Programs where the per episode fee was only a few hundred dollars.

[103] She testified that other than the YouTube business, the licences are limited geographically to one country and do not include global rights of online distribution.

[104] She testified that had she been asked to license all 22 Programs in Farsi all over the world, she probably would not have done so as it would not “make sense”. If, however, she decided it made sense to enter into such a licence, she testified that she would never have done so for less than \$10,000 USD per episode.

[105] In terms of the harm or damages caused to the Plaintiff by the conduct of the Defendants, Ms. Tatoğlu that the Plaintiff was harmed by the lost revenues from licensing fees that should have been paid by the Defendants, which she calculates at no less than \$10,000 USD per episode per Program. She also testified that the Plaintiff has been harmed by the loss of control over their content. Once a Program is on a platform, she stated, it is prone to piracy. If the Plaintiff does not know where its content is being shown, it is unable to reasonably check to see whether its content is being pirated.

**(4) Selim Turkmen**

[106] Mr. Turkmen was employed by the Plaintiff from April 2016 until February 2024, during which time he held the positions of Foreign Content Sales Executive and Manager, then Content Sales and Distribution Director and finally, International Director of Sales. His main responsibility in those positions was to monetize content through international sales and distribution. He was routinely involved in the negotiation of licences for content throughout the Relevant Time.

[107] With respect to the Programs, he testified that during the Relevant Time, they were by far the most popular programs not only for the Plaintiff but of all Turkish programming. It was these Programs that started the practice of Turkish dramas being distributed worldwide. The affidavit Mr. Turkmen swore in the summary judgment motion against GEM Music was put into evidence and Mr. Turkmen confirmed the accuracy of the description of the 22 Programs as set out therein. He also introduced into evidence video clips of each of the 22 Programs that he had recorded from the Plaintiff's Live Channel. He also testified as to the numerous domestic and international awards won by the Programs.

[108] He testified that in 2018, the Plaintiff broadcasted or streamed content in only Turkish and Spanish, the Spanish content being shown on a service called Kanal D Drama, which was operated with a third- party partner. He testified that the Plaintiff thought about branching out the Spanish service model to other languages but that, in relation to a Farsi model, the problem was that GEM Media and the Defendants had already created a platform. He testified that the Plaintiff knew that the return on investment of any Kanal D Farsi service would be low because the Programs had

already been exposed by GEM Media and the Defendants to so many viewers that the content had lost its value.

[109] While he did not participate in the November 2017 meeting between the Defendants and the Plaintiff, Mr. Turkmen testified that he knows no business arrangement was reached following that meeting. Moreover, he confirmed in the Plaintiff's database that no contracts were ever entered into with the Defendants.

[110] He testified that the licensing fee for the Programs varies depending on the popularity of the content sought to be licensed, the age of the content (with newer content generally demanding a higher fee than older content), the duration of the licence, the number of runs (how many times the content can be shown), the language of the program, the economic power of the country/viewing audience, the size of the advertising market, the ranking of that client and the purpose for which they want to use the content. In addition to the licensing fee, in some agreements, the Plaintiff also received a share of advertising revenues earned by the client. In terms of the range of per episode licensing fees charged by the Plaintiff, he testified that the lowest fees of [REDACTED] were generally charged in African countries and the highest fees of [REDACTED] were charged in the Middle East and North Africa [REDACTED]. [REDACTED]. The other licensing fees fell somewhere in the middle, with Spain at [REDACTED] and Spanish speaking US licences at between [REDACTED] to [REDACTED].

[111] He testified that, other than the YouTube channel, the Plaintiff never entered into an agreement (at least while he was with the company) that would permit someone to broadcast or

stream the Plaintiff's content worldwide. He stated that such a licence is not something that the Plaintiff would have entertained as it would pose a problem of control, in that giving another entity so much of their content might clash at some point with the Plaintiff's own distribution. The cost of such a licence would also be very high, such that the number of clients worldwide who could afford such a licence would be very limited, and that such clients would also then have to pay for dubbing/ translating in addition to licensing, which would add to their financial costs.

[112] He testified that, had the Defendants asked the Plaintiff for a licence to use the Programs worldwide on the GLWiZ Service during the Relevant Time, the per episode licensing fee would have been approximately \$10,000 USD or more and that he (on behalf of the Plaintiff) would have also requested a share of the Defendants' advertising revenues. With respect to the Live Channel, he testified that the Plaintiff would not have granted the Defendants a licence to rebroadcast the Live Channel outside of Turkey, as they do not offer such licences. Such licences would sabotage the Plaintiff's Euro D channel. Moreover, the Plaintiff does not have the right to broadcast some of the third party content shown on the Live Channel outside of Turkey.

[113] Mr. Turkmen provided evidence regarding the Plaintiff's licences with GEM Media. He testified that the licences entitled GEM Media to broadcast various programs free-to-air (as opposed to on-demand) in Farsi in Iran only, with GEM Media bearing the costs associated with dubbing or translating the Programs. All of the licences were concluded by the commencement of the Relevant Period. At no time was GEM Media licensed to rebroadcast the Live Channel. He confirmed on cross-examination that the licensing fees paid by GEM Media were for the longer Turkish versions of the episodes (as opposed to the shorter international versions). He also testified

that since the time the GEM Media licences were executed, the per episode licensing fee has drastically increased.

[114] He testified that, because the Plaintiff had had a prior business relationship with GEM Media, when the Plaintiff discovered that GEM Media was using their content without authorization, the Plaintiff had hoped that the matter could be resolved diplomatically. However, after Mr. Karimian's death and the relocation of GEM Media outside of Turkey, the Plaintiff was unable to reach GEM Media. He testified that he did go on the GLWiZ Service and saw the Plaintiff's Programs thereon, with the Plaintiff's Turkish advertisements removed and replaced with Farsi advertisements.

[115] Mr. Turkmen testified regarding the harm he believes the Plaintiff suffered as a result of the Defendants' conduct. The first form of harm he identified was the loss of opportunity to do what the Defendants had done, which was to operate a Farsi specialty service like the Plaintiff was doing for Spanish content. He noted that had the Plaintiff been able to set up a Farsi specialty service, the Plaintiff would have charged more than the Defendants were charging as the Defendants were not maximizing the value of the content.

[116] The second form of harm is the continued loss of control over the Plaintiff's content, which renders it difficult for the Plaintiff to offer exclusive licensing agreements in certain territories when the Defendants may also be operating in that territory without authorization.

[117] He testified that the Defendants harmed the Plaintiff by reducing the revenues they were able to earn from their YouTube Channel, as there was less demand for the content (and thus less advertising revenues) as the Defendants had already aired the content thousands of times on the GLWiZ Service.

[118] Mr. Turkmen also testified regarding a number of videos and screenshots he took on November 11, 2023, of the GLWiZ Service. Those videos and screenshots are addressed in detail below.

[119] Finally, he testified regarding the length of the Programs' episodes and how (and by whom) they were cut down over time.

**(5) Müge Akar**

[120] Ms. Akar is the Head of Sales of the Content Distribution Department of ATV, a broadcaster in Turkey that operates a free-to-air television channel that is ranked within the top five channels in Turkey. ATV also creates television series, talk shows, news and other programs.

[121] Ms. Akar testified that in 2022, she was notified by a group of clients that ATV's channel and programs were available on the GLWiZ Service in Farsi. As a result, ATV's legal department sent a notice of copyright infringement to the Defendants. Following receipt of the notice, she stated, ATV's channel and programs were removed from the GLWiZ Service.

**(6) Ceyda Görür**

[122] Ms. Görür works for the Plaintiff as Head of Acquisitions and Content Distribution, in which capacity she also does work for the parent company, DM. The majority of her work involves content licensing. She has over 25 years of experience in licensing content (including the licensing of Turkish drama series) gained from her current employment and her prior work experience with the Walt Disney Company, D-Smart and Digiturk. She has been involved in negotiating and writing approximately 5,000 licences.

[123] She testified that: (a) Turkish drama series are the third most popular exported programs in the world, behind programs from the United States of America and the United Kingdom, and that the Plaintiff's Live Channel ranks third amongst approximately 600 channels in Turkey; (b) the Live Channel is only broadcasted in Turkey due to limitations on the territorial broadcasting rights for third party content shown on the channel; (c) the Plaintiff owns the international rights in the Programs; and (d) the cost of creating a single episode of one of the Programs at the Relevant Time would have been between [REDACTED] and [REDACTED].

[124] In terms of the length of each of the Programs' episodes, Ms. Görür testified that they were initially approximately 80–90 minutes long but that the Plaintiff then started introducing longer episodes of 125–150 minutes each. The Plaintiff then determined that international markets outside of Turkey wanted shorter episodes, so the Plaintiff cut the longer Turkish episodes into shorter international versions of the episodes (approximately 45 minutes each) for licensing outside of Turkey. She testified that by 2015, the Plaintiff was performing the cutting of the episodes (as



opposed to the producer of a Program or a licensee performing the cutting) such that the Plaintiff: (i) could have editorial control and make sure the scenes were cut in the right place; and (ii) could make sure that episode numbers added up when placed in the archive (e.g., a 150-minute episode was cut into three episodes of 50 minutes) and could control the assignment of the episode numbers.

[125] In terms of the licensing of the Programs outside of Turkey (which at the Relevant Time was for the shorter episodes of the Programs), Ms. Görür testified that the Plaintiff licenses programs in either bundles or one by one. The price for a licence varies depending on the revenues of the channel seeking the licence (if they can afford to pay more, they are charged more), the size of the market, the number of territories for which a licence is sought (the Plaintiff charges more to license content in several countries versus in one country), the size of the advertising market in the territory, the purchasing power in the territory, the licence period, the number of runs of the program and the age of the content (with first runs always having a higher value).

[126] She testified that she is not aware of the Plaintiff ever entering into a worldwide licence for its content and that this is not a type of licence that she would entertain, as the Plaintiff would be unable to ensure that it captures the most value from each country.

[127] She also testified regarding the damages she believes the Plaintiff suffered as a result of the Defendants' conduct. With respect to the Live Channel, she testified that the Defendants' conduct put them in breach of their contracts with third party content providers.

[128] With respect to the Programs, she testified that when content is fresh and newly produced, the Plaintiff makes sure to capture the value of the content in every territory as a first-run. After its first cycle of sales, there are additional opportunities like paid TV and free TV. After approximately three to five years, the content becomes what is referred to as “library content”. Library content still has value to the Plaintiff, but it is of lower value. She testified that the conduct of the Defendants resulted in the 22 Programs falling into the library content category.

[129] She testified that the Plaintiff could have captured more value from that content if the market had not been fulfilled by the GLWiZ Service. Because the Defendants had already put the Programs out there, the Plaintiff lost their first-run Farsi values. Had the Defendants come to the Plaintiff asking for a licence for their activities vis-à-vis the Programs, she testified that the Plaintiff would not have negotiated a worldwide deal. However, if it had to, the Plaintiff would have asked for a minimum guarantee amount at a price of \$10,000 USD per episode plus advertising revenue sharing for a one or two year period only, after which the deal would be re-examined. As the Programs would be available in many countries, there would be a heightened opportunity for advertising revenues as advertisements are sold separately in each country.

[130] She also testified that, due to the conduct of the Defendants, the Plaintiff lost the ability to create a Farsi service similar to its Spanish service.

[131] She testified that she visited the GLWiZ website in November or December 2023 and saw DM content thereon, including music channels, CNN Turk and various radio stations. She testified that the Defendants did not have the right to stream or broadcast anything with regards to CNN

Turk or the radio stations. Ms. Görür confirmed, on cross-examination, that she had not cleared the cookies in her browser prior to accessing the GLWiZ website.

**B. Defendants' Fact Witnesses**

**(1) Shawn Reyhani**

[132] Mr. Reyhani is Vice-President of Group of Gold Line Inc., Vice-President of Operations of GLWiZ and Vice-President of Operations at Ava. He has been with these various companies for over 23 years.

[133] He testified about: (a) the genesis of Gold Line and its various business lines and business partners; (b) the relationship between GLWiZ and Gold Line and their respective roles vis-à-vis the GLWiZ Service; (c) Ava's role in the GLWiZ Service, which included the negotiation of contracts for content; (d) the services agreement between Ava and Gold Line for the GLWiZ Service; (e) the various ways that users could access the GLWiZ Service; (f) subscription fees and the numbers and locations of paid subscribers (50–60% in North America, 10–12% in Australia, 20–25% in Europe and the balance in Malaysia and Singapore); (g) the size and location of the Farsi-speaking target audience for the GLWiZ Service; (h) the types of streaming content offered on the GLWiZ Service (including 300–400 live channels, 1,000 different series and approximately 3,000 movies); (i) the 72-hour on-demand replays offered for certain channels; (j) the number of sessions and hours that viewers watched both the Programs and the Live Channel in the Relevant Period (as set out in Exhibit 151 at paragraph 80); (k) GLWiZ Service sales data during the Relevant Period; (l) the pleadings in the action commenced by GEM Music against the Defendants,

Mr. Reyhani and others; and (m) the availability of the Plaintiff's Programs on the on-demand portion of the GLWiZ Service being limited to paid subscribers.

[134] Mr. Reyhani testified that most of Ava's contracts for live channels are not in writing, as the majority of their channel owner partners do not require payment from Ava for the rebroadcasting of their channels (such as BBC Persia, Voice of America, Iran International and UNews). He testified that the owners of these channels earn their revenues primarily through advertising and, by permitting the channels to be on the GLWIZ Service, these owners stand to earn additional advertising revenues. He estimated that Ava has approximately 293–294 verbal licences, and seven or eight written licences, for live channels. He testified that Ava does pay for some licences for live channels, with licensing fees between \$5,000 to \$12,000 USD per month.

[135] Mr. Reyhani testified that when Ava enters into a licensing agreement, it is generally for the entity's entire library of content or channels. Ava does not necessarily know who the ultimate owner is of the content on the channels, and it would be impossible for them to know, as it is "a trade secret". He testified that for "[s]ome of the good programs, they don't want anyone to know who is the [owner]". As such, he ensures that any contracts include a clause that the content provider is responsible for the content.

[136] Mr. Reyhani testified about the Defendants' general policy for dealing with complaints and taking down content. As soon as a complaint arrives, he will send the complaint to their IT group to remove the program at issue. After that, they investigate the complaint to see if it has any merit. He testified that they have received hundreds of "false complaints" (primarily from their

competitors) as well as mistaken complaints. In investigating complaints, Mr. Reyhani testified that his team refers to the IMDb database to look up programs and obtain their description.

[137] With respect to advertising, he testified that the GLWiZ Service does not insert any advertising into its live channels. For on-demand programs, the Defendants insert pre-roll and post-roll advertisements at the start and end of each program, but no advertisements in the middle of the programs. Mr. Reyhani did not know whether the Defendants had earned any advertising revenues in relation to the Programs.

[138] Mr. Reyhani testified at length about the Defendants'/Ava's relationship with GEM Media. He stated that GEM Media was one of the largest Persian satellite television stations, with over 22 channels, "first class" advertisers and a very good reputation. He estimated that GEM Media had one hundred million users, which he testified was at least one hundred times more than the GLWiZ Service audience.

[139] He testified that the relationship with GEM Media began in 2012 with the execution of the First MOU, which he described as a "try and buy" drafted by Ava's legal counsel. The Defendants/Ava wanted to see if GEM Media's programs were good for their platform, on the understanding that if things went well, they would then enter into a binding contract. Based on the representations made by GEM Media in the First MOU (as set out in sections B5 and B6 of the document), the Defendants understood that GEM Media had the rights to the programs it was broadcasting and if for some reason they did not, GEM Media had to indemnify the Defendants for any claims for copyright infringement and associated legal fees. With respect to the Second

MOU, he testified that it was the same as the first, but the contracting party was “GEM TV” instead of GEM Media.

[140] He testified that within a very short period of time after the execution of the First MOU, the Defendants began putting GEM Media’s content on the GLWiZ Service.

[141] As the “try and buy” was a success, he testified that Ava and GEM Media then executed the CLA (also drafted by Ava’s legal counsel). The main differences between the MOUs and the CLA were that: (a) the CLA included financial liabilities on the part of Ava; and (b) the CLA was binding. Otherwise, it covered the same GEM Media content (which was the entirety of GEM Media’s content), included the same indemnification provision, included the same representations by GEM Media that it had the rights to the content it provided to Ava and continued to permit Ava to use the GEM Media content without limitation (territorial or mode of use).

[142] He testified that Ava and GEM Media executed an addendum to the CLA [Addendum]. The purpose of the Addendum was to permit Group of Gold Line Inc. to recuperate moneys owing from GEM Media. GEM Media had become indebted to Group of Gold Line Inc. starting in 2012 for GLWiZ set-top boxes, amounts loaned to Mr. Karimian, and payments made to entertainers in California on behalf of Mr. Karimian. The total amount of the indebtedness at that time was approximately \$300,000 USD. Mr. Reyhani confirmed on cross-examination that the Addendum did not change the termination clause and did not state that the CLA could not be terminated until the debt was repaid in full.

[143] Mr. Reyhani testified that the Defendants created a portal for GEM Media to track viewer hours and GEM Media's share of the revenues collected by the Defendants. From the Addendum's execution until December 2020, the total revenue share owing to GEM Media was \$197,361.39 USD. However, this revenue share was never sent to GEM Media as it was used to offset its debt owing to Group of Gold Line Inc.

[144] Mr. Reyhani testified that following a personal disagreement between Mr. Moeini and Mr. Karimian, GEM Media attempted to terminate the CLA by email sent October 17, 2015. He testified that he responded to their purported termination by letter dated October 22, 2015, stating that GEM Media could only terminate: (a) on six months' notice; and (b) once the full indebtedness had been repaid. He stated that GEM Media never responded to his letter and that "they backtrack from it, from the cancellation. They never — we never heard about them, and we were in contact with them until 2020." He did state that there was some subsequent back-and-forth between Mr. Moeini and Mr. Karimian about a potential change to the payment structure, but that this back-and-forth never went anywhere as the CLA was never amended.

[145] On cross-examination, Mr. Reyhani admitted that he understood that, via the October 17, 2015 email, at least in GEM Media's mind, GEM Media was revoking and cancelling all rights under the CLA.

[146] With respect to the December 18, 2015 letter from an attorney for GEM Media to Ava, stating that the letter constituted seven day's notice of termination of the First MOU, Mr. Reyhani testified that he understood that GEM Media wanted to terminate the First MOU but that it was

already terminated by virtue of the execution of the CLA. On cross-examination, he stated that he did not think this letter was intended to remind Ava that GEM Media was terminating the CLA. With respect to the January 27, 2016 letter from the same attorney, Mr. Reyhani testified that he understood that the purpose of this letter was to terminate the MOU. He testified that he did not understand from either of these letters that GEM Media wanted out of the relationship with Ava.

[147] He acknowledged that after these letters, GEM Media continued to say to him that the relationship was over and that he maintained the same position that GEM Media could not terminate the relationship until the debt was paid and six months' notice was provided. Notwithstanding these lawyer letters, he testified that GEM Media continued to cooperate with the Defendants and continued to provide passwords to them to access the content through the FTP site.

[148] On cross-examination, Mr. Reyhani admitted that, following the exchange of correspondence in 2015 and 2018, it would be fair to say that there was "some level of uncertainty" as to where the relationship between GEM Media and Ava stood. He admitted that by 2018, GEM Media was still saying the CLA was over. However, he later testified on cross-examination that it was his understanding that GEM Media had withdrawn their cancellation of the CLA as set out in the October 17, 2015 letter, notwithstanding that GEM Media/GEM Music subsequently hired lawyers to address this issue with Ms. Rahimi.

[149] With respect to the June 8, 2018 letter received by Ms. Rahimi, Mr. Reyhani's evidence was that because the subject line of the letter said GEM Music, and not GEM Media, he had no idea what this letter was about as Ava had no agreement with GEM Music. He testified that the



fact that the letter referred to the October 17, 2015 termination did not assist him in understanding it. He stated that Ava never received a letter that GEM Media's rights under the CLA had been transferred to GEM Music. However, following additional questioning, he admitted that he understood that the lawyer was trying to communicate that the CLA was over.

[150] When asked how the passing of Mr. Karimian in 2017 affected the relationship with GEM Media, Mr. Reyhani testified that the relationship "got worse". Mr. Karimian's family started a new company called GEM Music and they started sending the Defendants letters to terminate the CLA.

[151] With respect to the 2019 Cease and Desist Letter sent by the Plaintiff, Mr. Reyhani testified that he forwarded the email to his technical team (which included Mr. Bafekr) on March 20, 2019, advising them to take the content down, advised the Plaintiff a few days later that the content was from "GEM TV" and asked that the letter be sent from the sender's work email so that it could be passed along to GEM Media. After hearing back from his technical team that the content had been taken down, he advised the Plaintiff and asked the Plaintiff to check and confirm.

[152] Notwithstanding having received the 2019 Cease and Desist Letter, he testified that he did not think that perhaps the Defendants did not have the rights to broadcast the Programs. He thought that it was a mistake, in that the Plaintiff did not know that the Defendants had obtained the Programs from GEM Media, that the Plaintiff would figure that out soon enough and the matter would be resolved.

[153] When asked on cross-examination about the Archive attached the 2019 Cease and Desist Letter, Mr. Reyhani stated that he had instructed his people to verify whether that additional content was on the GLWiZ Service, but that they “couldn’t find out” because the names of the programs were in Turkish. However, later in the same cross-examination, he stated that he did not read the 2019 Cease and Desist Letter as requesting that the Defendants also remove the programs listed in the Archive. Rather, he stated that he understood the Archive to be sent merely “as a reference”. He admitted that in responding to the 2019 Cease and Desist Letter, he did not ask the Plaintiff for a Farsi translation of the titles set out in the Archive.

[154] With respect to the 2019 Warning Letter received a few months later, Mr. Reyhani testified that, based on this letter, he understood that the Plaintiff believed that the Defendants had not removed any of the content, which was not true. As such, he responded to the 2019 Warning Letter by advising that the Defendants had in fact previously removed the content and asked the Plaintiff to confirm. He stated that no response was received.

[155] On cross-examination, Mr. Reyhani gave evidence regarding the Turkish Court Document attached to the 2019 Warning Letter. He testified that while the attachment was concerning, he did not get the document translated as he figured the Plaintiff would provide him with an English translation thereof.

[156] On cross-examination, Mr. Reyhani testified that the Defendants did not pass along the 2019 correspondence from the Plaintiff to GEM Media (though they indicated to the Plaintiff they intended to do) as, at that time, the Defendants could not find anyone at GEM Media to forward

the correspondence to. However, when confronted with the evidence that he had said that the Defendants were still talking with GEM Media through 2020, Mr. Reyhani then stated that Mr. Moeini told him to “forget GEM, they don’t know anything. They’re not available. They’re not around.”

[157] He testified that the reason the Defendants did not provide a copy of their licence with GEM Media when asked to do so by the Plaintiff on March 27, 2019, was because there was a non-disclosure clause in the CLA.

[158] Mr. Reyhani testified that by 2018, he never suspected that GEM Media may not have had some or all of the rights to the content that it was supplying to Ava, and that at no point prior to receipt of the Statement of Claim did he doubt the validity of Ava’s licence from GEM Media. On cross-examination, he admitted that he never had a discussion with anyone at GEM Media wherein he was told that the Defendants had the right to stream the Plaintiff’s content, nor did he have any similar discussion with any representative of the Plaintiff. He made the “calculated assumption” that GEM Media had whatever rights the Defendants needed in order for the Defendants to put the content on the GLWiZ Service. He testified that “no one” would spend all of the money dubbing the Programs if they did not have the rights to them. Moreover, he stated that GEM Media seemed to have had the original soundtracks on which to do the dubbing, which must have been given to them by the Plaintiff or another TV station.

[159] When pressed on cross-examination to confirm that no steps were taken to verify whether GEM Media had the rights to the content provided to the Defendants, Mr. Reyhani stated that it was “not part of the things we do” but admitted that “[o]ur lawyers should have done that.”

[160] He testified that it was not odd to him that, under the MOUs, GEM Media would make all of their content available to the Defendants without requiring a payment because GEM Media had already paid to acquire the content for their TV stations. He testified that the Defendants simply provided added value to the content by increasing viewership.

[161] When asked on cross-examination why Ms. Moeini would be looking to make a deal with the Plaintiff in April 2012, when Ava had just entered into the MOU with GEM Media which covered the same content, Mr. Reyhani testified that the Defendants did not know what content GEM Media had and, even then, GEM Media had “only 20 dedicated content, not all 300 Kanal D content.” He further stated that Ms. Moeini was also likely not aware of the MOU with GEM Media.

[162] Mr. Reyhani denied that, by virtue of Ms. Moeini receiving the catalogue of the Plaintiff’s content in April 2012, Ava would have known what Programs belonged to the Plaintiff, given that the catalogue was in Turkish.

[163] On cross-examination, Mr. Reyhani confirmed that 99% of the time, the Defendants don’t know who owns the copyright in the content that they put on the GLWiZ Service. They rely on the TV stations who provide the content to have the necessary rights.

[164] With respect to ATV, he testified that the Defendants had a verbal agreement with ATV to allow its content to be shown on the GLWiZ Service. When confronted with the evidence of Ms. Akar, he stated that he was not saying that she was wrong, but that “I don’t know what happened with the ATV, but other TV stations, they always give us an oral confirmation or the permission, and then they back out of it.” When further pressed on the issue, he then stated that the ATV content that was shown on the GLWiZ Service had been provided to them by “GEM TV”.

[165] With respect to Mr. Turkmen’s videos and screen captures showing CNN Turk, Radyo D and Dream Turk on the GLWiZ Service in November of 2023, Mr. Reyhani confirmed that those channels were on the service but that, due to the agreement between the parties for the purpose of trial, he was unable to say who authorized the use of those channels.

[166] On cross-examination, Mr. Reyhani stated that the Defendants have always taken the position, including in the litigation with GEM Music before this Court, that GEM Music and GEM Media are different entities.

[167] On cross-examination, Mr. Reyhani confirmed that if the Plaintiff wanted to know the cost for acquiring content for the GLWiZ Service, the Plaintiff would also need to see Ava’s financial statements, which were not produced in this litigation.

[168] Finally, on cross-examination, Mr. Reyhani stated that notwithstanding that GEM Media had told the Defendants in 2015, 2016 and 2018, to stop showing their content — and then the

Plaintiff sent the Defendants the 2019 Cease and Desist Letter — he still did not believe that the Defendants were infringing the Plaintiff's copyright.

[169] The Plaintiff asserts that Mr. Reyhani's testimony was at times straightforward but at times evasive and argumentative. For example, the Plaintiff pointed to Mr. Reyhani's attempts to distinguish between the MOUs and CLA in various termination letters as an obvious attempt to avoid conceding that GEM Media had repeatedly advised that its relationship with Ava was over. By way of further example, the Plaintiff pointed to Mr. Reyhani's attempts to distinguish between GEM Media and GEM Music in order to explain why letters referring to the latter company were of no consequence. The Plaintiff asserts that this strained his credibility, particularly given that the Defendants themselves have repeatedly asserted that those two companies are in essence one and the same.

[170] I agree with the Plaintiff's characterization of Mr. Reyhani's evidence. I find that Mr. Reyhani advanced a strained interpretation of the correspondence surrounding the purported termination of the CLA, gave evolving testimony regarding the Defendants' authorization to use ATV's content, and gave contradictory evidence about whether GEM Media had withdrawn their purported cancellation of the CLA (which was not corroborated by any contemporaneous documents). I find that portions of Mr. Reyhani's evidence lacked veracity. Where his evidence differed from that of Mr. Turkmen, Ms. Akar or Ms. Görür, I have preferred their evidence over Mr. Reyhani's evidence.

**(2) Pouneh Rahimi**

[171] Ms. Rahimi is a lawyer called to the bar in Ontario, New York and Massachusetts. She has acted as part-time general counsel for both Defendants and Ava since as early as 2012, although she does not represent them in litigation matters. It was through Ms. Rahimi that the various emails she sent to third parties in November 2020, inquiring as to whether GEM Music had the authority to issue a licence to her client to broadcast their programming on a web-based platform, were introduced into evidence. Other than confirming that the emails were sent, Ms. Rahimi provided no other evidence about this correspondence.

[172] It was also through Ms. Rahimi that the exchange of correspondence between counsel for Ava and counsel for GEM Media/GEM Music in May and June of 2018 was entered into evidence. Again, other than confirming that the correspondence was sent and received, Ms. Rahimi provided no other evidence about the correspondence.

[173] On cross-examination, she testified that she had no recollection of: (a) any discussions regarding the CLA between Ava and GEM Media, having drafted the CLA and the specifics of the CLA or the Addendum; (b) GEM Media's purported termination of the CLA in 2015 and the correspondence related thereto; (c) the details of the letter she wrote to counsel for GEM Media on May 8, 2018, or even writing the letter itself; (d) whether she was consulted regarding GEM Media's purported termination of the CLA; (e) any issue related to the distinction between GEM Media and GEM Music; and (f) whether she was aware when she wrote the emails in November

2020 inquiring about obtaining a licence from GEM Music that the Defendants were already broadcasting GEM Music's content.

[174] The Plaintiff asserts that while Ms. Rahimi's evidence was straightforward, she lacked familiarity with many of the facts and issues in this proceeding, including letters that she wrote and received. I agree with the Plaintiff's characterization of her evidence. Given her inability to recall the events between the Defendants, GEM Media and GEM Music, I find that Ms. Rahimi's evidence was of no assistance to the Court in deciding the remaining issues in this proceeding.

**(3) Shala Yazdani**

[175] Ms. Yazdani is the Chief Financial Officer for both Defendants and has been an employee of Gold Line for the last 27 years. She has a bachelor's degree in accounting and has worked in the accounting field for more than 30 years. She is responsible for overseeing the day-to-day bookkeeping and accounting for the various Group of Gold Line Inc. companies, including the Defendants. She testified regarding the various lines of business conducted by each of the Defendants.

[176] She testified regarding financial documentation specific to the global revenues and expenses associated with the GLWiZ Service during the Relevant Time, and how the revenues and expenses were then apportioned and allocated as between each of the Defendants. With reference to Exhibit 166, Ms. Yazdani testified that the GLWiZ Service earned the following revenues



during the Relevant Period, comprised of subscription fees for TV boxes, TV box sales, web subscriptions, Smart TV subscriptions, advertising and accessories:

- \$7,493,108 CAD in 2018
- \$8,297,016 CAD in 2019
- \$9,066,327 CAD in 2020
- \$8,232,859 CAD in 2021

[177] With reference to Exhibit 166, Ms. Yazdani testified that the following costs associated with the GLWiZ Service (cost of sales combined with expenses) were incurred during the Relevant Period, comprised of the cost of boxes, various internet fees, salaries and benefits, rack rental, power and utilities, rent, amortization, food, advertising and promotion, custom and delivery fees, bank charges and merchant fees, commission agents, legal, travel, telephones, computers, other small expenses and customer service expenses:

- \$5,509,110 CAD in 2018
- \$5,855,984 CAD in 2019
- \$6,024,793 CAD in 2020
- \$5,882,664 CAD in 2021

[178] She testified that the total profit (also referred to as net income) earned from the GLWiZ Service during the Relevant Period was as follows:

- \$1,983,998 CAD in 2018

- \$2,441,033 CAD in 2019
- \$3,041,535 CAD in 2020
- \$2,350,195 CAD in 2021

[179] She testified that, until and including 2020, GLWiZ had its financial statements prepared by KPMG. And that, until and including 2019, Gold Line had its financial statements audited by KPMG. Thereafter, both Defendants had their financial statements prepared by NDL, another accounting firm. She testified that she worked with both accounting firms to provide the required documentation and information. She explained how the revenues and expenses associated with the GLWiZ Service were reflected in the financial statements for each of the Defendants and testified that the financial statements of both companies are 100% accurate with all information properly recorded therein.

[180] On cross-examination, Ms. Yazdani addressed the CRA Issues. She acknowledged receipt of a letter from the CRA dated January 21, 2021, regarding the CRA Issue that was addressed to her in her capacity as Chief Financial Officer [CFO] but denied that Gold Line or its management team had engaged in any form of impropriety as asserted by the CRA. She testified that Gold Line is presently litigating the matter before the Tax Court of Canada. There were a number of objections related to the balance of Ms. Yazdani's cross-examination, which I address below.

[181] The Plaintiff asserts that while Ms. Yazdani's evidence about financial matters and accounting practices was often straightforward, her credibility was seriously undermined by the fact that, according to the CRA, she was aware of and participated in the CRA Issue.

[182] I find that Ms. Yazdani gave evidence in a straightforward and measured manner. Even when confronted with the CRA Issue, she was calm, denied any wrongdoing and noted that the findings made by the CRA were currently in dispute before the Tax Court of Canada. For these reasons, and given my findings regarding the CRA Issue, I find Ms. Yazdani to be credible and her evidence reliable. That said, for the reasons detailed below, little turns on her evidence. The Plaintiff has admitted the amount of revenues generated by the Defendants from their use of the Programs and the Live Channel on the GLWiZ Service (subject to a caveat about the method of attribution of revenues, which I ultimately found to be inconsequential).

**(4) Arash Bafekr**

[183] Mr. Bafekr has a Master of Software Engineering degree and extensive experience in networking and infrastructure architecture. He is employed as a Manager with GLWiZ, responsible for software and network architectural design. He also manages the team responsible for software development, software maintenance, network development and network maintenance for the GLWiZ Service (both the web platform and the streaming application). He speaks Farsi and English, but not Turkish.

[184] In relation to his dealings with GEM Media, Mr. Bafekr testified that he would deal directly with Parviz Alaei, who was in a similar position to his within the GEM organization. He stated that he would speak with Mr. Alaei every two to three months.

[185] He testified that while the CLA provided that GEM Media would provide content to Ava via hard drives, this was not a feasible technical solution. Instead, GEM Media set up a password-

protected FTP site, exclusively for the Defendants' use, through which the Defendants could retrieve content. This manner of retrieving content from GEM Media continued until approximately 2018. He testified that none of the content provided by GEM Media through the FTP site included metadata about who owned the Programs.

[186] He testified that in 2017, after Mr. Karimian's death, GEM Media was struggling. Their website was down and the FTP site was not working. As such, he testified that he spoke with Mr. Alaei, and Mr. Alaei suggested that the Defendants record the content directly from GEM Media's satellite instead. Prior to that time, the Defendants had never retrieved content in that manner.

[187] He testified that the Defendants never cut or edited any of the content received from GEM Media. Whatever was retrieved is exactly what the Defendants posted on the GLWiZ Service.

[188] He testified that, based on his dealings with GEM Media and their reputation, he never questioned whether GEM Media actually held the rights to the content they provided to the Defendants.

[189] He testified that Mr. Reyhani decided what content was added or removed from the GLWiZ Service and that Mr. Reyhani was responsible for addressing any complaints made to the Defendants regarding their content. He testified that he only became involved when Mr. Reyhani decided that content should be removed, as it is his team that is responsible for removing (and adding) content to the GLWiZ Service. In terms of removing content, Mr. Bafekr testified that

content is not, *per se*, removed. Content is either active (available to be viewed) or disabled (unavailable for viewing).

[190] With respect to the 2019 Cease and Desist Letter, he testified that the email sending the letter and the attachments thereto was forwarded to him by Mr. Reyhani with an email that stated, “[p]lease remove below movies from our GLWiZ programs”. He stated that anything like this coming from Mr. Reyhani “is extremely serious for me and the whole team.” He testified that the English list of titles was extremely hard to deal with, as the GLWiZ Service team deals with the content by their Farsi titles, so “trying to find these is – trust me, is – some of them are mission impossible trying to go through the whole internet trying to find out which one is which.” Mr. Bafekr testified that his team typically turns to IMDb to search titles, but the difficulty is that they have to find the Turkish title, and then the Farsi title, and sometimes they cannot sort it out. He believes that most of the Programs referred to in the 2019 Demand Letter were removed but acknowledged that it was definitely possible that they made a mistake with removing one or two of them.

[191] On cross-examination, Mr. Bafekr testified that — notwithstanding that Mr. Reyhani had forwarded the attachments to the 2019 Cease and Desist Letter that included the Archive — he does not recall opening the Archive. He confirmed that staff at the Defendants speak Turkish but denied that they could have taken the list of programs in the Archive (which was written in Turkish) and determined the Farsi titles.

[192] He testified that the GLWiZ Service has a feature that allows a user to add programs to their favourites list. When a program is added to a user's favourites list, the only thing that is kept on the user's device is the video ID (not the program itself). Mr. Bafekr testified that, following the delivery of Integra's report, he looked into how it was possible that Ms. Barker could have seen the Programs (disabled by his team in 2019) in 2021. He discovered a technical problem or "bug" associated with the favourites feature that impacted the availability of the Programs on the GLWiZ Service. When Mr. Reyhani instructed his team to remove the Programs listed in the 2019 Demand Letter, these Programs were disabled. However, the "bug" permitted users of the GLWiZ Service to continue to access and view certain Programs that had been disabled, where the user had added the Programs to their favourites list prior to the date the Program was disabled. Mr. Bafekr testified that this was a flaw in the software/network architecture for which he was responsible. He testified that when he discovered the "bug", he brought it to Mr. Reyhani's attention right away.

[193] Mr. Bafekr also testified regarding what a user sees on the GLWiZ Service website and provided evidence regarding static and dynamic content and caches. He testified that if a user does not clear the cache on their browser and they go to the GLWiZ Service website, they may not see what is actually currently being displayed.

[194] He testified that the Defendants' servers store data about how many times content is watched and for how long. He confirmed that the chart marked as Exhibit 151 (and set out in paragraph 79) was pulled from their system and covers the sessions and hours that viewers watched both the Programs and the Live Channel.

[195] He testified that in October 2015, when GEM Media sent the email purporting to terminate the CLA, nothing had changed in terms of his dealings with Mr. Alaei. GEM Media continued to make content available to the Defendants through the FTP site. He noted no difference in the relationship between GEM Media and the Defendants right up to Mr. Karimian's death in 2017.

[196] On cross-examination, he conceded that: (a) if there was a problem with the relationship between the Defendants and GEM Media, Mr. Reyhani would have the most knowledge about that as Mr. Bafekr was not involved in contracting issues; and (b) he had no discussions with Mr. Alaei or anyone at GEM Media after 2018.

[197] The Plaintiff asserts that while Mr. Bafekr's evidence on many technical issues was at times straightforward, he was frequently evasive and argumentative, including when he perceived questions as potentially adverse to his employer's interest in this litigation. The Plaintiff asserts that the Court should take note of the fact that Mr. Bafekr also denied facts that were plainly true, such as Ms. Barker's ability to search for the Programs by title and that the content reflected in the videos taken by Ms. Barker of the GLWiZ Service was in fact available on the GLWiZ Service.

[198] I agree with the Plaintiff that on cross-examination, Mr. Bafekr was at times argumentative, particularly as is related to the "bug" issue and how it was that Ms. Barker was able to see what she recorded on the GLWiZ Service in 2021. I also find that his explanation for the difficulty encountered in trying to locate the Farsi names for the Programs based on the English or Turkish names lacked sincerity.

**(5) Ata Moeini**

[199] Mr. Moeini is the founder, Chief Executive Officer and main investor of Gold Line. He testified with the assistance of an interpreter. He testified as to the genesis of Gold Line and its various lines of business.

[200] He testified regarding his understanding of GEM Media's size and reputation in the industry, stating that it was considered to offer the best Farsi language satellite channels. GEM Media was operated by Mr. Karimian, who was able to secure advertising revenues from all of the large corporations targeting the Farsi-speaking market. He testified that Mr. Karimian was a close friend, and Mr. Moeini was like an older brother to him, often offering him advice.

[201] He testified regarding the business relationship between the Defendants and GEM Media and the personal falling out he had with Mr. Karimian in October 2015. He stated that they reconciled their personal relationship shortly after their falling out (approximately 10 to 20 days later) and while he was aware that GEM Media purported to terminate the CLA at the time of the falling out, he never spoke with Mr. Karimian about the business side of things after their reconciliation.

[202] He also testified regarding the November 2017 meeting with the Plaintiff, during which he provided the Plaintiff with a demonstration of the GLWiZ Service. He stated that the Plaintiff noted a picture of one of their Programs during the demonstration, advised him that it belonged to them and that GEM Media had not purchased the rights for it. Mr. Moeini asked the Plaintiff to



send a letter to the Defendants so that they could verify with GEM Media whether they paid for that specific Program title, and if they had not, that the Defendants would remove it. He testified that the Plaintiff never sent the requested letter.

[203] He testified that he was not aware at the time that the GLWiZ Service included the Plaintiff's Programs without authorization and offered an apology to the Plaintiff. He stated that he relied on GEM Media's full assurance that they had the rights to the Programs to enable the Defendants to put them on the GLWiZ Service.

[204] On cross-examination, Mr. Moeini confirmed that Eren Ercan, an employee of the Defendants, spoke Turkish.

[205] When questioned about the breakdown in the relationship between GEM Media and Ava/the Defendants, Mr. Moeini was unable to recall many of the details surrounding the correspondence sent between the parties from 2015 onward and testified that these matters were mainly handled by Mr. Reyhani and the lawyers.

[206] The Plaintiff asserts that Mr. Moeini's evidence was generally straightforward, but that he lacked familiarity with many of the facts and issues in this proceeding which he testified were handled by Mr. Reyhani and the Defendants' lawyers. I agree with the Plaintiff's characterization of Mr. Moeini's evidence. That said, I find Mr. Moeini to be a credible witness and that, for those issues upon which he was able to give evidence, his evidence was generally reliable.

### **III. Preliminary Issues**

[207] During the course of the trial, numerous evidentiary objections and other evidentiary disputes arose. I made rulings on certain objections during the trial but reserved my rulings on a number of other objections and issues for determination as part of this Judgment. As a result, various documents (referred to below) were marked as exhibits for identification purposes only, pending my ruling as to their admissibility. I also permitted the parties to examine and cross-examine witnesses in relation to the disputed evidence, on the understanding that if the disputed evidence was determined to be inadmissible, the related witness testimony would also be found inadmissible.

#### **A. Plaintiff's Request to Withdraw an Admission**

[208] At the close of the evidentiary portion of the trial, the Plaintiff requested that it be granted leave to withdraw the following admission as set out at paragraph 104 of the RASF:

Calculated as a *pro rata* share of revenue based on watch hours, the total revenue that the Live Feed and the Programs generated for the Defendants was \$65,000 or less (although the Plaintiff disagrees that such a calculation would be an appropriate measure of damages).

[Footnote omitted.]

[209] While the Plaintiff had previously put the Defendants and the Court on notice that it would be seeking leave to withdraw this admission, it took no steps to do so before the close of evidence and then sought to informally do so over the objection of the Defendants. I raised concerns about the timing and informality of the request and advised the parties to address the issue in their written closing submissions.

[210] The Plaintiff did not address the request to withdraw its admission in its closing written submissions. Accordingly, I issued a direction prior to the closing arguments advising, amongst other things, that the Court took the Plaintiff's silence to mean that the Plaintiff had abandoned its request to withdraw. The Plaintiff then provided an unsolicited supplemental written submission that confirmed that the Plaintiff was not abandoning the request to withdraw and included a two-paragraph submission on the issue.

[211] However, during the course of its oral closing arguments, the Plaintiff advised that it was in fact abandoning the request to withdraw the admission. Accordingly, I need not make a determination in relation to this request.

#### **B. Dispute Over a Portion of the RASF**

[212] During the course of the trial, it became apparent that the parties had a diverging understanding as to what they had agreed to in a portion of their RASF. Paragraph 99 of the RASF states:

The chart below shows, for each year from 2014 to 2022, the number of occasions (sessions) on which GLWiZ Service users watched the Programs and the Live Feed, the number of hours that users watched that content, and the amount of watch hours that the Programs and Live Feed represented as a portion of all of the watch hours for all content on the GLWiZ Service.

[Emphasis added.]

[213] The chart which followed paragraph 99 of the RASF is the same chart reproduced herein at paragraph 79.

[214] In an effort to explain the chart, paragraphs 100 through 102 of the RASF state:

100. In 2018, GLWiZ subscribers initiated 731,785 separate on-demand sessions where they watched the Programs for 332,896.85 hours.

101. In 2019, GLWiZ subscribers initiated 559,418 separate on-demand sessions where they watched the Programs for 345,280.04 hours.

102. In 2020, GLWiZ subscribers initiated 474,382 separate on-demand sessions where they watched the Programs for 320,076.84 hours.

[Emphasis added.]

[215] There is an inconsistency between paragraph 99 and paragraphs 100–102 as to whether the data in the chart includes both Programs and Live Channel viewing (as stated in paragraph 99) or viewing of the Programs only (as stated in paragraphs 100–102).

[216] The Defendants urged the Court to interpret the RASF as covering both the Programs and the Live Channel viewing. However, I will not engage in an interpretation of the RASF. Rather, I have simply disregarded the disputed portions of the RASF and will consider the evidence led from the witnesses on this issue. In that regard, both Mr. Reyhani and Mr. Bafekr testified that the chart covers both the Programs and the Live Channel. This evidence was not challenged on cross-examination. The Plaintiff also led no evidence to the contrary. Accordingly, based on witness testimony, I find that the data in the chart (reproduced herein at paragraph 79) includes both Programs and Live Channel viewing.

**C. Admissibility of Documents Appended to the Plaintiff's Written Representations**

[217] The Plaintiff appended to its written closing submissions excerpts from the motion record filed by the Defendants on a motion for a stay of proceedings brought in Court File no. T-410-21; and the written representations filed by the Defendants in Federal Court of Appeal File no. A-76-22. None of these documents were marked as exhibits during the trial. In their written submissions, the Plaintiff pointed to these documents to show that the Defendants had, in other proceedings before this Court and the Federal Court of Appeal, treated GEM Media and GEM Music as effectively one and the same. The Defendants objected to the admissibility of these documents.

[218] It was improper for the Plaintiff to attempt to introduce new evidence in this manner. If the Plaintiff wanted these documents in evidence, they were obligated to put them to a witness, such as Mr. Reyhani, on cross-examination. Accordingly, Appendix B and paragraphs 49 through 52 of the Plaintiff's written closing submissions are hereby struck.

**D. Admissibility of Mediation-Related Documents**

[219] The Defendants objected to the admissibility of a number of documents under Rule 388 on the basis that the evidence "divulges confidential information about the dispute resolution conference" held before Associate Judge Cotter.

[220] Before turning to the evidence itself, the language of Rule 388 of the *Federal Courts Rules*, SOR/98-106 [Rules] must be recalled. Rule 388, entitled “Confidentiality”, provides:

**388** Discussions in a dispute resolution conference and documents prepared for the purposes of such a conference are confidential and shall not be disclosed.

**388** Les discussions tenues au cours d’une conférence de règlement des litiges ainsi que les documents élaborés pour la conférence sont confidentiels et ne peuvent être divulgués

[221] The first disputed document is a letter dated December 20, 2023, from Plaintiff’s counsel (FC429), that attached a 2023 Expert Report (the admissibility of which will be addressed below). The Plaintiff attempted to tender the letter through Ms. Bayam. The Defendants objected to the admissibility of the document, in part, on the basis that the final paragraph of the letter described the contents of something said by the Defendants during the course of the mediation. I queried whether the redaction of the final paragraph of the letter prior to its admission into evidence would eliminate this ground of objection. Counsel for the Defendants advised that it was their view that the final paragraph “taints the entire letter.” We took the lunch break to allow for a redacted version of the letter to be prepared and placed before me for consideration and I indicated that, after the break, I would then hear submissions as to why the balance of the letter somehow improperly reveals comments made at the mediation.

[222] Following the lunch break, I asked counsel for the Defendants if there was still an objection related to the letter in its redacted form and counsel advised that their “objection regarding the connection to the mediation I think has been taken care of.” The letter was then marked for identification (Exhibit E) as the Defendants had raised other objections related to the letter, which I will deal with separately.

[223] As the Defendants abandoned their mediation-related objection to the letter during the course of the trial, it is not open to the Defendants to revive that objection in their closing arguments. Accordingly, subject to my determination below, I find that the mediation-related objection has been abandoned and the letter is admissible.

[224] The second disputed item is a bundle of videos and screenshots taken by Mr. Turkmen on November 11, 2023, during the mediation, which were marked for identification purposes as Exhibits G, H, I, J, K and L. Specifically:

- A. Exhibit G (FC136) and H (FC137) are photographs of Mr. Turkmen's laptop showing a total of 46 live channels available on the GLWiZ Service, Exhibit G showing the first part of the list of channels and Exhibit H showing the second part of the list of channels. Mr. Turkmen's evidence was that Exhibit H showed two live channels owned by DM (Dream Turk and CNN Turk) that he knew the Defendants did not have rights to broadcast.
- B. Exhibit I (FC138) is a video of Mr. Turkmen's laptop showing the CNN Turk channel being broadcast live on the GLWiZ Service.
- C. Exhibit J (FC139) is a video of Mr. Turkmen's laptop showing the Fox Turkiye and ATV channels being broadcast live on the GLWiZ Service. At the 23 second mark of this video, the screen changes and we can see, for two seconds, a Zoom screen showing the names of at least some of the participants in the mediation session. While the visual changed, during those two seconds, the audio remained the live

broadcast of the ATV channel. The video then returned to the broadcast of the ATV channel.

D. Exhibit K (FC140) is a video of Mr. Turkmen's laptop showing the ATV, Fox Turkiye, CNN Turk, TV2, TRT Spor, Dream Turk, Tele 1, Number One Turk, Power TV and a Haber channels being broadcast live on the GLWiZ Service.

E. Exhibit L (FC141) is a screenshot of Mr. Turkmen's laptop showing 24 of a total of 86 live channels available on the GLWiZ Service, including the Live Channel.

[225] There is some controversy as to when the screenshot at Exhibit L was taken. Mr. Turkmen could not recall but, when prompted by counsel indirectly, he agreed with the suggestion that it may have been taken around November of 2023. However, the Defendants assert that that is not possible, as it was produced as part of the Plaintiff's Affidavit of Documents in 2021. The Plaintiff made no submissions on this issue. The focus of the Plaintiff's examination of Mr. Turkmen in relation to this screenshot was on the fact that it showed the Live Channel. However, the parties have already agreed in their RASF that the Live Channel was not on the GLWiZ Service in 2022, or thereafter. As such, I find that this screenshot was not taken in November 2023 and must have been taken at an earlier date. In the circumstances, there is no objection that this screenshot offends Rule 388.

[226] As for the remaining videos and screenshots, the Defendants' Rule 388 objection centres primarily on the fact that the videos and screenshots were made during the course of the mediation. There is no merit to this objection. The videos (with the exception of Exhibit J) and the screenshots are unrelated to the mediation and simply happen to have been taken at a time when Mr. Turkmen



was participating in the mediation. They do not reveal any discussions from the mediation, nor can they be characterized as “documents prepared for the purpose” of the mediation. As for Exhibit J, two seconds of the video reveal the names of at least some of the participants at the mediation. The video does not record any of the discussions held during those two seconds of the mediation, as the audio remained that of the ATV channel, and the video showed only name plates. Rule 388 is not intended to protect this type of evidence from disclosure.

[227] The Defendants assert that:

Kanal D’s attempt to enter those mediation videos as similar fact evidence leaves the Defendants in an impossible position, as any further cross-examination to test Mr. Turkmen’s evidence would have inevitably called for evidence that would further breach the confidentiality protections found in Rule 388. Indeed, during cross-examination, the court cautioned counsel not to ask further questions about the video because of its connection to the mediation.

[Footnotes omitted.]

[228] The Defendants’ assertion is disingenuous. During Mr. Turkmen’s cross-examination, it was the Defendants who began questioning Mr. Turkmen about the mediation and then asked questions about who participated in the mediation. I stated to counsel for the Defendants, “I’m not sure why we’re getting into details of the mediation” and counsel responded, “I don’t want to go any further. That is my last question on that subject.” The Defendants were not foreclosed on their ability to cross-examine Mr. Turkmen in relation to the content and the creation of these videos and screenshots, which is the only potential relevance that they have to this proceeding.

[229] Accordingly, all of the Defendants' objections related to the admissibility of Exhibits G, H, I, J, K and L on the basis of Rule 388 are dismissed. However, there were other objections raised by the Defendants regarding this evidence, which are addressed below.

#### **E. Admissibility of the Turkish Court Documents**

[230] The Defendants object to the admissibility of various documents that I will refer to collectively as the Turkish Court Documents, on the basis that: (a) they are hearsay; (b) two of the documents are experts reports that do not comply with the *Rules*; and (c) the documents are submissions and not findings made by any Turkish court. Before turning to the objections, I will describe each of the Turkish Court Documents and the evidence related thereto.

[231] The first document was marked for identification purposes as Exhibit A (FC173). The exhibit includes both the original Turkish version and an English translation, entitled, "E-DETERMINATION REPORT" [E-Determination]. It is dated May 21, 2019. As explained by Ms. Bayam, the document is an electronic evidence determination report procured by the Plaintiff's counsel in Turkey, Utku Karabayraktar. Ms. Bayam testified that the government of Turkey operates an online portal that permitted the Plaintiff to enter an inquiry regarding the GLWiZ Service. She testified that the system then took screenshots of the GLWiZ Service (as requested by the entered data) and assigned the inquiry an application number. The Plaintiff then took the generated record to an independent notary and the notary issued and signed the report. The report includes screenshots of the GLWiZ Service and states that on May 21, 2019, the GLWiZ Service hosted a variety of the Plaintiff's Programs, and a number of episodes thereof, many of which are

not at issue in this proceeding. It should be noted, however, that the screenshots included Waiting for the Sun and Time Goes By, which are at issue in this proceeding.

[232] There was a disagreement between counsel for the Defendants and Ms. Bayam as to who captured the screenshots. Counsel for the Defendants stated, based on the language of the English translation (which had been agreed to by the parties), that it was Mr. Karabayraktar. Ms. Bayam disagreed and stated that, based on her knowledge of the portal and her reading of the original Turkish version of the E-Determination, it is the portal and not Mr. Karabayraktar that took the screenshots. The Defendants did not call any witness to testify about the operation of the portal so as to contradict Ms. Bayam's evidence. In the circumstances, I accept that it is the portal, and not Mr. Karabayraktar, that took the screenshots.

[233] The Defendants acknowledge that the E-Determination was attached to the 2019 Warning Letter sent to the Defendants by email in August 2019, but note that the Defendants were only sent the original Turkish version and not the English translation thereof. This is of note as the Defendants assert that none of Mr. Moeini, Mr. Reyhani and/or Mr. Bafekr can understand Turkish.

[234] The next two documents were marked for identification as Exhibits B (FC426) and C (FC171). They are the same document — namely, the 2019 Expert Report authored by Ms. Hürmüz — with Exhibit B being the original document in Turkish and Exhibit C being the English translation thereof. The Turkish title of the document is “BİLİRKİŞİ RAPORU” and the English translation thereof, as agreed between the parties, is “Expert Report”. The documents bear the

header of the Istanbul Second Intellectual and Industrial Rights Law Court (which is a specialized intellectual property court), state that the subject is a “Declaratory Report”, list the requester as the Plaintiff through Mr. Karabayraktar, list the date of request made by the Plaintiff as June 6, 2019, and list the date of the verdict (the date the Court decided to appoint Ms. Hürmüz) as June 24, 2019.

[235] Under the heading “Assignment”, the 2019 Expert Report states:

In the case file numbered 2019/136, which was assigned to me as an expert by your court, I was requested to prepare a report to ascertain whether the series [Forbidden Love, Time Goes By, Secrets, Waiting for the Sun], BİNBİR GECE, İFFET, ÇALIKUŞU, and [Fallen Angel], owned by the party seeking determination, are available on the mobile application named GLWiZ, and if so, to identify the number of episodes aired and the total runtime of those episodes. My findings from the examination are as follows.

[236] The 2019 Expert Report goes on to set out the steps that the author took to locate the programs on the GLWiZ Service. The parties agree that the 2019 Expert Report stated that each of Forbidden Love, Time Goes By, Secrets, Waiting for the Sun and Fallen Angel were available on the GLWiZ Service. However, the author’s attempts to access Forbidden Love and Time Goes By produced error messages instead of opening streams of those Programs.

[237] The 2019 Expert Report concludes by stating, “I respectfully submit my report for your Honourable Court’s consideration regarding the legal situation” and was signed on July 8, 2019.

[238] Ms. Bayam testified that it is the Turkish Court that appointed Ms. Hürmüz and that the 2019 Expert Report is a Court-generated document bearing the seal of the Istanbul Second

Intellectual and Industrial Rights Law Court. An original copy of Exhibit B as issued by the Istanbul Second Intellectual and Industrial Rights Law Court was available for inspection during the trial.

[239] While Exhibit C is entitled an “Expert Report”, Ms. Bayam testified that the document contains no opinions but, rather, only factual determinations about the GLWiZ Service and the Programs thereon. In terms of how the 2019 Expert Report came about, Ms. Bayam testified that the Plaintiff would have made a demand to the Istanbul Second Intellectual and Industrial Rights Law Court to capture the requested evidence about their programming on the GLWiZ Service. The Istanbul Second Intellectual and Industrial Rights Law Court would have then appointed the expert and the expert would have completed the work without any involvement of the Plaintiff. Ms. Bayam testified that the Plaintiff has no control over the expert and that she does not think that the Plaintiff has any ability to compel the expert to come to Canada to speak about the 2019 Expert Report. The Defendants did not tender any evidence to contradict Ms. Bayam’s testimony regarding how the 2019 Expert Report came about.

[240] The final document, marked for identification as Exhibit E (FC429), is the redacted December 20, 2023 letter from counsel for the Plaintiff, discussed above, which is attached to a 2023 Expert Report written only in Turkish (although it is mistakenly referred to in the letter as a Court Detection). The 2023 Expert Report is similar in nature to the 2019 Expert Report, although it was based on a request to capture different content on the GLWiZ Service approximately four years later.

[241] Ms. Bayam testified that in 2023, the Plaintiff noticed that the live channels belonging to some of their related companies were available on the GLWiZ Service and requested an expert report from the Turkish court regarding those channels, which included CNN Turk, Dream Turk and Dream Turk Radyo. Ms. Bayam testified that those live channels are owned and operated by related entities, including DM, and that the Defendants were not authorized to broadcast those live channels.

[242] There is no English translation of the 2023 Expert Report in evidence and Ms. Bayam did not provide clear testimony as to what findings were made in the 2023 Expert Report regarding the content available on the GLWiZ Service.

[243] Turning now to the Defendants' objections. The Defendants' first argument is that the Turkish Court Documents constitute inadmissible hearsay evidence. The Plaintiff relies on section 23 of the *Canada Evidence Act*, RSC, 1985, c C-5 [CEA] to seek to have the Turkish Court Documents admitted under that statutory exception to the hearsay rule. However, even where section 23 is engaged, relevance and admissibility must still be established [see *Pfizer Canada Inc v Apotex Inc*, 2007 FC 971 at para 113]. Documents from a foreign court proceeding are not rendered admissible for the truth of their contents simply because they are a judicial record or are tendered under section 23 of the CEA [see *R v Caesar*, 2016 ONCA 599 at para 47]. This Court has endorsed the following statement from the Ontario Court of Appeal regarding the limits of section 23 of the CEA:

...[T]hese avenues of proof are just that, in my view – procedural mechanisms whereby evidence of the court proceeding or record may be proved, without having to provide proof of the authenticity of the document by calling the court officer or stenographer who

made the record. In other words, they provide a shortcut to proof of authenticity. However, they do not render the hearsay content of court proceedings or records admissible for the truth of their contents where they would not otherwise be admissible for that purpose in the circumstances. [...] [Emphasis omitted.]

[see *Canada (Citizenship and Immigration) v Jozepović*, 2022 FC 21 at paras 23–24, citing *R v Caesar*, *supra* at para 40]

[244] To be admissible for the truth of their contents, the Plaintiff must demonstrate that the Turkish Court Documents fall within the principled exception to the hearsay rule and that the prejudice of their admission does not outweigh their probative value or that it was the recorder’s duty to validate the truth of their contents [see *R v Caesar*, *supra* at para 47].

[245] The Plaintiff argues that the Turkish Court Documents should be admitted pursuant to the principled approach to hearsay, as:

- A. There can be no prejudice resulting from the admission of hearsay evidence in the circumstances of this case as the truth of the evidence is not in dispute — the Defendants have admitted that each of the Programs were on the GLWiZ Service at some point during the Relevant Period and have admitted that they infringed the Plaintiff’s copyright.
- B. The Turkish Court Documents only confirm admitted facts and do not implicate any of the evidentiary dangers which the exclusionary rule was designed to address — as such, there is no basis to attack the reliability of the evidence.
- C. The documents are necessary as it is not possible to compel Turkish officials to attend the trial in Canada.

[246] The Defendants assert that the Turkish Court Documents are not necessary, as the Plaintiff could have obtained letters rogatory to take the evidence of the Court officials. Moreover, a representative of the Plaintiff could simply have recorded the same evidence and then given that evidence at trial.

[247] I agree with the Defendants that this evidence was not necessary to demonstrate that the Programs captured on the E-Determination and 2019 Expert Report were on the GLWiZ Service as at the date of those documents. These Turkish Court Documents were not the only means by which such evidence could have been put before the Court. Moreover, and importantly, this evidence is not necessary as the Defendants have admitted that all of the Programs were on the GLWiZ Service at some point in time during the Relevant Period and have admitted liability.

[248] As such, I am not satisfied that the Plaintiff has demonstrated that the E-Determination and the 2019 Expert Report should be admitted for the truth of their contents. However, these documents shall be admitted into evidence not for the truth of their contents, but for the fact that they were sent to and received by the Defendants and put them on notice of the Plaintiff's allegations of copyright infringement for the Plaintiff's content referenced therein.

[249] With respect to the 2023 Expert Report, even if the Plaintiff had established the necessity of this evidence, I find that it would be impossible for me to admit this document for the truth of its content as I have insufficient evidence as to what this document actually says. The Plaintiff did not tender into evidence an English version of this document and Ms. Bayam's evidence was far from clear as to the content of the 2023 Expert Report. As such, I will admit this document into



evidence not for the truth of its content, but for the fact that it was sent to and received by the Defendants and, together with the December 20, 2023 letter, put the Defendants on notice of further allegations of copyright infringement of other content beyond the Programs and the Live Channel.

[250] I note that during closing arguments, the Defendants confirmed that they do not object to the admissibility of the Turkish Court Documents if they are admitted not for the truth of their contents, but rather for the fact that they were received by the Defendants and they say what they say. The Defendants did object to any other use of the Turkish Court Documents, such as to show that the Programs remained on the GLWiZ Service indefinitely or to show that a particular Program was on the GLWiZ Service on a particular date. To be clear, no such use of the documents is being made, as that would require the contents of the documents to be taken as true.

[251] In light of my determination, I need not go on to address the Defendants additional arguments that the 2019 and 2023 Expert Reports do not comply with the *Rules* and that the Turkish Court Documents are submissions and not findings.

**F. *Admissibility of Documents Related to the CRA Issue***

[252] During the course of the Plaintiff's cross-examination of Ms. Yazdani, I admitted into evidence (over the Defendants' objection) a letter dated January 21, 2021, from the CRA addressed to Ms. Yazdani in her capacity as CFO of Gold Line. The letter advised that, for the period from June 1, 2016, to December 31, 2018: (a) the CRA had made a determination that some of Gold Line's business transactions related to the buying and selling of telephone minutes from and to

other alleged companies were sham transactions; (b) a proposed adjustment would be made to reduce the sales reported by approximately \$320 million CAD on its GST/HST returns; (c) a proposed adjustment of approximately \$37 million CAD would be made to the net tax on Gold Line's GST/HST returns; (d) a proposed penalty would be applied; and (e) Gold Line had 30 days to provide information for the CRA to consider regarding the proposed adjustments, failing which the audit would be finalized based on the adjustments proposed and a Notice of Reassessment would be provided. I found that this letter constituted a business record of Gold Line's and, as Ms. Yazdani acknowledged receipt and knowledge thereof, the letter was admissible.

[253] Thereafter, also during cross-examination, the Plaintiff put to Ms. Yazdani two additional documents. Exhibit S (FC326) is a motion record filed by Gold Line in the context of a pending appeal by Gold Line before the Tax Court of Canada, related to the CRA's resulting Notice of Reassessment. Exhibit T (FC330) is the affidavit of Clara Massara, a Tax Appeals Case Specialist at the CRA, which exhibited a 2021 Position Paper prepared by the CRA regarding the alleged sham transaction and the GST/HST Audit Report for Gold Line for the relevant period of time. The Defendants objected to the admissibility of both documents.

[254] The Defendants assert that the use of the documents breaches Rule 232 of the *Rules*, as the Plaintiff sprung these documents on the Defendants without previously disclosing them. Rule 232 provides:

**Undisclosed or privileged document**

**232 (1)** Unless the Court orders otherwise or discovery of documents has been waived by the parties, no document shall be

**Documents qui ne peuvent servir de preuve**

**232 (1)** À moins que la Cour n'en ordonne autrement ou que les parties n'aient renoncé à

used in evidence unless it has been

leur droit d'obtenir communication des documents, un document ne peut être invoqué en preuve que dans l'un des cas suivant :

(a) disclosed on a party's affidavit of documents as a document for which no privilege has been claimed;

a) il est mentionné dans l'affidavit de documents de la partie et, selon celui-ci, aucun privilège de non-divulgence n'est revendiqué;

(b) produced for inspection by a party, or a person examined on behalf of one of the parties, on or subsequent to examinations for discovery; or

b) il a été produit par l'une des parties ou par une personne interrogée pour le compte de celle-ci pour examen, pendant ou après les interrogatoires préalables;

(c) produced by a witness who is not, in the opinion of the Court, under control of the party.

c) il a été produit par un témoin qui, de l'avis de la Cour, n'est pas sous le contrôle de la partie.

### Exception

### Exception

(2) Subsection (1) does not apply to a document that is used solely as a foundation for, or as a part of a question in, cross-examination or re-examination.

(2) Le paragraphe (1) ne s'applique pas aux documents qui sont utilisés uniquement comme fondement ou partie d'une question posée à un contre-interrogatoire ou à un réinterrogatoire.

[255] As provided by Rule 232(2), the Plaintiff was entitled to put these documents to Ms. Yazdani on cross-examination without previously disclosing them to the Defendants. As such, the Defendants' Rule 232 objection is dismissed.

[256] The Defendants also object to the admissibility of these documents and related questioning on the basis that the documents are unreliable as they: (i) are textbook examples of hearsay; (ii) contain mere allegations and opinions that are before another court; (iii) were used solely to contradict the Plaintiff's admission of the Defendants' revenues in the RASF; (iv) raise the risk of an inconsistent finding; and (v) are simply irrelevant. The Plaintiff did not provide any written submissions in response to these objections nor to clarify what uses they intended to make of the disputed evidence (with one exception, as noted below). At the hearing, when the Plaintiff sought to introduce this evidence, the Plaintiff asserted that the evidence was relevant to: (a) the accuracy of the Defendants' financial statements and whether their revenue figures can be trusted; and (b) the credibility of Ms. Yazdani.

[257] I agree with the Defendants that the documents are not relevant to any of the substantive issues remaining to be determined by the Court. To the extent that the Plaintiff seeks to use the CRA Issue to cast doubt on the veracity and credibility of the Defendants' financial statements, the Plaintiff has admitted the total revenues earned by the Defendants from the GLWiZ Service during the Relevant Period (albeit disagreeing with the manner of attribution of total revenues to the Plaintiff's content) and abandoned its attempt to withdraw that admission. As such, the Court is not required to make a determination of the total revenues earned by the Defendants.

[258] The Plaintiff asserted, in their written and oral closing submissions, that the CRA Issue was relevant to the credibility of Ms. Yazdani, the Defendants and the other members of senior management, and the reliability of their evidence. As addressed below, I find that the evidence is

inadmissible for that purpose as the Plaintiff has failed to establish that the probative value of the evidence related to the CRA Issue exceeds its prejudicial effect.

[259] Accordingly, I find that Exhibits S and T and the related questioning thereon are inadmissible.

[260] Moreover, I decline to give any weight to the January 21, 2021 letter, as, for the reasons stated above, I find that the CRA Issue is irrelevant to the remaining substantive issues for determination.

#### **G. Similar Fact Evidence Objections**

[261] The similar fact evidence rule (also referred to as similar act evidence rule) operates where a party proffers evidence of bad character of a party on an occasion external to the act or omission in dispute in a proceeding. The underlying rationale for the rule is that unfair prejudice may cause the trier of fact to make a wrong decision [see Sidney N Lederman, Alan W Bryant, Michelle K Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 5th ed (Canada: LexisNexis) at 866]. Similar fact evidence is circumstantial evidence and its probative value depends on the validity of the inference that it could support in relation to the matters in issue [see *R v Handy*, 2002 SCC 56 at para 26].

[262] The leading case on similar fact evidence is the Supreme Court of Canada's decision in *R v Handy*, *supra*. While it is a criminal law case, courts have found that it applies equally in civil proceedings [see *Kajat v Arctic Taglu (The)* (CA), [2000] 3 FC 96 at para 21] As a general rule,

similar fact evidence is presumptively inadmissible as it carries two types of unfair prejudice — reasoning prejudice and moral prejudice [see *R v Handy*, *supra* at paras 42 and 55]. Reasoning prejudice is the risk of distraction, confusion or of undue consumption of time, and the danger that the trier of fact may have difficulty disentangling the subject matter of the proceeding from the similar facts [see *R v Gill*, 2021 ONSC 6797 at para 14]. Moral prejudice is the risk that a person will be found liable because they are a “bad person”, rather than based on the evidence [see *R v Gill*, *supra* at para 13; *Williams v Wai-Ping*, 2005 CanLII 16602 (ONSC) at para 13]. However, the risk of prejudice is generally considered to be reduced in a judge alone trial, such as this [see *R v TB*, 2009 ONCA 177 at paras 26–29].

[263] The onus is on a party proffering the evidence to overcome that presumption, by showing that, on a balance of probabilities, the probative value of the similar fact evidence outweighs its potential prejudice and thereby justifies its reception [see *R v Handy*, *supra* at para 55].

[264] Whether or not the probative value exceeds the prejudicial effect can only be determined in light of the purpose for which the evidence is proffered. As such, the proffering party must identify the issue(s) for which it seeks to use the evidence. Similar fact evidence may be admissible if it goes beyond showing general propensity and is more probative than prejudicial in relation to an issue in the proceeding [see *R v Handy*, *supra* at paras 71–74]. The inferences sought to be drawn from the evidence of similar facts must accord with common sense, intuitive notions of probability and the unlikelihood of coincidence [see *Belton v Spencer*, 2021 ONSC 2029 at para 61, citing *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, *supra* at 811].

[265] The strength of the similar fact evidence and its credibility must also be considered. If the similar fact evidence is not believable, it has no probative value and it must be excluded [see *Belton v Spencer, supra* at para 63].

[266] An opposing party should also be given fair notice of the similar fact evidence so as to permit them an opportunity to investigate the incident, prepare for cross-examination and adduce contrary evidence (if required). That said, a lack of fair notice may not establish that an evidence's admission is unfair or oppressive [see *Kajat v Arctic Taglu (The), supra* at paras 21–22, citing *Mood Music Publishing Co Ltd v De Wolfe Ltd*, [1976], 1 All ER 763 (CA)].

[267] The *R v Handy* analysis can only be carried out by the trial judge after hearing the evidence unless, of course, it is immediately evident from counsel's description that it will not pass muster [see *Greenhalgh v Douro-Dummer (Township)*, 2009 CanLII 57148 (ONSC) at para 29]. As such, in this case, I advised the parties that the disputed documents would be marked for identification and counsel would be able to examine and cross-examine the witnesses in relation to the disputed similar fact evidence. Then, as part of my Judgment, I would decide if the evidence was admissible and if so, for what purpose.

[268] The evidence objected to as constituting inadmissible similar fact evidence generally falls into two categories: (i) evidence from the Plaintiff's employees that the Defendants have infringed copyrights that do not belong to the Plaintiff but allegedly belong to companies that share a parent company with the Plaintiff; and (ii) evidence from an unrelated third party witness of acts of copyright infringement by the Defendants that are unrelated to the Plaintiff.

[269] The Defendants object to the admissibility of Exhibits E, G, H, I, J, K, L and O and testimony related thereto, as well as the entirety of the testimony of Ms. Akar, on the basis that it constitutes inadmissible similar fact evidence. All of the aforementioned evidence has previously been described in these Reasons, with the exception of Exhibit O.

[270] Exhibit O (FC432) is a video taken by Ms. Görür in April of 2024 of the GLWiZ Service on her laptop. The video shows that a live broadcast of a music channel and CNN Turk, operated by DM, were available on the GLWiZ Service as well as on the Plaintiff's radio channel. Ms. Görür testified that, to her knowledge, the Defendants were never given authority or permission to do anything with this content.

[271] The Defendants objected to the admissibility of Exhibit O on the basis that it had never been produced by the Plaintiff. Counsel for the Plaintiff confirmed that he had only received it the night before the third day of trial and uploaded it into the e-trial toolkit upon receipt. I find that Exhibit O is inadmissible as, in breach of Rule 232, it was not previously disclosed by the Plaintiff either as part of the discovery process or at any time before the trial began. The Plaintiff also made no submissions as to why I should nonetheless admit the video into evidence, so I decline to do so. However, Ms. Görür's testimony about what she observed on the GLWiZ Service in December of 2023 and April of 2024 is not inadmissible on this basis, as Rule 232 only refers to documentary evidence. The admissibility of her testimony will depend on my finding regarding the similar fact evidence issue.



[272] As noted above, whether or not the probative value of a piece of evidence exceeds the prejudicial effect thereof, can only be determined in light of the purpose for which the evidence is proffered. The Plaintiff states that it intends to use the disputed evidence to:

- A. Demonstrate the need for a wide injunction by showing that the Defendants continue to infringe copyright belonging to the Plaintiff and others.
- B. Demonstrate the need for a statutory damage award that provides an adequate measure of specific deterrence to the Defendants.
- C. Rebut the Defendants' defences as pleaded in their Statement of Defence. Specifically, in response to the allegation at paragraph 2 of the Statement of Claim that the Defendants deliver streamed content to customers without securing the underlying rights from creators and copyright owners, the Defendants' pleading at paragraph 5 of their Statement of Defence that, "...the Defendants take steps to ensure the Defendants have secured the underlying rights from creators and copyright owners" and then put the Plaintiff on strict proof of their allegation to the contrary.
- D. Undermine the credibility of the Defendants' witnesses.
- E. Demonstrate that, during the litigation, the Defendants continued to engage in unauthorized activities, which the Plaintiff asserts is a relevant consideration for statutory damages.

[273] The circumstances of this case are unique in that the Defendants have conceded infringement. Evidence of propensity, such as the Defendants having infringed copyright in the past, intended to be used to show that the Defendants infringed the Plaintiff's copyright, is not probative of the issues remaining to be determined by the Court as liability is conceded. As such, I must consider the intended use to be made by the Plaintiff of the disputed evidence in relation to the issues that remain to be determined by the Court.

[274] The Defendants assert that the Plaintiff is attempting to use the similar fact evidence, in general, to say that the Defendants are bad people who do not respect copyright law, at large, which goes towards the moral prejudice issue. However, moral prejudice is the risk that a person will be found liable because they are a "bad person" rather than based on the evidence. The Defendants have already admitted their liability for copyright infringement so there is no risk that I will find them liable for infringement because they are "bad people".

[275] I agree with the Plaintiff that the Defendants put their business practices in issue and, in particular, asserted that they take steps to ensure they have the rights for all of the content that is put on the GLWiZ Service. The Defendants did not restrict their pleading to only the Plaintiff's Programs and the Live Channel. Having put the Plaintiff on strict proof to the contrary, it is not open to the Defendants to now assert that such evidence is inadmissible because it relates to content that was not pleaded, or does not belong, to the Plaintiff. Evidence of the Defendants' use of content belonging to the Plaintiff (other than the Programs and Live Channel) and their related companies or third parties for which the Defendants did not have authorization, is therefore

relevant to this issue. Similarly, I find that such evidence is also relevant to the need for deterrence in any award of statutory damages.

[276] The Defendants assert that there is reasoning prejudice as the Court will have to figure out whether the allegations of unauthorized use of third party content or other content of the Plaintiff's is actually true. However, there is evidence from the witnesses called by the Plaintiff that the Defendants had no such authorization. Ms. Akar testified that the Defendants had no authorization to use the ATV content, and Mr. Turkmen and Ms. Görür testified that they knew the Defendants did not have the rights to broadcast CNN Turk or Dream Turk. I acknowledge that Mr. Reyhani's evidence was that the Defendants had oral agreements with every TV station to use their content and then gave specific evidence regarding the Defendants' rights to use the ATV content. I am satisfied that, notwithstanding this contradictory evidence, the risk of reasoning prejudice — that I may have difficulty disentangling the subject matter of the proceeding from the similar facts — is minimal. I find the similar fact evidence to be credible and its probative value outweighs any prejudice to the Defendants.

[277] With the exception of Exhibit O (which I have already found to be inadmissible in any event), I find that the Defendants were given fair notice of the similar fact evidence. Indeed, Ms. Görür's will say statement provided that:

The Defendants' ongoing infringement of further Kanal D owned or licensed content, despite a November 2023 court detection and a December 2023 cease-and-desist letter delivered to the Defendants via counsel, which she will introduce. She will say that the Defendants are continuing to infringe the Kanal D content, despite having again been provided with evidence and notice. She will tell the court that at least as late as December 2024, those acts of infringement continued.

[278] Mr. Turkmen's will say statement provided that he would testify:

[W]hile attending a virtual mediation in this case in November 2023, he personally accessed the GLWiZ Service and he located additional Kanal D content on that service, which was there without any permission or authorization. He will introduce videos and screenshots that he personally took showing that content on the GLWiZ service, which have been produced, showing the broadcast or streaming of at least CNN Turk, Fox Turkiye, TV 2, TRT Spor, Dream Turk, Tele 1, Kanal 24, Number One Turk, Power TV, a Haber, ATV, and TV8.

[279] Mr. Turkmen's videos and screenshots were also produced to the Defendants well in advance of trial.

[280] Ms. Akar's will say statement states that she was expected to testify "as to the unauthorized broadcast and streaming of her company's content on the GLWiZ Service, as also seen on video clips to be introduced by Selim Turkmen and others, and steps taken by her company to address that activity" and that she would also "introduce related communications ATV had with the Defendants in 2023." The Defendants were also well aware of ATV's evidence given that they received a cease-and-desist letter from ATV separate and apart from this proceeding.

[281] Counsel for the Plaintiff's letter dated December 20, 2023 (which attached the 2023 Expert Report), also put the Defendants on notice that the Plaintiff intended to rely upon the 2023 Expert Report at trial. While the 2023 Expert Report was in Turkish, the body of the letter alerted the Defendants to the fact that the 2023 Expert Report related to additional content under "common ownership with Kanal D" that was found on the GLWiZ Service — namely, CNN Turk, Dream Turk and Radyo D.

[282] Accordingly, I find that Ms. Akar's testimony, Exhibits E, G, H, I, J, K and L, and all testimony related thereto, are admissible.

[283] The Plaintiff also urged the Court to rely on the documents related to the CRA Issue to find that the senior management of the Defendants lack credibility. I find that the Plaintiff is effectively asking the Court to find that the Defendants' senior management are "bad actors" because they have engaged in an unlawful carousel scheme such that the Court should find that they are, in general, not credible. Thus, the use of the CRA Issue evidence also triggers a similar fact evidence analysis.

[284] The Supreme Court of Canada has acknowledged, albeit in the criminal law context, that similar fact evidence may be useful on the central issue of credibility [see *R v B (CR)*, [1990] 1 SCR 717 at 719]. However, I must still consider probative value and be satisfied that the Plaintiff has demonstrated that the probative value of this disputed evidence exceeds its prejudicial effect. I am not satisfied that the Plaintiff has met its burden, as I find that the probative value of the evidence related to the CRA Issue is low for two reasons: (i) the validity of the CRA's reassessment of Gold Line on the basis of the sham transactions is currently being litigated before the Tax Court of Canada; and (ii) the sham transactions are entirely unrelated to the GLWiZ Service and, to the extent that this evidence could speak to the reliability of the Defendants' financial statements, the revenues earned by the Defendants from the GLWiZ Service are not in dispute. I find that the potential prejudice of this disputed evidence outweighs its low probative value and, accordingly, the evidence related to the CRA Issue is inadmissible.

#### **H. Admissibility of Mr. Bafekr's Evidence Related to the "Bug" in the GLWiZ Service**

[285] During his direct examination, Mr. Bafekr gave evidence regarding what has been described as a technical “bug” that he said permitted users of the GLWiZ Service to access certain Programs that had been disabled by the Defendants in response to the 2019 Cease and Desist Letter. Mr. Bafekr testified that he became aware of the “bug” upon viewing Ms. Barker’s videos following their production in the litigation in 2021.

[286] The Plaintiff objects to the admissibility of Mr. Bafekr’s evidence related to the “bug” on the basis that it is unfairly prejudicial to the Plaintiff as: (a) it was never pleaded as the basis to explain the Defendants’ acts of infringement after March 2019; and (b) it was known to the Defendants for almost four years prior to trial and yet only disclosed in the two weeks leading up to trial. The Plaintiff asserts that the late disclosure of the “bug” prevented the Plaintiff from properly considering this highly technical explanation and obtaining and presenting a technical response, which would have required the assistance of a technical witness or expert.

[287] The Defendants assert that while it is regrettable that they did not provide this technical explanation sooner, nothing should be read into their failure to do so. Rather, what caused the Defendants to consider the “bug” in depth was the Plaintiff’s request in January 2025 (following further examinations for discovery) for an undertaking that the Defendants confirm whether any of the Programs mentioned in the 2019 Cease and Desist Letter were still on the GLWiZ Service in 2020 and 2021.

[288] I do not accept this explanation. Mr. Bafekr’s evidence was that he discovered the “bug” in 2021 and brought it to Mr. Reyhani. Mr. Reyhani was thus well aware of the existence of the

“bug” for approximately four years before its disclosure to the Plaintiff. I find that a deliberate decision must have been made by the Defendants not to disclose this explanation when it was discovered in 2021.

[289] That said, while the Defendants certainly should have disclosed the particulars of the “bug” and their reliance thereon to attempt to explain how Ms. Barker was able to view certain Programs years ago, I will nonetheless admit this evidence. I do so because this evidence does not actually assist the Defendants, as I find it does not explain why Ms. Barker was able to view the Programs.

[290] Mr. Bafekr testified that the “bug” meant that a user who had put a Program in their favourites was able to continue to access that Program after the Program was disabled in 2019. This would have required the user to have put the Program in their favourites prior to March 2019. However, Ms. Barker’s firm was not retained until 2020, long after the Programs at issue had been “disabled”. The Defendants offered this technical explanation in “isolation” and never put to Mr. Bafekr, in direct or on re-direct, the date that Ms. Barker created her account despite him repeatedly asking for that date on cross-examination.

[291] In their closing arguments, the Defendants continued to rely on the “bug” as the rationale for why certain Programs could still be viewed in 2021. I was the one who raised the fact that the Defendants had failed to “connect the dots” while Mr. Bafekr was giving evidence and that the “bug” could not have accounted for Ms. Barker’s ability to view the Programs. The Defendants were unable to offer a meaningful response to my concern that was grounded in any evidence that they had put before the Court.

[292] Accordingly, Mr. Bafekr's evidence regarding the "bug" is admissible but I find that it does not explain how Ms. Barker was able to view the Programs detailed in her evidence in 2021. Rather, I find that the Defendants failed to remove/disable Leaf Cast, Time Goes By, War of the Roses and For My Son in response to the 2019 Cease and Desist Letter.

#### **IV. Issues**

[293] As a result of the Defendants' late concession on the issues related to liability, the sole issues remaining for the Court's determination relate to the remedies requested by the Plaintiff (excluding declaratory relief, which has been consented to by the Defendants). Specifically:

- A. What is the appropriate quantum of statutory damages that should be awarded.
- B. Whether an award of punitive damages is warranted and, if so, the appropriate quantum of such an award.
- C. Whether the Plaintiff is entitled to a wide injunction.
- D. Costs of this proceeding.

#### **V. Analysis**

##### **A. Statutory Damages**

[294] The Plaintiff elected to recover an award of statutory damages instead of actual damages. While the Defendants acknowledge that an amount of statutory damages is owing, the parties'



positions differ significantly as to the appropriate quantum that should be awarded in all of the circumstances.

[295] The Plaintiff seeks \$15,000 CAD per episode of the Programs and \$20,000 CAD for the Live Channel, for a total statutory damages award of \$44,630,000 CAD. The Plaintiff's position is largely driven by its evidence regarding lost licensing revenues, the valuable nature of the Programs and the Defendants' failure to remove the Plaintiff's content from the GLWiZ Service following notices sent by the Plaintiff.

[296] The Defendants assert that, as a starting point, this Court has acknowledged in *Vidéotron Ltée v Konek Technologies Inc*, 2023 FC 741 [*Vidéotron*], that an award of statutory damages of more than \$1 million CAD is rare. Based on all of the circumstances, the Defendants assert that this is not one of those rare cases where an award of over \$1 million CAD is warranted. Rather, an award of \$200–300 CAD per episode of the Programs and a nominal amount for the Live Channel, for a total award of \$595,000 CAD to \$892,500 CAD, would be just and fair in all of the circumstances. The Defendants' primary argument is that the Court should award an amount of statutory damages lower than the \$500 CAD per work minimum pursuant to paragraph 38.1(1)(b), as applying the lower limit of the range (\$500 CAD) would result in a total award that is grossly out of proportion. In addition, the Defendants assert that they should benefit from subsection 39.1(2) of the *Copyright Act*, which permits the Court to reduce the statutory damages award to \$200 CAD per work, on the basis that the Defendants were innocent infringers.

## (1) General Principles

[297] Pursuant to section 38.1 of the *Copyright Act*, a copyright owner may elect recovery of statutory damages in lieu of damages and profits. Pursuant to paragraph 38.1(1)(a) of the *Copyright Act*, if infringement is for commercial purposes (such as is the case here), statutory damages may be awarded “in a sum of not less than \$500 and not more than \$20,000 that the court considers just, with respect to all infringements involved in the proceedings for each work or other subject-matter”.

[298] Determining the appropriate quantum of statutory damages is not an exact science and must be considered on a case-by-case basis. It involves consideration of all relevant circumstances, with the aim of yielding a just result [see *Rallysport Direct LLC v 2424508 Ontario Ltd*, 2020 FC 794 at para 6 [*Rallysport*], aff’d 2022 FCA 24 [*Rallysport FCA*]; *Collett v Northland Art Company Canada Inc*, 2018 FC 269 at para 59 [*Collett*], citing to *Telewizja Polsat SA v Radiopol Inc*, 2006 FC 584 at para 37 [*Telewizja*]]. This includes consideration of the factors set out in subsection 38.1(5) of the *Copyright Act*, which provides:

### **Factors to consider**

**(5)** In exercising its discretion under subsections (1) to (4), the court shall consider all relevant factors, including

**(a)** the good faith or bad faith of the defendant;

### **Facteurs**

**(5)** Lorsqu’il rend une décision relativement aux paragraphes (1) à (4), le tribunal tient compte notamment des facteurs suivants :

**a)** la bonne ou mauvaise foi du défendeur;

**(b)** the conduct of the parties before and during the proceedings;

**(c)** the need to deter other infringements of the copyright in question; and

**(d)** in the case of infringements for non-commercial purposes, the need for an award to be proportionate to the infringements, in consideration of the hardship the award may cause to the defendant, whether the infringement was for private purposes or not, and the impact of the infringements on the plaintiff.

**b)** le comportement des parties avant l’instance et au cours de celle-ci;

**c)** la nécessité de créer un effet dissuasif à l’égard de violations éventuelles du droit d’auteur en question;

**d)** dans le cas d’une violation qui est commise à des fins non commerciales, la nécessité d’octroyer des dommages-intérêts dont le montant soit proportionnel à la violation et tienne compte des difficultés qui en résulteront pour le défendeur, du fait que la violation a été commise à des fins privées ou non et de son effet sur le demandeur.

[299] The Federal Court of Appeal has confirmed that statutory damages can be awarded even if no monetary damages are suffered by the copyright holder and no business is lost [see *Rallysport FCA*, *supra* at para 29]. However, where actual damages can be quantified, they are a relevant factor in the analysis [see *Vidéotron*, *supra* at paras 80 and 84; *Rallysport FCA*, *supra* at para 28; *Maier Estate v Bulger*, 2024 FC 1267 at para 171].

[300] This Court has acknowledged that there should be some relationship between actual damages and statutory damages [see *Pinto v Bronfman Jewish Education Centre*, 2013 FC 945 at para 195]. The key term being “some” relationship. Actual and statutory damages must not be

conflated. Statutory damages are not intended to be 1:1 proportional with provable “but-for” losses, as they incorporate additional considerations such as the need for deterrence [see *Rallysport, supra* at paras 8–9]. If damages were limited to the cost of a licence (i.e., a plaintiff’s actual losses), there would be no incentive for copyright infringers to abide by the law and to obtain such a licence. Instead, it would be in their interest to infringe copyright and run the risk of getting caught [see *Vidéotron, supra* at para 81]. By way of example, in *Vidéotron*, Justice Grammond noted that his award of statutory damages for the TVA Sports channels was five times the approximate damages suffered by the plaintiffs, which he found not to be grossly out of proportion in the circumstances of that matter given the need for deterrence and denunciation.

[301] Thus, while a plaintiff’s actual or probable damages is a relevant consideration, it is certainly not determinative and is but one of the many factors to be considered and weighed in determining the quantum of statutory damages that are fair and proportionate in all of the circumstances.

[302] The parties disagree as to whether the Defendants’ earnings from the infringement constitute a relevant consideration when determining the appropriate quantum of statutory damages. The Plaintiff asserts that they are irrelevant, yet offers no authority to support this assertion. Contrary to the Plaintiff’s assertion, this Court routinely considers the earnings made by a defendant from their infringing conduct (if such evidence is available, be it in the form of profits or revenues) and I am satisfied that this forms part of “all relevant circumstances” that the Court must consider in fixing the quantum of statutory damages [see *Maier Estate v Bulger, supra* at paras 186, 188, 191; *Telewizja, supra* at para 47; *Trader v CarGurus*, 2017 ONSC 1841 at para 67;

*Young v Thakur*, 2019 FC 835 at para 50; *Nicholas v Environmental Systems (International) Limited*, 2010 FC 741 at para 105 [*Nicholas*]].

[303] The *Copyright Act* also expressly contemplates, in two separate provisions, discretionary reductions to the statutory minimum of \$500 CAD per work.

[304] First, pursuant to subsection 38.1(2) of the *Copyright Act*, the Court has the discretion to lower the amount of statutory damages per work for commercial purposes to less than \$500 CAD, but not less than \$200 CAD, where “the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright”. As is evident from the wording of the provision, the burden of proof lies with a defendant to demonstrate that the reduction contemplated by the provision should be made.

[305] Second, subsection 38.1(3) of the *Copyright Act*, entitled “Special case”, provides for a reduction below \$500 CAD or \$200 CAD per work (as the case may be) in certain circumstances:

**(3)** In awarding statutory damages under paragraph (1)(a) or subsection (2), the court may award, with respect to each work or other subject-matter, a lower amount than \$500 or \$200, as the case may be, that the court considers just, if

**(a)** either

**(i)** there is more than one work or other subject-matter in a single medium, or

**(3)** Dans les cas où plus d’une oeuvre ou d’un autre objet du droit d’auteur sont incorporés dans un même support matériel ou dans le cas où seule la violation visée au paragraphe 27(2.3) donne ouverture aux dommages-intérêts préétablis, le tribunal peut, selon ce qu’il estime équitable en l’occurrence, réduire, à l’égard de chaque oeuvre ou autre

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| <p>(ii) the award relates only to one or more infringements under subsection 27(2.3); and</p> <p>(b) the awarding of even the minimum amount referred to in that paragraph or that subsection would result in a total award that, in the court's opinion, is grossly out of proportion to the infringement.</p> | <p>objet du droit d'auteur, le montant minimal visé à l'alinéa (1)a) ou au paragraphe (2), selon le cas, s'il est d'avis que même s'il accordait le montant minimal de dommages-intérêts préétablis le montant total de ces dommages-intérêts serait extrêmement disproportionné à la violation.</p> |
|---|--|

[306] Section 38.1(3) of the *Copyright Act* recognizes that there are cases where the statutory minimum amount of \$500 CAD is not appropriate, as it would result in an excessive award not grounded in any reality [see *Vidéotron, supra* at para 85, citing *Louis Vuitton Malletier SA v Wang*, 2019 FC 1389 at para 153, and *Thomson v Afterlife Network Inc*, 2019 FC 545 at para 63].

## (2) Application of the General Principles

[307] I will now consider the evidence and arguments presented regarding each of the factors listed in 38.1(5) of the *Copyright Act*, as well as the evidence and arguments related to the application of each of subsection 38.1(2) and subsection 38.1(3) of the *Copyright Act*.

### (a) The Defendants are not innocent infringers as contemplated by subsection 38.1(2) of the Copyright Act

[308] I will begin by considering whether the Defendants have established that they are innocent infringers, as contemplated in subsection 38.1(2) of the *Copyright Act*, as this was certainly the focus of the parties at the commencement of trial; although certainly not the focus of the

Defendants' position (which focused heavily on the issue of proportionality) by the time the parties made their closing submissions.

[309] For subsection 38.1(2) to apply, the Defendants must establish that: (i) they were not aware they had infringed copyright; and (ii) they had no reasonable grounds to believe they had infringed copyright. The test is conjunctive.

[310] A defendant cannot rely on subsection 38.1(2) where they have received information that their activities could constitute copyright infringement and nonetheless carry on with their activities [see *LS Entertainment Group Inc v Formosa Video (Canada) Ltd.*, 2005 FC 1347 at para 62; *Century 21 Canada Ltd Partnership v Rogers Communications Inc*, 2011 BCSC 1196 at para 418 [*Century 21*]; *Nicholas*, *supra* at para 104; *Rallysport*, *supra* at paras 3 and 37]. Even where a defendant believes that there is no merit to a notice of copyright infringement received, subsection 38.1(2) remains unavailable to them if they ignore the notice.

[311] As noted in *Century 21* at paragraph 416:

...the defendants' argument focuses on the legitimacy of the letters and ignores the fact of notice. Surely the point is that notice alerts them to a potential claim which may or may not be proven valid at a future date. To ignore a claim however is to run the risk of potential liability if breach of contract or ownership of copyright and its infringement is eventually proven.

[312] In *Century 21*, *supra*, the court went on to find that subsection 38.1(2) was not available to the defendants as a result of the notice of copyright infringement received.

[313] In *Mejia v LaSalle College International Vancouver Inc*, 2014 BCSC 1559 at paragraph 217, the British Columbia Supreme Court found that subsection 38.1(2) was unavailable to a defendant where, even if they may not have intended to infringe the plaintiff's copyright, there was no evidence that the defendant considered the possibility of its "legal obligation to refrain from conduct that might constitute" infringement.

[314] The Defendants acknowledge that there are precedents in the case law stating that a defendant who receives notice of infringement and ignores it cannot then claim to be "innocent". However, the Defendants assert that that is not what happened here. Rather, the Defendants assert that the Plaintiff's notice of infringement was a "moving target" with notice of thirteen Programs in the 2019 Cease and Desist Letter, a different nine Programs in the 2019 Warning Letter and three additional Programs complained of for the first time in the Statement of Claim. The Defendants assert that they made "robust" efforts to remove the Programs immediately upon receipt of each notice.

[315] The Defendants further assert that their "innocence" should be assessed on a program-by-program basis, such that Programs for which no notice was given, or that were immediately removed after notice was provided, should be treated differently than Programs that were not removed after notice was given.

[316] I find that there is no merit to the Defendants' assertions and that they are not entitled to benefit from the innocent infringer exception in relation to any of the Programs or the Live Channel. The Defendants' argument is premised on a misguided interpretation of the innocent



infringer exception. The Defendants do not become innocent infringers if they immediately remove content upon being put on notice of copyright infringement. In order to benefit from subsection 38.1(2), the Defendants had to demonstrate that they had no reasonable grounds to believe that they had infringed copyright. The “reasonable grounds” certainly disappear once the Defendants were put on notice of infringement, but the Defendants still need to establish that they had “reasonable grounds” to believe that they were not infringing copyright prior to being put on notice. For the reasons set out below, I am not satisfied that the Defendants have established that they had no reasonable grounds to believe that they had infringed copyright in relation to any of the Programs, such that a Program-by-Program analysis is not required.

[317] It must be recalled that the Defendants assert that they reasonably believed they had a valid licence from GEM Media to include the Programs on the GLWiZ Service for the entire Relevant Period (2018 to 2021). However, I find that the evidence before the Court establishes that the Defendants did not have reasonable grounds to believe that they were not infringing copyright in the Programs, or put differently, the Defendants did not have reasonable grounds to believe that they had a valid licence from GEM Media for the Programs.

[318] Before turning to that evidence, I note that there is a live dispute between the parties as to whether the CLA was terminated, which dispute is presently being arbitrated. It is not for this Court in the context of this action to make a determination, one way or another, as to whether the CLA was terminated. Rather, the correspondence between the Defendants and GEM Media/GEM Music regarding the purported termination of the CLA is relevant to whether, in the face of this

correspondence and in all of the circumstances, the Defendants had reasonable grounds to believe that they had a licence from GEM Media during the Relevant Period.

[319] GEM Media wrote to the Defendants on October 17, 2015, purporting to terminate the CLA. Subsequent letters were sent in December 2015 and January 2016, similarly purporting to terminate the relationship between GEM Media and the Defendants. A further round of correspondence was sent in May and June of 2018, wherein counsel for GEM Media/GEM Music reiterated the termination of the CLA in October 2015, put the Defendants on notice of infringement of GEM Media/Gem Music's copyright and demanded that the Defendants cease and desist from broadcasting any of GEM Media's content.

[320] Notwithstanding that the Defendants took the position that GEM Media was not entitled to terminate the CLA, Mr. Reyhani admitted on cross-examination that:

- A. He understood, via the October 17, 2015 email that, at least in GEM Media's mind, GEM Media was revoking and cancelling all rights under the CLA.
- B. After the 2015 and 2016 letters and by 2018, GEM Media continued to tell him that the CLA was over.
- C. By 2018, it would be fair to say that there was some level of uncertainty as to where the relationship between GEM Media and Ava stood.

[321] I acknowledge that Mr. Reyhani also testified that he understood that GEM Media had withdrawn their cancellation of the CLA as set out in the October 17, 2015 email. I do not find this

evidence to be credible. Mr. Reyhani provided no basis for this belief nor any particulars as to how the alleged withdrawal of the cancellation was communicated to him and by whom. There are no documents corroborating Mr. Reyhani's assertion that GEM Media withdrew the cancellation. To the contrary, Mr. Reyhani's evidence is contradicted by the on-going correspondence between counsel related to the termination of the CLA and GEM Media's allegation of copyright infringement against the Defendants, as well as the commencement of legal proceedings against the Defendants by GEM Music.

[322] In light of the correspondence received by the Defendants, the majority of which pre-dated the Relevant Period, I find that the Defendants did not have reasonable grounds to believe that they had a valid licence from GEM Media that permitted them to use the Programs on the GLWiZ Service during the Relevant Period.

[323] Moreover, the evidence before this Court also establishes that at the November 2017 meeting in Istanbul, the Defendants were put on notice by the Plaintiff that they did not have any rights to use any of the Plaintiff's content on the GLWiZ Service. This discussion with the Plaintiff (which occurred before the commencement of the Relevant Period) should have caused the Defendants concern regarding the validity of their licence with GEM Media. Yet, there is no evidence before the Court that the Defendants took any steps to verify with GEM Media and confirm that it had the ability to license the Defendants' use of the Programs.

[324] Therefore, by the time the Defendants received the 2019 Cease and Desist Letter, I find that the Defendants already had no reasonable grounds to believe that they had a valid licence to

utilize the Programs. As the innocent infringer test is conjunctive, I find that the Defendants are not entitled to claim the benefit of subsection 38.1(2) as they have failed to meet the second part of the test.

[325] While I need not go on to consider the first part of the test — whether the Defendants were not aware that they had infringed copyright — I will nonetheless make a few comments thereon.

[326] The parties agree that the 2019 Cease and Desist Letter put the Defendants on notice of copyright infringement of the 14 Programs referenced in the body of the letter. However, contrary to the assertion of the Defendants, I find that the 2019 Cease and Desist Letter also put the Defendants on notice of the Plaintiff's copyright in other programs. It stated: "This warning letter includes all parts and sections of above listed series and all related links which has not [been] written above" [emphasis added]. The related links included the Archive, which included four additional Programs at issue in this proceeding.

[327] Notwithstanding that Mr. Bafekr testified that he and his team take such correspondence as "extremely serious" when conveyed to them by Mr. Reyhani, and Mr. Reyhani's testimony that the Defendants respond to complaints by immediately taking down the content, the Defendants made no efforts to investigate the list of programs in the Archive.

[328] Mr. Bafekr testified that no one from the Defendants could have taken the Archive (in Turkish) and determined the Farsi titles of the Programs. However, I do not find this evidence credible. There was evidence that at least one employee at the Defendants (Mr. Ercan) spoke

Turkish. If the Defendants take allegations of copyright infringement as seriously as they assert, I would have expected them to review the Archive and attempt to locate the additional programs on the GLWiZ Service or, alternatively, to have written to the Plaintiff and requested the Archive in English or Farsi, which they did not do.

[329] Mr. Bafekr testified that the English list of 14 titles in the 2019 Cease and Desist Letter was extremely hard to deal with and that, in relation to the effort required to find the Farsi titles of the Programs, “trying to find these is — trust me, is — some of them are mission impossible trying to go through the whole internet trying to find out which one is which”. Again, I do not find this evidence credible, as I find that it exaggerates the effort required to locate the Farsi titles. Clearly, the Defendants were able to search “the whole internet” to find the Farsi titles of the 14 Programs referred to in the body of the letter in English as the evidence was that they removed (or believed they had removed) the titles shortly after receiving the 2019 Cease and Desist Letter.

[330] Mr. Reyhani’s evidence on discovery was that the Defendants received the Plaintiff’s 2019 Cease and Desist Letter and 2019 Warning Letter, understood that they were being told they were infringing copyright and had to stop. The 2019 Cease and Desist Letter covered 18 of the Programs, and the 2019 Expert Report appended to the 2019 Warning Letter put the Defendants on notice of one additional Program. Yet at least four of the Programs remained on the GLWiZ Service after Mr. Reyhani responses to the 2019 Warning Letter, as evidenced by Ms. Barker’s videos. There is no clear evidence from the Defendants confirming the date they disabled each of the Programs on the GLWiZ Service. Only the Defendants could have provided this evidence.

[331] While the Defendants criticize the Plaintiff for their notices of infringement being a “moving target”, this Court has taken a dim view of infringers who attempt to shift blame to rights holders [see *Nintendo of America Inc v King*, 2017 FC 246 at para 158 [*Nintendo*]]. The evidence demonstrates that the Defendants had no objectively reasonable grounds to believe they had the authority to include any of the content obtained from GEM Media on the GLWiZ Service during the Relevant Period. It also demonstrates that the Defendants did not take the Plaintiff’s allegations of infringement seriously enough to fully investigate them, did not remove all of the Programs from the GLWiZ Service in response to the correspondence from the Plaintiff, made no efforts to verify GEM Media’s rights to the Programs and made no efforts to correspond with the Plaintiff to verify exactly which Programs needed to be removed. It is the conduct of the Defendants, not the Plaintiff, that is blameworthy.

[332] In relation to the Live Channel, there is no evidence before this Court that the Defendants had any reasonable grounds to believe that they were entitled to rebroadcast the Live Channel as they do not assert that the Live Channel was covered by the CLA.

[333] Accordingly, I decline to exercise my discretion to reduce the statutory minimum to \$200 CAD per work pursuant to subsection 38.1(2) of the *Copyright Act*.

**(b) The Plaintiff’s actual damages**

[334] As noted above, the actual damages suffered, when it is possible to measure, is a relevant factor in assessing the amount to be awarded as statutory damages. In this case, for the reasons set

out below, I find that the Plaintiff's actual damages incurred as a result of the conduct of the Defendants are not easily quantifiable.

[335] I accept that, as a result of the conduct of the Defendants, the Plaintiff lost the opportunity to monetize the Programs for the Farsi-speaking population outside of Iran. That monetization could have occurred through: (a) licence fee revenues; (b) revenues earned through a Farsi service similar to the Spanish service operated by Plaintiff; or (c) additional revenues from the YouTube channel. I will address each of these lost opportunities in turn.

[336] However, before doing so, it is also important to keep in mind that these lost opportunities are only partially attributable to the conduct of the Defendants. The evidence before me is that GEM Media/GEM Music began broadcasting the Plaintiff's Programs to the Farsi-speaking population prior to the Defendants. There is no clear evidence before me as to exactly when GEM Media/GEM Music began doing so and how shortly thereafter the Defendants put the Programs on the GLWiZ Service. At least for some portion of the episodes of the Programs, there would have been no meaningful delay (i.e., a matter of days or weeks) between when GEM Media/GEM Music and the Defendants broadcasted the Programs. The evidence was that from 2018 onward the Defendants recorded the episodes from GEM Media/GEM Music's channels and then cut them and added them to the GLWiZ Service.

[337] There was minimal evidence led about GEM Media's business as no witnesses from GEM Media/GEM Music testified at trial. The only evidence before the Court is from the Defendants' witnesses (Mr. Reyhani and Mr. Moeini) who testified as to their understanding of GEM Media's

operations. Mr. Reyhani testified that GEM Media had one hundred million users, which he stated was at least 100 times more than the Defendants' subscriber base. I do not accept this evidence, as it lacks foundation. Mr. Reyhani was never employed by any of the GEM companies and did not provide any basis for his understanding of the size of GEM Media's audience. While it is certainly possible that GEM Media's operations may have reached a larger viewing audience, the parties agree in the RASF that the GLWiZ Service is "the world's largest supplier or source of streamed Persian media content". As such, to the extent that the Farsi-speaking audience that the Plaintiff may have targeted for the purpose of monetizing its Programs was previously exposed to Farsi-dubbed/subtitled Programs, I find that such previous exposure was caused by both GEM Media/GEM Music and the Defendants in roughly equal measure.

[338] The Plaintiff has obtained the \$27 million GEM Judgment against GEM Music for its conduct in relation to the same Programs but, as of the date of this trial, the Plaintiff had been unable to collect on the GEM Judgment. The Defendants assert that the GEM Judgment must be factored into the Court's quantification of the statutory damages claim, otherwise the Plaintiff stands to "over recover". Put differently, the Defendants assert that the GEM Judgment must be considered when assessing whether the amount of statutory damages awarded is proportionate. I agree with the Defendants that the GEM Judgment is a relevant consideration. However, I also find that the Defendants' responsibility for the Plaintiff's damages should not be discounted based on the GEM Judgment.

[339] I will now turn to consider lost licensing fee revenues. The Defendants made the Plaintiff's Programs available on the GLWiZ Service without geographical limitation, although the majority



of their subscribers were located in Canada, the United States of America, Australia and some European countries.

[340] The evidence before the Court is that the Plaintiff's licences are limited geographically to generally one country and none of its licences grant global rights of online distribution. Ms. Tatoğlu, Mr. Turkmen and Ms. Görür each testified that they would not have agreed to a world-wide licence of the type that would have been required to account for the Defendants' conduct. If the Plaintiff had to enter into such a licence, Ms. Tatoğlu further testified that she would not have done so for less than \$10,000 USD per episode and Mr. Turkmen further testified that the cost of such a licence would have been \$10,000 USD or more, plus a share of the Defendants' resulting advertising revenues. Ms. Görür further testified that she would have asked for a minimum guarantee amount of \$10,000 USD per episode plus a share of advertising revenues for a one-to-two year period, after which the deal would be re-examined. Ms. Görür noted that she would expect there to be heightened advertising revenues from such a licence given that advertisements would be sold in each country separately.

[341] The Plaintiff points to the evidence before the Court of its various licences granted in relation to its content (including these Programs) where the Plaintiff has routinely charged [REDACTED] or [REDACTED] per episode for the rights in one country. Thus, the Plaintiff asserts, it is not unreasonable to conclude that the Plaintiff would have charged at least that much for global rights.

[342] The Plaintiff also points to the licensing rates for the GEM Licences. While those licences were negotiated over 10 years ago, the Plaintiff charged GEM Media licensing fees in the range of [REDACTED] to [REDACTED] for the limited right to use the Programs in Iran.

[343] The Defendants assert that the Plaintiff has not demonstrated that licences for the Programs during the Relevant Period were worth \$10,000 USD per episode in Farsi in any market, as there is no proof that a market participant did or would have paid those rates for the Farsi-dubbed/translated Programs. The Defendants note that, other than the GEM Licences (which were limited to Iran), the Plaintiff did not produce any licences for the Programs in Farsi.

[344] The Defendants also note that a review of the licences granted by the Plaintiff for these same Programs during the Relevant Period shows that there were many licences granted for these programs in languages other than Farsi with per episode licensing fees in the range of [REDACTED] and [REDACTED].

[345] In relation to the GEM Licences, the Defendants note that those licensing fees were for the first-run Farsi broadcast of the various Programs licensed by GEM Media. Mr. Turkmen admitted on cross-examination that the [REDACTED] licensing fee charged to GEM Media for Fallen Angel in 2013 (for what was then a brand new Program) is not worth [REDACTED] many years later when Fallen Angel was no longer a first-run Program.

[346] I agree with this conceptually — that is, the value of the Programs would have reduced over time once they lost their first-run value and became library content. However, the GEM

Licences were for Iran only. Had the licences been complied with, the Programs would have retained their first-run Farsi value outside of Iran. However, we know that GEM Media/GEM Music did not comply with the terms of the GEM Licences and did use the Programs outside of Iran. The difficulty I have, though, is that I do not have clear evidence before me of the territory in which GEM Media operated and where it had the majority of its customers. Did GEM Media saturate the same market of viewers that the Defendants broadcasted to? If not, the Programs may still have retained some of their first-run Farsi value in Canada, the United States of America, Australia and certain European countries at the time when the Defendants would have procured their notional licence.

[347] If the Court were to rely on the GEM Licences, the Defendants stress that the GEM Licences were for the longer episode versions of the Programs rather than the current shorter versions. As such, the licence fees would have to be cut in half or thirds. The Plaintiff conceded this fact during their closing arguments and I agree.

[348] However, I also note that the GEM Licences were for two years and the Relevant Period is three years, so the fees would have to be multiplied by 1.5. Moreover, the GEM Licences were for Iran only and the GLWiZ Service operated in over 50 countries, so a further multiplication exercise would have to be done to adjust the value of the licence fee upwards to account for the larger territory of the licence the Defendants would have required.

[349] The Defendants also asserted that, as the fees varied from [REDACTED] to [REDACTED] per episode under the GEM Licences, the Court would need to consider an average or blended rate instead of simply applying the highest per-episode rate to all of the Programs. I agree.

[350] The Defendants also encourage the Court to take a step back and look at the lost licensing fees not at a licence-by-licence level, but from the perspective of the Plaintiff's actual total foreign licensing revenues, which the Defendants stress do not support the amount of statutory damages sought. During the Relevant Period, the Defendants state that the Plaintiff's total foreign licensing revenues for its entire catalogue of approximately 300 programs, for licences issued in all languages in all countries, was [REDACTED] (with the figures taken from Exhibit 125 for the years 2018, 2019 and 2020). To award the Plaintiff \$44 million CAD based on 22 of the 300 programs in a subset of the countries would be entirely disproportionate to their actual revenues and even more disproportionate to the Plaintiff's net profits (which number is not before the Court). The Plaintiff did not meaningfully respond to this argument. I agree with the Defendants that this a relevant consideration.

[351] Overall, I have considered all of the licensing evidence before me. Unlike in many cases, the Plaintiff was not generally operating in the market in which the Defendants operated, be it with the Programs in Farsi or any other language. There is no evidence of any licences, for any Programs in any language, in Canada and there is limited evidence of licences in the United States of America. None of the parties brought to the Court's attention any licences for Australia. The only Farsi licences are the GEM Licences, which have their limitations and issues as noted above. The remaining licences for the Programs are in other languages, are not comparable in their territorial

scope and vary significantly from [REDACTED] to [REDACTED] per episode. This limits the Court's ability to measure, with any degree of confidence, the Plaintiff's actual lost licence fees.

[352] That said, I do have the evidence of Ms. Tatoğlu, Mr. Turkmen and Ms. Görür (who are all very experienced in the licensing of content) as to what they would have charged for a notional licence to cover the Defendants' conduct. That evidence was not meaningfully challenged on cross-examination or contradicted by any witnesses called by the Defendants.

[353] In terms of lost revenues that could have been earned from a Farsi service similar to the Spanish service operated by Plaintiff, the Plaintiff did not lead any evidence as to the revenues earned from the operation of the Spanish service or any evidence as to what the Plaintiff believes could have been earned from a Farsi service. While I accept that the Plaintiff lost this opportunity, I cannot quantify the value of this loss.

[354] In terms of lost additional revenues from the YouTube channel, the evidence before the Court is that the Plaintiff earns approximately [REDACTED] per year from the YouTube channel for their entire catalogue of library content. As such, the revenues earned from the Programs in Farsi on the YouTube channel is only a fraction of this amount and there was no evidence led as to the size of that fraction. I accept that had the Farsi-speaking viewers not already been exposed to the Programs in Farsi, the Plaintiff would have been able to generate more views of the Programs on the YouTube channel thereby generating higher revenues. However, I have no evidence before me on which to attempt to quantify those lost additional revenues.

[355] In addition to the aforementioned monetization losses, I also find that the Plaintiff lost control over the Programs, which is a form of harm resulting from the Defendants' conduct. I accept Ms. Tatoğlu's evidence that this loss of control impedes the Plaintiff's ability to safeguard their Program content and renders the Program content susceptible to piracy.

[356] The aforementioned analysis does not take into account the Live Channel, as the evidence before the Court is that the Plaintiff does not issue licences for the Live Channel. Mr. Reyhani's evidence was that the Defendants have entered into licences for other live channels where they have paid between [REDACTED] and [REDACTED] per month. However, I have no evidence before me from the Plaintiff as to what the cost of a notional licence for the Live Channel would have been.

[357] The Plaintiff asserts, and I accept, that the Defendants' rebroadcasting of the Live Channel exposed the Plaintiff to a risk of liability vis-à-vis third parties. It was the evidence of Mr. Turkmen and Ms. Akar that the Plaintiff does not have global rights of distribution in all of the content that it broadcasts on its Live Channel. For example, the Plaintiff would secure a licence to broadcast a movie on its Live Channel with the broadcast right limited to the territory of Turkey. Any broadcasting of the movie outside of Turkey would expose the Plaintiff to a claim from the licensor. However, there was no evidence led at trial that any third party had contacted the Plaintiff to assert such a claim.

**(c) The Defendants' revenues**

[358] As noted above, the Plaintiff asserts that the Defendants' revenues are not a relevant consideration. The Plaintiff argues that the conduct of the Defendants amounted to piracy and it is akin to a counterfeiter arguing that they sold 100 counterfeit purses for \$5, such that \$500 is the relevant number for the Court's consideration. According to the Plaintiff, the fact that the Defendants make little money from their improper conduct should not factor into the quantification of the statutory damages so as to limit the amount the Plaintiff could recover. The focus should be on the Plaintiff's losses and not the Defendants' gains, otherwise all of the power is put into the "hands of the pirate". While I appreciate the Plaintiff's concern, the Defendants' revenues are a factor that the Court must consider. That said, the weight that the Defendants' revenues are afforded in the consideration of all of the factors remains at the Court's discretion.

[359] Prior to trial, the parties reached an agreement regarding the Defendants' revenues during the Relevant Period. Calculated as a *pro rata* share of revenues based on watched hours, the total revenue that the Programs and the Live Channel generated for the Defendants during the Relevant Period was \$65,000 CAD or less. These revenues were comprised of earnings from customer subscriptions, set-top boxes and advertising. There is an issue with the expense data produced by the Defendants and I accept that not all documentation required to determine the Defendants' profits has been produced to the Plaintiff or placed before the Court. As such, I will focus on the Defendants' revenues and not their profits.

[360] While the Plaintiff has attempted to call into question the reliability of the Defendants' revenue figures as a result of the CRA Issue, the Plaintiff is bound by their admission as to the quantum of the Defendants' revenues attributable to the GLWiZ Service during the Relevant Period. Moreover, I have found that the evidence related to the CRA Issue is either inadmissible or I have given it no weight.

[361] The evidence before the Court is that the Defendants earned approximately \$7.5 million CAD in revenues from the GLWiZ Service during the Relevant Period from its entire catalogue of 300 channels, 1,000 series and 3,000 movies. It remains open to the Plaintiff to contest how the Defendants arrived at attributing only \$65,000 CAD of those revenues to the Programs. The Plaintiff has always contested that the amount of revenues attributable to the use of the Programs and the Live Channel on the GLWiZ Service should not be calculated as a *pro rata* share of revenues based on watch hours. During the closing arguments, I asked the Plaintiff what method of calculation it asserts would be more appropriate, but no other method was proposed. As such, I am left with only the \$65,000 CAD revenue figure to consider.

[362] Is it possible that the Defendants could have earned higher revenues from the GLWiZ Service? The Defendants did not pay to license the content that it obtained from GEM Media, which reduced their costs and enabled them to charge less from their subscribers. Is it possible that they could have charged subscribers more? Is it possible that they could have generated significant advertising revenues? Mr. Turkmen certainly was of the view that the Defendants had not maximized the value of the Plaintiff's content. However, Mr. Turkmen's evidence alone is not



sufficient for me to find that the revenues generated by the Defendants from their copyright infringement was or could have been more than \$65,000 CAD during the Relevant Period.

**(d) Bad faith of the Defendants and the conduct of the Defendants before and during the proceeding**

[363] While bad faith and the conduct of the Defendants before and during the proceeding are different factors under subsection 38.1(5) of the *Copyright Act*, the Plaintiff did not provide any written submissions addressing these factors. In its oral closing argument, the Plaintiff conflated the two, providing the Court with no distinct submissions on either factor. The Defendants similarly provided no distinct submissions on these factors in either their written or oral submissions. As such, I have no choice but to consider them together.

[364] Bad faith must be understood in context and has been referred to as “conduct that is contrary to community standards of honesty, reasonableness or fairness” [see *Century 21, supra* at para 405]. What constitutes bad faith is contextual and may include the following: (i) ignoring a cease and desist letter [see *Microsoft Corporation v PC Village Co Ltd*, 2009 FC 401 at paras 33–35; *Rallysport, supra* at para 10; *Century 21, supra* at para 416]; (ii) repeatedly infringing different products [see *Twentieth Century Fox Film Corp v Hernandez*, 2013 CarswellNat 6160]; (iii) scraping or copying photos directly from a website [see *Trader, supra* at para 61]; (iv) ignoring offers not to litigate if they cease infringement [see *Telewizja, supra* at para 50]; and (v) using a false name to avoid being detected [see *Collett, supra* at para 64].

[365] The Plaintiff argues that the Defendants acted in bad faith in that they failed to stop infringing each time they were told by the Plaintiff to do so. The Defendants deny that they acted in bad faith, asserting that they always intended to remove the content and it was simply that their execution of the removal of the content was flawed. While the Defendants did not flagrantly disregard every communication from the Plaintiff and continue on with their infringement uninterrupted, I find that there is merit to the Plaintiff's bad faith assertion.

[366] In November of 2017, Mr. Moeini was told that the Defendants were not authorized to use the Plaintiff's content on the GLWiZ Service (as confirmed by the discovery evidence of Mr. Turna) and yet the Defendants did not take it down. While the Defendants state that they believed they had a valid licence from GEM Media to use the content, they did nothing to verify whether they did in fact have a valid licence. This is contrary to their asserted policy (or business practice) of always taking steps to ensure that they have the rights to use content and always taking allegations of infringement very seriously by removing the content and then conducting an investigation into the merits of the infringement allegation. The Defendants did not remove the Plaintiff's content or conduct an investigation.

[367] When the Defendants received the 2019 Cease and Desist Letter, the Defendants took no steps to investigate whether they had any of the Programs listed in the Archive on the GLWiZ Service and as detailed above, their assertion that it would be too much work or impossible to do rings hollow. Again, the Defendants' response to the 2019 Cease and Desist Letter does not align with their asserted policies. The Defendants did not investigate the validity of the complaint as they did not contact GEM Media to advise them of the Plaintiff's allegation and to verify the

validity of their licence. Mr. Reyhani admitted on cross-examination that the Defendants, through their lawyer, should have taken steps to verify whether GEM Media had the rights to the content provided to the Defendants, yet the Defendants offered no explanation for their failure to do so.

[368] I find that it defies common sense why the Defendants would not verify the validity of their licence from GEM Media in the face of the Plaintiff's allegations, unless of course they actually believed that their licence from GEM Media had been terminated and did not want to bring their downloading of content from GEM Media's satellites to the Plaintiff's attention.

[369] That said, I accept that the Defendants did not entirely ignore the 2019 Cease and Desist Letter as the Plaintiff suggests. Mr. Bafekr and his team were tasked with removing some content. Those efforts, however, were clearly not entirely successful.

[370] The 2019 Warning Letter provided the Defendants with the 2019 Expert Report and advised that the Defendants continued to infringe the Plaintiff's copyright. The Defendants made no effort to translate, or to obtain from the Plaintiff an English translation of, the 2019 Expert Report. There was also no evidence of any steps taken by Mr. Reyhani to investigate the Plaintiff's complaint so as to confirm whether the Programs had in fact been deactivated, or to verify the Defendants' rights to use the content with GEM Media. Again, this is contrary to the Defendants' asserted policies.

[371] The Plaintiff further asserts that the Defendants have acted in bad faith by trying to paint GEM Media as the "villain" in this matter, having falsely represented to the Defendants that they

could grant them a sublicense to use the Programs. I agree that this assertion is a tough pill to swallow when one considers all of the circumstances. I find that the evidence before the Court establishes that, prior to the commencement of the Relevant Period and continuing thereafter, the Defendants had been repeatedly told by GEM Media that the CLA was terminated and that the Defendants had no right to use any of the GEM Media content, which included the Programs. In the face of being told (rightly or wrongly) that they had no licence, the Defendants continued to use the Programs. However, I do not find that the Defendants' efforts to characterize GEM Media as the true villain rises to the level of constituting bad faith.

[372] I also agree with the Defendants that their conduct is not akin to the forms of misconduct noted by this Court's jurisprudence. The Defendants did not completely ignore all cease and desist letters, they did not ignore the Court's proceedings or any orders or directions issued by the Court and they ceased all use of the Programs and the Live Channel once the action was commenced.

[373] During their oral closing submissions, the Plaintiff took the Court through the Defendants' pleading (which the Defendants never amended) to demonstrate all of the denials that the Defendants made and the positions that the Defendants took, which the Plaintiff asserts were plainly untrue and completely at odds with the case the Defendants then put forward at trial. Specifically, the Defendants: (a) denied that they copied, stored or streamed any content; (b) denied that they copied any of the Plaintiff's content; (c) pleaded that they streamed content directly from their licensors; (d) pleaded that their activities were undertaken with the Plaintiff's authority; and (e) pleaded that the Plaintiff authorized some of their activities during the November 2017 meeting.

[374] I do not find that these positions pleaded in their Statement of Defence can be characterized as conduct amounting to bad faith, nor inappropriate conduct during the proceeding. It is open to a party to plead their case as they see fit. While it would have been of benefit for the Defendants to have amended their pleading as the case moved forward and their position changed, the Plaintiff was well aware that certain pleaded allegations had been abandoned by the Defendants prior to trial by virtue of what was agreed to in the original Agreed Statement of Facts and then in the RASF.

[375] The Plaintiff further relies on the fact that the Defendants completely changed course after the first trial date was adjourned by conceding infringement, abandoning the position that the Plaintiff had authorized their use of the Programs and the Live Channel and instead arguing that they had been under the reasonably held, but mistaken, belief that they had a valid licence from GEM Media to use the Programs. While I do not find that the aforementioned conduct constitutes bad faith on the part of the Defendants, I do find that their abrupt change in position as to the source of their licence is conduct during the proceeding that is worthy of the Court's consideration in quantifying statutory damages.

[376] The Plaintiff also relies on the late-breaking explanation advanced by Mr. Bafekr as to why Ms. Barker was able to view certain Programs in 2021, even though the Defendants had represented to the Plaintiff that they had removed the Programs in 2019. Again, I do not find that this conduct constitutes bad faith, but I do find that it is worthy of the Court's consideration in quantifying statutory damages.

(e) **Need for deterrence**

[377] As stated by Justice Fuhrer in *Rallysport, supra* at paragraph 42:

Deterrence ensures misconduct does not go unpunished simply because but-for causation cannot be proven for each image. Statutory damages “must be sufficiently high to serve a salutary message and deter future infringements on the part of the named Defendants and other parties”: *PC Village*, above at para 39. This is especially so where technology makes it easy to infringe. [...]

[378] Preloaded set-top boxes, apps and internet streaming make it easy for the Defendants and others to infringe the Plaintiff’s copyright [see *Bell Canada v L3D Distributing Inc (INL3D)*, 2021 FC 832 at para 96 [*Bell Canada*]]. The quantum of statutory damages must be significant enough to deter others who may wish to engage in similar illicit activities and also to deter these Defendants from resuming such activities [see *Nintendo, supra* at para 163]. This Court has recognized the “enduring harm” that results from unauthorized broadcasting and streaming which includes an unlimited potential for continued infringement due to the loss of control over the copyrighted works. It is a harm I found was suffered by the Plaintiff [see *Bell Canada, supra* at para 101]. I also do not accept the assertion that simply because the Live Channel is free-to-air, the amount of statutory damages awarded in relation thereto should be nominal (as was found in *Vidéotron*). Such a finding would remove any component of deterrence from an award of statutory damages. In the circumstances, I find that there is an acute need for deterrence that must be factored into the award of statutory damages in relation to both the Programs and the Live Channel.

[379] I also find that there is a need to deter these Defendants against future acts of infringement. While they made some efforts to cease their infringement in response to notifications from the

Plaintiff, and have now completely ceased all acts of infringement of the Programs and the Live Channel, the conduct of the Defendants demonstrates a failure to abide by their own policy of ensuring that they have authorization to use the content on the GLWiZ Service. In that regard, the Defendants did not call any evidence to establish that they believed they had a licence to rebroadcast the Live Channel at any point during the Relevant Period and, thus, I find that they rebroadcasted the Live Channel knowing that they did not have the authorization to do so.

[380] Moreover, the Plaintiff produced videos and screenshots taken by Mr. Turkmen in November 2023 showing CNN Turk and Dream Turk (which are live channels owned by the Plaintiff's parent company, DM) on the GLWiZ Service. Mr. Turkmen testified that he knew that the Defendants did not have the rights to broadcast either channel.

[381] Ms. Görür, who was an employee of the Plaintiff and also an employee of DM, testified that she visited the GLWiZ website in November or December 2023 and saw DM content thereon, including CNN Turk and various radio stations. She testified that the Defendants did not have the right to stream or do anything with this content. While she may not have cleared the cookies on her browser before viewing the GLWiZ website, her evidence was consistent with that of Mr. Turkmen's.

[382] On cross-examination, Mr. Reyhani admitted that the aforementioned DM content was on the GLWiZ Service but stated that, due to an agreement between the parties for the purpose of trial, he was unable to say who authorized the use of those channels. Counsel for the Defendants provided no submissions on this issue but I presume it relates to the Defendants' decision not to

call Mr. Sarılar as a witness. In the absence of any evidence from the Defendants of authorization to use this content, and in light of the testimony of Mr. Turkmen and Ms. Görür, I find that the Defendants have used this DM content without authorization, contrary to their own asserted policy.

[383] Ms. Akar testified that the Defendants put ATV's channel and programs on the GLWiZ Service without authorization, resulting in ATV sending the Defendants a cease and desist letter in 2022. Mr. Reyhani's evidence regarding the Defendants' authorization to use ATV's content was evolving, first asserting the Defendants had a verbal licence from ATV and then asserting that the content was given to them by "GEM TV". I do not find Mr. Reyhani's evidence on this issue credible and prefer the evidence of Ms. Akar. Accordingly, I find that the Defendants have also used the content of ATV without authorization, contrary to their own asserted policy.

[384] The Defendants also failed to adhere to their policy of taking copyright complaints seriously by removing the content and then investigating whether the complaint had any merit. As detailed above, it is clear that the Defendants did not remove at least some of the Plaintiff's content in response to notices delivered by the Plaintiff, did not investigate the Archive and never properly investigated whether the assertion that the Defendants had no licence to use the content had merit.

**(f) A total award at \$500 CAD per work would not be grossly out of proportion**

[385] The Defendants assert that an award of statutory damages at the statutory minimum of \$500 CAD per work would result in a total award that is grossly out of proportion to the infringement. Relying on subsection 38.1(3) of the *Copyright Act*, the Defendants assert that the Court should



reduce the per work amount to between \$200–\$300 CAD. While the Defendants rely on subsection 38.1(3), they provided no written submissions to demonstrate how the first criterion set out in subsection 38.1(3) is met, which is a burden that the Defendants bear [see *Nintendo, supra* at paras 146 and 149; *Rallysport, supra* at para 12]. It must be recalled that subsection 38.1(3) has two criteria that must both be met — (i) that there is more than one work or other subject-matter in a single medium, or the award relates only to one or more infringements under subsection 27(2.3); and (ii) the awarding of even \$500 CAD per work would result in a total award that in the Court’s view is grossly out of proportion to the infringement [see *Rallysport, supra* at para 7]. The Plaintiff similarly provided no written submissions on the first criterion and thus the Court was left only with the limited submissions made during the oral closing arguments.

[386] With respect to what constitutes a “single medium” (“même support matériel” in French), there has only been a handful of decisions from this Court and others that have considered this issue, the most comprehensive of which I have noted below.

[387] In *Trader v CarGurus, supra*, Justice Conway of the Ontario Superior Court of Justice held:

[57] Trader argues that the court cannot reduce the \$500 minimum pursuant to s. 38.1(3) because the Trader photos are not in “a single medium”. I reject that submission. The word “medium” is not defined in the Act and is used broadly throughout the statute. I see no reason why the term “medium” cannot encompass an electronic (as opposed to physical) medium, given that it is a means through which the user can access the photos. In both *Telewizja Polsat SA v. Radiopol Inc., supra*, and *Century 21 Canada Ltd. v. Rogers Communications Inc., supra*, the court reduced the statutory damages pursuant to s. 38.1(3) where the infringement was through a website, implicitly accepting that a website can be a “medium”.

[58] Trader also argues that there is no “single” medium because the Trader photos can be accessed through both a desktop and a mobile application. In my view, the medium in this case is the CarGurus website. The desktop and mobile application are simply two user interfaces for accessing that website. The Trader photos are therefore in a single medium, meeting the first condition for reduced statutory damages in s. 38.1(3).

[388] In *Vidéotron, supra*, Justice Grammond considered the meaning of a “single medium”

and held:

[105] [...] I would point out that the purpose of this provision is to prevent a mechanical application of section 38.1 from leading to the awarding of disproportionate sums. It would be paradoxical if the purpose of this provision could be frustrated by interpreting it in a too technical or mechanical fashion. The concept of “medium” must be applied while taking into account the wide variety of types of works that can be subject to copyright and the growing diversity of technological means of reproducing or retransmitting these works. In my view, a pragmatic approach is called for.

[106] Moreover, I do not see anything in the wording of subsection 38.1(3) that requires works to be present simultaneously on a single medium, such as a hard drive or RAM. In my view, a “single medium” includes any technological infrastructure that makes it possible to reproduce, display or retransmit several works one after another. This is the situation in this case: the medium is Konek’s and Hill Valley’s network infrastructure, which makes it possible to retransmit several works one after another.

[107] There is little case law dealing with the application of subsection 38.1(3) to electronic means of communication, and there are no decisions that support a requirement of simultaneity. In *Trader Corp v CarGurus Inc*, 2017 ONSC 1841 at paragraphs 57–58, the court gave a broad interpretation to the concept of “single medium” and applied it to a collection of photographs available on a website. In *Thomson*, this Court applied subsection 38.1(3) to obituaries reproduced on a website without there being evidence establishing the conditions under which this information was recorded. In *Telewizja Polsat*, this Court applied subsection 38.1(3) to the retransmission of television programs over the Internet. The plaintiffs are seeking to distinguish this case, pointing out that it concerned an on-demand retransmission system and that the defendant kept all the programs on its server. I am not convinced

that such a distinction is relevant; indeed, following the plaintiffs' argument would lead to the conclusion that the defendant in *Telewizja Polsat* acquired the benefit of subsection 38.1(3) by retaining copies of the infringing works, which seems absurd to me.

[389] In *Maier Estate v Bulger*, *supra*, Justice Furlanetto held:

[175] I similarly find that subsection 38.1(3) of the Act (*i.e.*, the single medium provision) cannot be used to lower the statutory damage amount. The Defendants argue that “medium” as used elsewhere in the Act refers to a single category of medium (subsection 13(4) of the Act) as opposed to a single item. They assert that subsection 38.1(3) is not to be interpreted in a manner that is “too technical or mechanical”; nor one that would result in an “astronomical” damages award: *Vidéotron* at paras 85, 105. However, as noted by Justice Pallotta in *Patterned Concrete Mississauga Inc v Bomanite Toronto Ltd*, 2021 FC 314 [*Patterned Concrete*], “[i]t is the works, not the copies, that must be in a single medium in order for section 38.1(3) to apply” (at para 65). The provision was intended to apply to works like newspapers or anthologies, where multiple copyrights may exist in a single copied medium (*Nintendo of America Inc v King*, 2017 FC 246 [*Nintendo*] at para 148), or to works that exist in an electronic medium like a website (*Trader v CarGurus*, 2017 ONSC 1841 at paras 57-58).

[176] The situation is very different here. In this case, the works infringed are those embodied in the B&W Negatives. As set out in my earlier findings, the infringing acts do not extend to the hard drives. The images as contained in the negatives are each separate and may be separately copied. They are not in a single medium where multiple copyrights are infringed through a single copy. Accordingly, it is my view that subsection 38.1(3) does not apply and that the appropriate quantum of statutory damages should fall within the range specified by the Act; that is, between \$500 and \$20,000 per work.

[390] The Plaintiff asserts that, even on a conservative interpretation of a “single medium”, subsection 38.1(1) has no application here as the works are found on two mediums — namely, on-demand and the live broadcast channel. The Plaintiff further asserts that a proper interpretation of “medium” should focus on the means by which the work is made available by the infringer, which,

in this case, involved a website, a set-top box and an app. On either interpretation, the Plaintiff asserts that the works at issue are not in a single medium.

[391] The Defendants rely on *Vidéotron* to assert that the works are in a single medium — namely, the Defendants’ server — which is the technical infrastructure that makes it possible to reproduce, display or retransmit several works one after another.

[392] However, I need not make a determination as to whether the first criterion is met as, even assuming that the works at issue are in a single medium, I find that the Defendants have not demonstrated that an award of \$500 CAD per work would result in a total award that is grossly out of proportion to the infringement. At \$500 CAD per work (2,974 episodes of the Programs and the Live Channel), the total award would be \$1,487,500 CAD. While I agree with the Defendants that a \$44 million CAD statutory damages award as requested by the Plaintiff would be grossly disproportionate, I do not find that an award of \$1,487,500 CAD would be grossly out of proportion in all of the circumstances.

### **(3) The Appropriate Quantum of Statutory Damages**

[393] I appreciate that determining the appropriate quantum of statutory damages is not an exact science. As such, I have considered and weighed all of the relevant circumstances and the factors enumerated in subsection 38.1(5) of the *Copyright Act*, all as set out above.

[394] I have also conducted a comprehensive review of the jurisprudence to consider the amount of statutory damages awarded by the courts, particularly in those cases that have at least some

factual similarities. The Defendants urge the Court to rely upon the decisions in *Telewizja*, *Vidéotron* and *Odyssey Television Network Inc v Ellas TV Broadcasting Inc*, 2018 FC 337, when selecting the appropriate quantum of statutory damages, arguing that, like here, those cases involved mass infringements of television series and broadcast signals in IPTV (or similar) services. In each case, this Court awarded per-episode amounts below the statutory minimums, and the substantial misconduct and bad faith of those defendants did not stop this Court from relying on paragraph 38.1(3)(b) of the *Copyright Act*. The Plaintiff urges the Court to rely upon the decisions in *Bell Canada v Nie*, 2022 CanLII 7552 (FC), *Bell Canada*, *supra*, and the GEM Judgment, where statutory damages were set at \$10,000 CAD per work.

[395] In considering the GEM Judgment, I am mindful that the amount of statutory damages awarded by Justice Whyte Nowak for these same Programs during approximately the same period of time was done without the benefit of GEM Music's participation on the summary judgment motion. Therefore, there was no party to cross-examine the Plaintiff's witnesses and no party to push back on the arguments advanced by the Plaintiff regarding the appropriate quantum.

[396] I am also mindful of the nature of the works at issue. The Programs are award-winning, high-quality drama series (although at least one is a romantic comedy) and are among the most popular in the world next to English-language programming. The cost of creating a single episode of the Programs at the Relevant Time ranged from [REDACTED] to [REDACTED]. These are not photos of used cars like in *Trader v CarGurus*.

[397] In all of the circumstances, I am satisfied that an award of statutory damages of \$2,000 CAD per episode, of each of the Programs, is justified. In relation to the Live Channel, I find that a larger amount is warranted due to the heightened need for deterrence vis-à-vis these Defendants and the public at large. Accordingly, I award statutory damages of \$10,000 CAD in relation to the Live Channel. Therefore, the total amount of statutory damages awarded is \$5,958,000 CAD.

## **B. Punitive Damages**

[398] An election by the owner of copyright to seek statutory damages does not affect any right the copyright owner may have to exemplary or punitive damages [see *Copyright Act*, subsection 38.1(7)].

[399] Punitive damages are an exceptional remedy, designed to punish a defendant rather than compensate a plaintiff. They are in the nature of a fine, meant to act as a deterrent to a defendant and to others from acting in the impugned manner [see *Bauer Hockey Corp v Sport Masko Inc (Reebok-CCM Hockey)*, 2014 FCA 158 at para 19 [*Bauer Hockey*]].

[400] In *Whiten v Pilot Insurance Co*, 2002 SCC 18 at paragraph 36, the Supreme Court of Canada explained that punitive damages are awarded where a party's conduct has been malicious, oppressive and high-handed, such that it offends the court's sense of decency. The test limits the award to misconduct that represents a marked departure from ordinary standards of decent behaviour.

[401] Punitive damages should only be awarded, however, if all other penalties and damages have been taken into account and are “found to be inadequate to accomplish the objectives of retribution, deterrence, and denunciation” [see *Whiten v Pilot Insurance Co*, *supra* at para 123; *Microsoft Corporation v Liu*, 2016 FC 950 at para 26; *Thomson v Afterlife Network Inc*, *supra* at para 74; *Videotron*, *supra* at para 118; *Telewizja*, *supra* at para 52].

[402] The determination of whether an award of punitive damages is appropriate and, if so, the amount of punitive and exemplary damages, is a highly contextual exercise. Factors to consider in assessing the appropriateness and quantum of a punitive damages award include: (a) whether the conduct was planned and deliberate; (b) the intent and motive of the defendant; (c) whether the defendant persisted in the outrageous conduct over a lengthy period of time; (d) whether the defendant concealed or attempted to cover up its misconduct; (e) the defendant’s awareness that what they were doing was wrong; (f) whether the defendant profited from their misconduct; and (g) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff [see *Whiten v Pilot Insurance Co*, *supra* at para 113; *Bauer Hockey*, *supra* at para 20].

[403] The Plaintiff seeks an award of punitive damages in the amount of \$500,000 CAD. However, I am satisfied that, in this case, the award of statutory damages already sufficiently fulfills a punitive and retributive function such that an award of punitive damages is not warranted.

### **C. The Plaintiff’s Request for a Wide Injunction**

[404] In addition to the permanent injunction related to the Programs and the Live Channel, the Plaintiff has requested the issuance of a wide injunction pursuant to section 39.1(1) of the

*Copyright Act* that would cover an additional 68 programs (as detailed in Appendix B to the Plaintiff's Draft Judgment). While the Plaintiff originally sought permission to include additional programs in any wide injunction by the delivery of a letter to the Defendants, upon questioning by the Court as to the feasibility of such an arrangement, the Plaintiff agreed to limit its proposed wide injunction to the additional 68 programs only.

[405] Section 39.1 of the *Copyright Act* expands the scope of injunctions and permits the Court to enjoin the Defendants from infringing the copyright in any other works if: (a) the Plaintiff is the copyright owner or a person to whom an interest in the copyright has been granted by licence; and (b) the Plaintiff satisfies the Court that the Defendants will likely infringe the copyright in those other works without such an injunction.

[406] The Plaintiff made limited supplementary written submissions in support of their request for a wide injunction and only after being prompted by the Court as to whether this relief was being pursued. The Plaintiff asserts that a wide injunction is necessary as it is likely that the Defendants will infringe copyright in other works belonging to the Plaintiff given that:

- A. The Defendants admit that they sometimes make content available when they do not know who owns the copyright in that content.
- B. The Defendants continued to infringe the Programs and the Live Channel, even after receiving repeated notifications of infringement and demands of removal.
- C. The Defendants infringed the Plaintiff's copyright in other programs and channels in 2023/2024, well after the commencement of this litigation.



D. The Defendants infringed the copyright in content owned by the Plaintiff's parent corporation in 2023/2024, well after the commencement of this litigation.

E. The Defendants have infringed the copyright of others, such as ATV, and GEM Music has also sued them for copyright infringement.

[407] The Defendants assert that a wide injunction should not be granted given that infringement of the Programs and the Live Channel has ceased and any concern about potential future infringement of other programs is not a sufficient basis for the granting of a wide injunction. Moreover, the Defendants submit that the Plaintiff must demonstrate that they will suffer irreparable harm if a wide injunction is not granted, which they have not done (although the Defendants cited no authority for this requirement).

[408] I find that the Plaintiff's request for a wide injunction cannot be granted as the Plaintiff has failed to establish the first requirement of section 39.1 — namely, that the Plaintiff is the copyright owner or a person to whom an interest in the copyright has been granted by licence. The Plaintiff has not pointed the Court to any evidence that would demonstrate that the Plaintiff owns the copyright, or has been granted a licence, in relation to each of the 68 programs and it is certainly not the role of the Court to scour through the transcripts and exhibits to look for it.

[409] That said, my review of the evidence reveals that of the 68 programs for which a wide injunction is sought, 47 or 48 of them appear in the Archive that was sent to the Defendants in 2019 (the program called "Ali" or "Keşanlı Ali" being unclear, as a similar but not exactly named program appears in the Archive). However, the Plaintiff's witnesses did not state that the Plaintiff

owns the copyright in all programs in the Archive or is a person to whom an interest in the copyright has been granted by licence. Rather, the witnesses simply described these programs as “Kanal D programs”. Moreover, for the remaining 20–21 programs that do not appear in the Archive, the Court has no evidence regarding these programs at all, including evidence about the ownership of copyright or the licensing thereof. Absent such evidence, the Court will not grant a wide injunction.

[410] I would also note that it was certainly open to the Plaintiff to include in their Statement of Claim at least a number of the additional 68 programs at the time that the proceeding was commenced, or subsequently by way of amendment. Yet, for reasons unknown to the Court, the Plaintiff took no steps to do so.

#### **D. Pre-Judgment and Post-Judgment Interest**

[411] The Plaintiff seeks pre-judgment interest at the rate of 0.5%, calculated based on the rates applicable in the Province of Ontario, to run from the date of issuance of the Statement of Claim. The Plaintiff also seeks post-judgment at the rate of 4.0%. Gold Line made no submissions on the issue of interest.

[412] Regardless of whether this action can be properly construed as arising in Ontario (where Gold Line operates and, presumably, where its servers are located) or arising in more than one province, I am satisfied that it is reasonable in the circumstances to fix the rate of pre-judgment interest at 0.5% and the rate of post-judgment interest at 4.0%, which rates are in keeping with the rates established in the Ontario *Courts of Justice Act*, RSO 1990, c C43, subsection 127(2).

**E. Costs**

[413] As agreed during closing arguments, the parties shall, within seven days of release of this Judgment and Reasons, provide the Court with a jointly-proposed timetable for the delivery of written cost submissions and any agreement as to the length thereof. Subject to any further order or direction of the Court, the issue of costs of this proceeding shall be determined in writing.

**JUDGMENT in T-206-21**

**THIS COURT ORDER, DECLARES AND ADJUDGES is that:**

1. The documents marked for identification purposes at trial as Exhibits A, B, C, E, G, H, I, J, K and L, together with the questioning of witnesses thereon, are admitted into evidence, with the limitation that Exhibits A, B, C and E are not admitted for the truth of their contents but only for the fact that the documents were sent to and received by the Defendants and put them on notice of the Plaintiff's allegations of copyright infringement for the content referenced therein.
2. The testimony of Ms. Akar is admissible.
3. The testimony of Mr. Bafekr regarding the "bug" is admissible.
4. The documents marked for identification purposes at trial as Exhibits S and T, together with the questioning of witnesses thereon, are inadmissible.
5. The document marked for identification purposes at trial as Exhibit O is inadmissible. However, Ms. Görür's testimony related to what she observed on the Defendants' GLWiZ Service in December 2023 and April 2024 is admissible.
6. The Plaintiff is the owner of the copyright in the 2,974 episodes of the 22 television programs listed in the chart at paragraph 7 of the Reasons [collectively, the Kanal D Programs].
7. The Defendants have infringed the Plaintiff's copyright in each of the 2,974 works comprising the Kanal D Programs by copying, downloading, uploading and

making available the Kanal D Programs on their GLWiZ IPTV service, including via their applications and website at [www.glwiz.com](http://www.glwiz.com) [collectively, the GLWiZ Service], contrary to sections 2.4(1.1), 3(1)(a), 3(1)(f) and 27(1) of the *Copyright Act*, RSC, c C-42.

8. The Defendants have authorized the communication and infringement of the Plaintiff's copyright in the Kanal D Programs and have induced those using its GLWiZ Service to infringe the copyright in the Kanal D Programs.
9. The Defendants have distributed copies of the Kanal D Programs which they knew or should have known infringe the copyright therein, in a manner that has prejudicially affected the Plaintiff as the copyright owner, contrary to section 27(2)(b) of the *Copyright Act*.
10. The Defendants have, by way of trade, distributed, exposed or offered for sale or rental, or exhibited in public, copies of the Kanal D Programs which they knew or should have known infringe the copyright therein, contrary to section 27(2)(c) of the *Copyright Act*.
11. The Defendants have possessed, for the purposes of doing those things referred to in subsections 27(2)(b) and 27(2)(c) of the *Copyright Act*, copies of the Kanal D Programs which they knew or should have known infringe the copyright therein, contrary to section 27(2)(d) of the *Copyright Act*.
12. The Defendants have infringed the Plaintiff's copyright in its communication signal for its live Turkish-language Kanal D television channel [the Kanal D Live

Channel], by retransmitting or rebroadcasting it to the public simultaneously with the Plaintiff's own broadcast of that communication signal, contrary to section 21(1) of the *Copyright Act*.

13. The Defendants, including their shareholders, officers, directors, employees, agents, servants and assigns, and any other person or entity acting on their behalf, are hereby enjoined from directly or indirectly possessing, copying, reproducing, translating, dubbing, storing, downloading, uploading, broadcasting, distributing, streaming, or making available the Kanal D Live Channel or any episode of any of the Kanal D Programs, including any episodes of the 22 listed Kanal D Programs hereafter produced and/or released, in any language, including by broadcast or other linear means of delivery, on websites or social media sites that the Defendants directly or indirectly own, operate, and/or control, or via any IPTV service(s) that the Defendants directly or indirectly own, operate, and/or control, including the GLWiZ Service, and from authorizing or inducing any third party to engage in any of the aforementioned activities.
14. The Defendants shall, at their own cost and within fourteen (14) days of receiving a copy of this Judgment, delete and destroy all copies of the Kanal D Programs in their direct or indirect possession, power or control, howsoever or wheresoever those copies or files are maintained or stored, and shall deliver a sworn affidavit verifying compliance with this obligation to the Plaintiff via its legal counsel, Jim Holloway at Baker & McKenzie LLP.

15. The Defendants shall pay to the Plaintiff statutory damages in the amount of \$5,958,000 CAD pursuant to section 38.1 of the *Copyright Act*.
16. The Defendants shall pay to the Plaintiff pre-judgment interest on the award of statutory damages calculated at the rate of 0.5% per annum, and not compounded, from February 3, 2021, to the date of this Judgment.
17. This Judgment bears interest at the rate of 4.0%, not compounded, from the date of issuance until the amounts ordered by this Court are paid in full.
18. The Defendants are jointly and severally liable for all amounts owing to the Plaintiff pursuant to this Judgment.
19. The parties shall, within seven (7) days of release of this Judgment and Reasons, provide the Court with a jointly-proposed timetable for the delivery of written cost submissions and any agreement as to the length thereof. Subject to any further order or direction of the Court, the issue of costs of this proceeding shall be determined in writing.

“Mandy Aylen”

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Judge

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

**DOCKET:** T-206-21

**STYLE OF CAUSE:** YELDA HABER VE GÖRSEL YAYINCILIK A.S. v  
GLWIZ INC. AND GOLD LINE  
TELEMANAGEMENT INC.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 3–7, FEBRUARY 10  
AND MARCH 7, 2025

**JUDGMENT AND REASONS:** AYLEN J.

**CONFIDENTIAL JUDGMENT  
AND REASONS ISSUED:** JUNE 19, 2025

**PUBLIC JUDGMENT AND  
REASONS ISSUED:** JULY 9, 2025  
(SENT FOR TRANSLATION ON MAY 5, 2025)

**APPEARANCES:**

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Matthew Oppenheim

FOR THE PLAINTIFF

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