

Federal Court



Cour fédérale

Date: 20250819

Docket: T-206-21

Citation: 2025 FC 1387

Ottawa, Ontario, August 19, 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

JUDGMENT AND REASONS

[1] By Public Judgment and Reasons dated July 9, 2025 (2025 FC 1107) [Judgment], I found the Defendants liable to the Plaintiff for \$5,958,000 in statutory damages for copyright infringement of twenty-two of the Plaintiff's programs (2,974 episodes in total) and its live television channel. The issue of costs was reserved.

[2] The parties have since been unable to reach an agreement on the issue of costs and have now made written costs submissions. The parties agree that the Plaintiff is entitled to its costs of the proceeding but disagree on the quantum.

[3] The Plaintiff seeks a lump sum cost award of \$512,417 in legal fees (representing approximately 50% of its actual fees incurred, after an adjustment to remove some fees for work that overlapped with a separate proceeding and for student research time), together with \$73,680.16 in disbursements.

[4] The Defendants assert that, as this case was simple and the Defendants made many admissions that streamlined the proceeding, any award of costs should be no higher than the top end of Column V of Tariff B of the *Federal Courts Rules*, SOR/98-106 [*Rules*]. In the alternative, if the Court is inclined to make a lump sum cost award, the Defendants argue that the factors under Rule 400(3) do not support an award above 25% of the Plaintiff's actual legal fees. The Defendants further assert that portions of the Plaintiff's costs and disbursements are improper, unnecessary and/or unreasonable.

[5] For the purpose of these Reasons, any capitalized terms shall have the same meaning as in the Judgment.

I. Analysis

[6] Rule 400 (1) of the *Rules* provides this Court with "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid."

[7] The principal objectives underlying an award of costs are to: (i) provide indemnification for costs associated with successfully pursuing a valid legal right or defending an unfounded claim; (ii) penalize a party who has refused a reasonable settlement offer; and (iii) sanction behaviour that increases the duration and expense of litigation or is otherwise unreasonable or vexatious [see *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 25; *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 19 [*Allergan*]].

[8] The default level of costs in this Court is the midpoint of Column III of Tariff B [see Rule 407]. However, Rule 400(4) expressly contemplates an award of costs in a lump sum in lieu of any assessed costs pursuant to Tariff B.

[9] A lump sum award, based on a percentage of a party's actual legal fees, can simplify the costs determination and further the goal articulated in Rule 3 of ensuring "the just, most expeditious and least expensive" determination of every proceeding on its merits. The burden is on the party seeking increased costs to demonstrate why their particular circumstances warrant an increased award [see *Apotex Inc v Shire LLC*, 2021 FCA 54 at para 18; *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 13 [*Nova*]]. As noted by the Federal Court of Appeal in *Nova*, there appears to be a trend in recent intellectual property decisions of favouring lump sum costs awards, particularly in cases involving sophisticated commercial litigants [see *Nova, supra* at para 16].

[10] Lump sum costs awards tend to be between 25% and 50% of a party's actual fees. However, there may be cases where a higher or lower percentage is warranted. The Court's wide discretion

to award costs is structured by the factors set out in Rule 400(3), the case law and the objectives that underly awards of costs [see *Nova, supra* at paras 17, 19]. While the criteria under Rule 400(3) are useful beacons in the selection of the percentage of actuals to award, the determination of the lump sum is not an exact science [see *Nova, supra* at para 21].

[11] Rule 400(3) of the *Rules* sets out a list of non-exhaustive factors that the Court may consider when awarding costs. As relevant to this case, the factors include: (i) the result of the proceeding; (ii) the amounts claimed and the amounts recovered; (iii) the importance and complexity of the issues; (iv) the amount of work; (v) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding; (vi) the failure of a party to admit anything that should have been admitted or to serve a request to admit; (vii) whether any step in the proceeding was improper, vexatious or unnecessary, or taken through negligence, mistake or excessive caution; and (viii) any other matter that the Court considers relevant.

[12] As a matter of good practice, requests for lump sum costs awards should generally be accompanied by a Bill of Costs and an affidavit in respect of disbursements that are outside of the knowledge of the solicitor [see *Nova, supra* at para 14]. In this case, the Plaintiff has filed a detailed Bill of Costs, supporting invoices with annotated explanations and a confidential copy of all of counsel's dockets and client invoices.

A. Tariff versus Lump Sum

[13] Having considered the submissions of the parties, I am satisfied that a departure from Column V of Tariff B is warranted and that a lump sum cost award is appropriate given that:

- A. The parties to this intellectual property matter are sophisticated commercial entities.
- B. While the Defendants' admissions prior to trial rendered the issues to be determined at trial less complex, the reality is that for the majority of the litigation, there were live infringement issues regarding almost 3,000 episodes of the Plaintiffs' Programs, in addition to the remedies issues (which also morphed immediately before trial). In the circumstances, I find that the case is properly characterized as a complex intellectual property proceeding, notwithstanding that no expert witnesses were required.
- C. An award of costs, even at the high end of Column V of Tariff B, would not meet the objectives of indemnification and making a reasonable contribution to the costs of the litigation.

[14] I would also note that these same Defendants, in *Gold Line Telemanagement Inc v Ereele GmbH*, 2025 FC 904 [*Ereele GmbH*], sought and obtained a lump sum cost award of 40% of their actual legal fees in another copyright proceeding related to the GLWiZ Service.

B. The Quantum of the Lump Sum Award

[15] The Plaintiff seeks 50% of its actual legal fees, whereas the Defendants assert (in the alternative) that an award of only 25% is appropriate. I am satisfied that, given that this case is a copyright matter and not a complex drug patent proceeding like in *Allergan*, the proper method for setting a lump sum award is to start at 25% of the Plaintiff's actual legal fees and then assess whether factors, such as those listed in Rule 400(3), warrant a higher or lower percentage [see *Seedlings Life Science Ventures, LLC v Pfizer Canada ULC*, 2020 FC 505 at para 22 [*Seedlings*]; *Bauer Hockey Ltd v Sport Maska Inc (CCM Hockey)*, 2020 FC 862 at para 14].

[16] The Plaintiff made various submissions to justify their proposed increase of the percentage of recovery to 50%, whereas the Defendants have countered with a number of arguments as to why no lump sum award is warranted, which also support decreasing any lump sum award below 25% or not increasing it above 25%. Having considered the submissions of the parties and the various factors enumerated in Rule 400(3) as set out above, I am satisfied that an increase to 30% of actual legal fees is warranted. In reaching this finding, I have accepted and rejected a number of the arguments advanced by the parties.

[17] I am satisfied that a 5% upward adjustment to 30% of the Plaintiff's actual legal fees incurred is warranted due to the following:

- A. In mid-November of 2024, the Defendants obtained, over the objections of the Plaintiff, an adjournment of the trial (then scheduled to proceed in late November 2024) due to the illness of Mr. Moeini. At the time that I granted the adjournment,

I did so expressly without prejudice to the Plaintiff's right to seek their trial preparation costs thrown away. The Plaintiff calculated the costs thrown away at \$30,280 (approximately 3% of actuals), which calculation the Defendants do not dispute. However, the Defendants assert that any recovery of costs thrown away should not merit an overall higher percentage of recovery, noting that this Court has in other cases only permitted a 30% recovery of costs thrown away due to an adjournment [see, for example, *Adbelrazik v Canada*, 2019 FC 769]. I agree with the Defendants that the costs arising from the adjournment do not warrant an overall increase in the percentage of recovery to the degree requested by the Plaintiff, as this would result in overcompensating the Plaintiff for the adjournment. The recovery of a portion of these specific costs is, instead, incorporated in the 5% adjustment.

- B. In January of 2025, the Defendants dramatically changed their defence to this proceeding. Until that point in time, the Defendants had denied infringement and asserted that the Plaintiff had authorized their use of the Programs and Live Channel through Mr. Sarilar (a former employee of the Plaintiff). In the weeks leading up to the rescheduled trial, the Defendants announced that they were no longer defending the action on this basis. Rather, they conceded infringement and asserted that they had mistakenly, though reasonably, understood that they had a valid license from GEM Media to use the Plaintiff's Programs. On that basis, the Defendants asserted that they were therefore "innocent infringers" within the meaning of subsection 38.1(2) of the *Copyright Act*, RSC, 1985, c. C-42. Moreover, and more importantly, the thrust of the Defendants' position was now that any award of statutory damages

above \$200 per work would result in an award that was grossly disproportionate to the infringement within the meaning of subsection 38.1(3) of the *Copyright Act*. This last-minute change in the Defendants' position materially changed the focus of the trial and, consequently, rendered a not insignificant portion of the Plaintiff's trial preparation up until that point in time of little value. The Plaintiff calculated the costs associated with this change in defence at \$62,100, which the Defendants did not dispute. The recovery of a portion of these costs is incorporated in the 5% adjustment.

- C. The change in the Defendants' defence also necessitated the need for a last-minute discovery of the Defendants' representative to further explore this new defence, as earlier questions asked by the Plaintiff regarding the Defendants' dealings with GEM Media had been refused. At the time that I scheduled this further discovery, I advised the Defendants that they would be liable for the costs thereof. Again, the recovery of a portion of these costs (although not clearly delineated by the Plaintiff) is incorporated in the 5% adjustment.
- D. Less than 10 days before the start of the rescheduled trial, the Defendants produced additional documents and advised the Plaintiff of a technical "bug" that allowed users to access content on the GLWiZ Service which the Defendants had believed to have been disabled in response to the Plaintiff's 2019 Cease and Desist Letter. This technical issue then factored into the Defendants' arguments regarding their "innocence" and their unsuccessful attempts to respond to the Plaintiffs' claims of copyright infringement. However, as detailed in the Judgment, I found that the Defendants were well aware of this technical "bug" in 2021 and a deliberate

decision had been made by the Defendants not to disclose this explanation earlier in the proceeding. This conduct warrants an upward adjustment.

- E. As detailed more fully in the Judgment, the Defendants deliberately infringed the Plaintiff's copyright in the Live Channel, as the Live Channel did not fall within their asserted "innocent infringer" argument. Again, this conduct warrants an upward adjustment.
- F. As detailed in paragraphs 365 through 368 of the Judgment, the Defendants engaged in bad faith conduct in failing to verify the validity of their asserted license with GEM Media and in failing to properly investigate the allegation of copyright infringement made by the Plaintiff in the 2019 Cease and Desist Letter. Again, this conduct warrants an upward adjustment.

[18] There were a number of arguments advanced by the parties that I find do not warrant either an upward or downward adjustment to the percentage of recovery. Specifically:

- A. The complexity of the proceeding (including the Defendants' failure to admit liability until close to the eve of trial) is already accounted for in the decision to award a lump sum at 25% of adjusted actuals [see *Seedlings, supra* at para 23].
- B. Contrary to the assertion of the Plaintiff, I find that the fact that the Defendants have been alleged to be copyright infringers in other proceedings is irrelevant. Moreover, in the case relied upon by the Plaintiff (*Ereele GmbH, supra*), this Court found that the works allegedly infringed by the Defendants were not granted copyright

protection in Canada and thus the claims of copyright infringement against the Defendants were not made out.

- C. I reject the assertion that the Plaintiff's failure to obtain an award of punitive damages, a wide injunction and a higher amount in statutory damages are factors that mitigate against a lump sum of 25% of actual legal fees. The statutory damages award obtained by the Plaintiff was significant and the Plaintiff was successful in obtaining other injunctive relief. The Defendants were also entirely unsuccessful in advancing their main grounds of defence — namely, that they were “innocent infringers” within the meaning of the *Copyright Act* and that the statutory damage award sought by the Plaintiff would be grossly disproportionate.
- D. While the Plaintiff's attempt to withdraw an admission at trial was misguided and ultimately abandoned, this was a minor issue that would have necessitated minimal effort by the Defendants to respond to. It further did not require any additional evidence to be led at trial. Similarly, the Plaintiff's annexing of evidence to their closing submissions necessitated minimal effort by the Defendants to address. I find that neither act of the Plaintiff can be characterized as unnecessarily lengthening the duration of the proceeding or as being vexatious, nor was any conduct of the Plaintiff sufficiently improper or unnecessary so as to rise to the level of warranting a reduction to the amount of costs recoverable.

[19] In terms of the amount of actual legal fees claimed by the Plaintiff, the Defendants assert that the Plaintiff has improperly included \$31,316 in legal fees for two motions that have already been the subject of prior costs orders. The Plaintiff did not address this assertion in their reply. I

agree with the Defendants that the legal fees associated with these motions are not recoverable as the Court has already adjudicated the level of recovery for the work associated with these motions [see *Exeter v Canada (Attorney General)*, 2013 FCA 134 at para 14]. As such, the fees associated with these motions must be removed from the total actual fees. No other concerns were raised by the Defendants regarding the fees set out in the Plaintiff's Bill of Costs and I find that, with the one exception as noted above, the actual legal fees claimed by the Plaintiff are otherwise reasonable and necessary.

[20] As such, the total amount of actual fees shall be reduced from \$1,024,834 (100% of adjusted actuals) to \$993,518. Based on a lump sum cost award of 30% of actuals, the amount of legal fees recoverable by the Plaintiff is therefore \$298,055.

C. Disbursements

[21] For a disbursement to be reasonable, it must be a justified expenditure in relation to the issues at trial in the proceeding. Counsel's decision to incur the expense must reflect a prudent and reasonable representation, considering the circumstances as they existed at the time [see *Nova, supra* at para 20; *Janssen Inc v Teva Canada Limited*, 2012 FC 48 at para 68].

[22] The Plaintiff seeks disbursements in the amount of \$73,680.16, which largely consist of: (i) costs associated with trial transcripts; (ii) travel expenses for counsel, witnesses and supervising counsel from the Plaintiff; (iii) translation of documents; (iv) photocopies; (v) examination fees and discovery transcripts; (vi) private investigator fees; (vii) courier and process server fees; (viii) court filing fees; and (ix) corporate search fees. The request for each disbursement is

supported by corresponding invoices and proof of payments, with handwritten annotations thereon explaining each disbursement, where required.

[23] The Defendants take issue with three disbursements. First, the Defendants take issue with the costs associated with counsel for the Plaintiff's travel to Turkey for a half-day examination for discovery of the Plaintiff's representative, which examination was conducted by videoconference. I find that this disbursement was reasonable, as the rationale for in-person preparation for examinations for discovery is self-evident regardless of whether the examination was ultimately conducted virtually, particularly in light of the language and time zone issues, the extent of the documentary productions and the amount at stake in the proceeding.

[24] Second, in relation to the travel expenses for two supervising counsel from the Plaintiff, the Defendants assert that the disbursements related to a second supervising counsel in the amount of \$5,106 should be disallowed as no explanation was provided as to why both supervising counsel were necessary and, to the Defendants' recollection, only one supervising counsel actually attended at trial. In their reply, the Plaintiff confirmed that both supervising counsel attended the trial (one as a witness and one as an observer) and stressed that their attendance highlighted the importance and significance of the issues to the Plaintiff.

[25] I am mindful of the following commentary made by Justice Sébastien Grammond in *Seedlings, supra* at para 15, with which I agree:

[...] [I]t is inherently difficult for a court to second-guess strategic litigation choices made by the parties. The court does not know each party's degree of tolerance of risk and may not have a full appreciation of the impact of its judgment on the parties. And, of

course, hindsight is always perfect. Indeed, it should not be for the losing party “to tell the winning party how they could have succeeded by doing or spending less” [...]

[Citation omitted.]

[26] In the circumstances, I see no basis to second-guess the Plaintiff’s decision to have an in-house counsel who was not testifying attend the trial. Accordingly, I will allow this disbursement in its entirety.

[27] Third, the Defendants take issue with the \$4,882 claimed for photocopying, as the Plaintiff did not provide an affidavit explaining why such charges were accrued for an electronic trial, the cost per page and the purpose, content and necessity of the copies. Moreover, the Defendants note that approximately \$3,576 in photocopying charges were incurred after closing arguments and that the per page rate charged for all copies does not reflect the actual cost of copying but rather appears to reflect the cost that counsel charged the Plaintiff for in-house copies. The Plaintiff did not address these concerns in its reply. Absent any evidence or explanation from the Plaintiff to address these concerns, I am not satisfied that the photocopying charges represent a reasonable and necessary expense. In particular, I agree with the Defendants that the amount recoverable for photocopying should reflect the actual costs incurred by a law firm in making photocopies, as law firms are “not in the business of making a profit on its photocopy equipment” [see *Diversified Products Corp v Tye-Sil Corp*, 1990 CanLII 13732 (FC), 34 CPR (3d) 267 at 275–276; *dTechs EPM Ltd v British Columbia Hydro and Power Authority*, 2023 FC 1446 at paras 87–89]. Based on the evidence before me, I find that the amount recoverable for photocopying should be reduced to \$1,000.

[28] I am satisfied that the balance of the disbursements claimed by the Plaintiff were reasonable and necessary. Accordingly, after a reduction of \$3,882 in recoverable photocopying charges, I find that the Plaintiff is entitled to disbursements in the amount of \$69,798.16.

D. Post-judgment interest

[29] While the Plaintiff did not address post-judgment interest in their written cost submissions, a claim for post-judgment interest was made in the Statement of Claim. I see no basis to deprive the Plaintiff of such an award. Accordingly, post-judgment interest shall be awarded at the rate of 4.0%, which is consistent with the rate of post-judgment interest awarded in the Judgment.

JUDGMENT in T-206-21

THIS COURT’S JUDGMENT is that:

1. The Plaintiff is hereby awarded total costs in the amount of \$367,853.16, inclusive of all fees and disbursements, with post-judgment interest at the rate of 4.0% from the date of this Judgment.
2. No costs are otherwise awarded on this Judgment.

“Mandy Aylen”

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.

**SUBMISSIONS ON COSTS CONSIDERED AT OTTAWA, ONTARIO, PURSUANT
TO THIS COURT'S JUDGMENT IN 2025 FC 1107**

JUDGMENT AND REASONS AYLEN J.

DATED: AUGUST 19, 2025

WRITTEN SUBMISSIONS BY:

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