Federal Court  Cour fédérale

Date: 20250815

Docket: T-1257-22

Citation: 2025 FC 1378

Ottawa, Ontario, August 15, 2025

PRESENT: THE CHIEF JUSTICE

BETWEEN:

BELL MEDIA INC.
ROGERS MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
PARAMOUNT PICTURES CORPORATION
UNIVERSAL CITY STUDIOS LLC
UNIVERSAL CITY STUDIOS PRODUCTIONS LLP
WARNER BROS. ENTERTAINMENT INC.

Plaintiffs

and

MARSHALL MACCIACCHERA dba SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA dba SMOOTHSTREAMS.TV
ARM HOSTING INC.
STAR HOSTING LIMITED (HONG KONG)
ROMA WORKS LIMITED (HONG KONG)
ROMA WORKS SA (PANAMA)

Defendants

ORDER AND REASONS

I. Introduction

[1] It appears that some copyright pirates make calculated decisions to breach court orders, after assessing the pros and cons associated with doing so. Some of those pirates even brazenly continue their contemptuous actions after being found in contempt. In the face of such defiance of its orders, it behooves the Court to impose penalties designed to maximize the potential for instilling respect for its orders and the rule of law.

[2] These reasons concern the penalties to be imposed on the Defendants Marshall Macciacchera and his father Antonio Macciacchera for their contempt of certain provisions in an "Anton Piller" Order issued by Justice Vanessa Rochester (as she then was) on June 28, 2022 (the "Interim Order"). Considering the family relationship between these two Defendants, and not out of any disrespect, they will be referred to below solely by their first names.

[3] All parties have agreed that a penalty of incarceration is appropriate. Therefore, the central issue addressed in these reasons concerns the duration and parameters of such a penalty.

[4] In brief, the Plaintiffs request that the Court order Marshall and Antonio to be incarcerated until they comply with certain provisions of the Interim Order, which were extended by the Order of Justice Roger Lafrenière dated November 22, 2022: *Bell Media Inc v Macciacchera (Smoothstreams.tv)*, 2022 FC 1602 (the **"**Interlocutory Order**"**). In any event, the Plaintiffs further request that the Court impose a period of incarceration of no less than six months on each of Marshall and Antonio.

[5] Marshall submits that he should only be incarcerated for one week for each of the "clear failures" to comply with the provisions of the Interim Order. He asserts that there are only three such failures, namely, his refusals to provide the password to his personal computer and to authorize the Hong Kong banks where two of the corporate Defendants have accounts, to disclose certain information to the Plaintiffs. Antonio maintains that he should only be incarcerated for 30 days of house arrest, or 30 days to be served on weekends, for his refusals to authorize two Canadian banks to disclose to the Plaintiffs the transaction histories of the accounts that he has at those institutions.

[6] Both Marshall and Antonio further maintain that they should be permitted to serve their respective penalties and then not face any further consequences in relation to their ongoing contempt.

[7] For the reasons that follow, Marshall will be ordered to be incarcerated for an initial period of six months for his non-curable failure to comply with the provisions of the Interim Order in respect of which he was found to be in contempt, including paragraph 20 thereof, as extended by paragraph 5 of the Interlocutory Order. In addition, Marshall will be ordered to be incarcerated for a further maximum period of five years less one day, or until he complies with the Interim Order (as extended by the Interlocutory Order), whichever comes first, by disclosing (i) the password to the computer that was copied during the execution of the Interim Order at 259 Dunlop Street, unit 202, Barrie, Ontario, (ii) any other means necessary to access the contents of that computer, and (iii) all information pertaining to his assets, as described in these reasons

further below. For greater certainty, the above-mentioned maximum period of five years less one day shall include the initial period of six months' imprisonment.

[8] Likewise, Antonio will be ordered to be incarcerated for an initial period of four months for his non-curable failure to comply with paragraphs 30 and 37 of the Interim Order, by (i) refusing to provide access to his property and to the specified evidence therein that the persons enforcing the Interim Order had reasonable grounds to believe was located there, and (ii) otherwise refusing to assist the persons who attempted to enforce that Order, and to cooperate with those persons. In addition, Antonio will be ordered to be incarcerated for a further maximum period of five years less one day, or until he complies with the above-mentioned provisions of the Interim Order, by disclosing all information pertaining to his assets, as described further below. Once again, this maximum period of five years less one day shall include the initial period of four months' imprisonment.

[9] By failing to comply with the provisions of the Interim Order in respect of which they were found to be in contempt, Marshall and Antonio flagrantly disregarded that Order and frustrated a principal objective of the Interim Order, namely to prevent the destruction or removal of evidence, or the transfer of funds beyond the jurisdiction of the Court. By continuing their contempt, Marshall and Antonio have displayed blatant defiance of the Court's Orders and have prevented the Plaintiffs from advancing their underlying action for copyright infringement. This warrants a penalty that strongly encourages Marshall and Antonio to cure their ongoing contempt, that reflects the Court's denunciation and that deters such conduct in the future,

particularly given the absence of any mitigating factors that merit significant weight in the present circumstances.

II. The Parties

[10] The Plaintiffs, Bell Media Inc. and Rogers Media Inc., are Canadian broadcasters that own and operate a number of television stations on which they broadcast a wide variety of programming. They also broadcast television programming on their respective subscription-based on-demand Internet streaming services. The Plaintiffs, Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Paramount Pictures Corporation, Universal City Studios LLC, Universal City Studios Productions LLLP, and Warner Bros. Entertainment Inc., are engaged in the production and distribution of motion pictures and television content.

[11] The Plaintiffs claim that Marshall and Antonio are the key individuals behind the operation of the Smoothstreams.tv Internet Protocol Television [**IPTV**] service network, including smoothstreams.tv, live247.tv, streamtvnow.tv and starstreams.tv (collectively referred as the **"SSTV Services"**).

[12] The Plaintiffs further claim that the following corporate Defendants are payment processors for the IPTV services, as set out below:

Defendant	**Payment Processor**	**President and Sole Director**
Arm Hosting Inc.	live247.tv	Marshall
Star Hosting Limited (Hong Kong)	streamtvnow.tv	Marshall

Roma Works Limited (Hong Kong)	starstreams.tv	Marshall

[13] The Defendant Roma Works SA (Panama) (**"**Roma Works Panama**"**) was initially created by Antonio for a purpose unrelated to these proceedings. It does not appear to be disputed that Roma Works Panama is the sole shareholder of the Defendant Star Hosting Limited (Hong Kong) (**"**Star Hosting Limited**"**). However, there is conflicting evidence as to whether it continues to be controlled by Antonio, or is now controlled by Marshall. In contrast to the other Defendants, Roma Works Panama was not charged with contempt of any Order of the Court.

III. Procedural History

[14] The procedural history leading up to the present penalty proceeding is complex. The first part of that history was detailed by Justice Lafrenière in his treatment of part of the Plaintiffs' motion to review the execution of the Interim Order and to show cause for why Marshall and the corporate Defendants should be charged with contempt of Court for breaching the Anton Piller Order: *Bell Media Inc v Macciacchera (Smoothstreams.tv)*, 2022 FC 1139 [***Macciacchera 1***]. I then provided a brief summary and update in *Bell Media Inc v Macciacchera (Smoothstreams.tv)*, 2023 FC 801 [***Macciacchera 2***] at paras 5–13. This was followed by a further update by Justice Rochester (as she then was) in *Bell Media Inc v Marshall Macciacchera (Smoothstreams.tv)*, 2024 FC 1292 [***Macciacchera 3***] at paras 6–13.

[15] For the present purposes, the following brief summary will suffice.

[16] On June 17, 2022, the Plaintiffs commenced the underlying action for infringement of their copyright in a large number of entertainment works. In broad terms, the Plaintiffs allege that the SSTV Services provide subscribers with unauthorized access to a large number of motion pictures and live television channels that broadcast television programming for which the copyright in Canada is owned by various rights holders, including the Plaintiffs.

[17] On June 28, 2022, Justice Rochester issued the Interim Order, which included the Anton Piller Order and a range of injunctive and other related relief requested by the Plaintiffs.

[18] Among other things, the Anton Piller Order included extensive provisions for the search, seizure and preservation of evidence and equipment related to the SSTV Services. It also required the Defendants to disclose information regarding the SSTV Services, as well as their financial and other assets. In addition, the broader Interim Order required the Plaintiffs to appoint an independent lawyer (the **"ISS"**) to supervise the service and execution of the Anton Piller Order. Ultimately, the ISS who provided such supervision in respect of the service and execution against Marshall was Mr. Daniel Drapeau, a sole practitioner at DrapeauLex Inc. The ISS for the attempted execution against Antonio was Mr. Mark Davis, a partner at the firm Cassels Brock & Blackwell LLP.

[19] On July 14, 2022 (the **"Attempted Execution Date"**), the Interim Order was served on Marshall and Antonio at separate locations. Antonio refused to provide access to his residence and generally refused to cooperate with the execution. Marshall only partially cooperated.

[20] On July 21, 2022, Prothonotary Benoit Duchesne[1] (as he then was) issued an Order requiring Antonio to attend a hearing to hear proof regarding ten acts of contempt with which he was charged, and to present any defence that he may have to those charges (as amended, the **"Duchesne Charging Order"**).

[21] The following week, in *Macciacchera 1*, Justice Lafrenière issued a similar Order that, among other things, required Marshall and the Corporate Defendants (other than Roma Works Panama) to attend a hearing to hear proof regarding several additional acts of contempt with which they were charged,[2] and to present any defence that they may have to those charges.

[22] In the Interlocutory Order issued on November 22, 2022, Justice Lafrenière declared that the execution of the Interim Order as against the Defendants was lawfully conducted.

[23] The Defendants' appeal of that aspect of the Interlocutory Order was dismissed: *Macciacchera (Smoothstreams.tv) v Bell Media Inc*, 2024 FCA 138.

IV. Findings of Contempt

[24] In *Macciacchera 2*, I found Antonio guilty of contempt for flagrantly disobeying paragraphs 24(b), 25, 30 and 37 of the Interim Order, as contemplated by four of the charges of contempt against him. However, I dismissed the other six charges of contempt against him.

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[1] At that time, the title of the Court's Associate Judges was "Prothonotary".

[2] Marshall and the corporate Defendants (other than Roma Works Panama) were charged with breaching paragraph 20 of the Interim Order; Marshall, Star Hosting Limited (Hong Kong) and Roma Works Limited (Hong Kong) were charged with breaching paragraphs 24(a), 24(b), 24(c) and 25 of that Order. Marshall was also charged with breaching paragraph 30 of the Order.

[25] In *Macciacchera 3*, Justice Rochester (as she then was) found Arm Hosting Inc. guilty of one charge of contempt for deliberately disobeying paragraph 20 of the Interim Order. She also found Star Hosting Limited and Roma Works Limited (Hong Kong) (**"Roma Works Limited"**) guilty of three charges of contempt for deliberately disobeying paragraphs 20, 24, and 25 of the Interim Order. She further found Marshall guilty of four charges of contempt for deliberately disobeying paragraphs 20, 24, 25, and 30 of the Interim Order. The foregoing represented all of the acts of contempt with which Marshall and the corporate Defendants were charged.

[26] It is common ground between the parties that some of the contempt findings against Antonio and Marshall, respectively, are non-curable. In particular, Antonio's refusal to assist ISS Mark Davis to access his property, information, documents and equipment on the date of the execution of the Interim Order, as provided by paragraph 30 of that Order, is no longer curable. The same is true with respect to his obligation to "cooperate with the persons executing this Order," as provided by paragraph 37. Likewise, Marshall's refusal to transfer to ISS Daniel Drapeau control over the infrastructure of the SSTV Services, as contemplated by paragraph 20 of the Interim Order, is no longer curable.

[27] This appears to explain why the compliance-oriented provisions in the Notices of Penalty discussed immediately below are confined to two of the four provisions of the Interim Order, in respect of which Antonio was found guilty (paragraphs 24(b) and 25), and three of the four provisions in respect of which Marshall was found guilty (paragraphs 24, 25 and 30).

[28] Insofar as paragraphs 24 and 25 are concerned, the penalty sought against Marshall is both in his personal capacity and as sole director and directing mind of the Defendants Star Hosting Limited and Roma Works Limited.

V. The Notices of Penalty for Contempt Recommended Against Marshall and Antonio

[29] The Notice of Penalty for Contempt Recommended against Marshall requests the following:

> 1. Incarceration until you comply with the following paragraphs of the Interim Order, as extended by the [Interlocutory Order] and, in any event, for a period of no less than six (6) months:
>
> a) Paragraph 30 of the Interim Order and paragraph 13 of the Interlocutory Order: Disclosure of the password and/or of any other means necessary to access the contents of the computer copied during the execution of the Interim Order at 259 Dunlop Street, unit 202, Barrie, Ontario, Canada; and
>
> b) Paragraphs 24 and 25 of the Interim Order and paragraphs 10 and 11 of the Interlocutory Order: Disclosure of all information pertaining to your assets, including by providing a written consent in the form of Schedule III of the Interim Order and Interlocutory Order for the HSBC bank account(s) associated with the documents found at Exhibit DSD-18 to the affidavit of Daniel S. Drapeau dated July 22, 2022.
>
> c) Costs of the penalty aspect of the contempt proceeding to be paid to the Plaintiffs on a solicitor-client basis, including legal fees and disbursements.

[30] The Notice of Penalty for Contempt Recommended against Antonio requests the following:

> 1. Incarceration until you comply with the following paragraphs of the Interim Order, as extended by the [Interlocutory Order] and, in any event, for a period of no less than six (6) months:

a) Paragraphs 24(b) and 25 of the Interim Order and paragraphs 10(b) and 11 of the Interlocutory Order: Disclosure of all information pertaining to your assets, including by providing a written consent in the form of Schedule III to the Interim Order and Interlocutory Order for TD Bank Account No 508 502268, and Royal Bank of Canada Account No 0015-5167283.

b) Costs of the penalty aspect of the contempt proceeding to be paid to the Plaintiffs on a solicitor-client basis, including legal fees and disbursements.

[31] During the penalty hearing before me, the Plaintiffs explained that their request for a period of incarceration of no less than six months is for the non-curable contempt findings, and that their request that Marshall and Antonio be incarcerated until they cure their contempt applies to the curable contempt findings: Hearing Transcript, June 17, 2025 [**Day 2 Transcript**] at page 12. The Plaintiffs further explained that this request for a minimum period of incarceration of six months is also based on the defiant nature of the contempt: Day 2 Transcript at page 161.

VI. Relevant Legislation

[32] For the present purposes, the relevant legislation is Rule 472 of the *Federal Courts Rules*, SOR/98-106 (the "Rules"), which provides as follows:

Penalty	**Peine**
472 Where a person is found to be in contempt, a judge may order that	472 Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :
(a) the person be imprisoned for a period of less than five years or until the person complies with the order;	(a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;

(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;	(b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
(c) the person pay a fine;	(c) qu'elle paie une amende;
(d) the person do or refrain from doing any act;	(d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
(e) in respect of a person referred to in rule 429, the person's property be sequestered; and	(e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
(f) the person pay costs	(f) qu'elle soit condamnée aux dépens.

VII. Overview of the Evidence

[33] During the penalty hearing, Mr. Branko Vranesh, Mr. Andrew McGuigan and Antonio were cross-examined on their affidavits. The Plaintiff also filed the transcript of Marshall's cross-examination of Mr. Davis, which took place out of court, and transcripts of the examinations of Marshall and Antonio on discovery.

[34] Mr. Vranesh is a senior analyst at MT>3, a division of the law firm McCarthy Tétrault that specializes in providing advice and services relating to e-discovery, information governance and digital forensics. Among other things, Mr. Vranesh testified that he does not know whether any of the servers that were seized during the execution of the Interim Order have been monitored since their seizure. He also acknowledged that Marshall provided to him the login credentials for the Defendant Arm Hosting Inc.'s domain. He further stated that he had not been asked to analyze any of the physical computer drives or servers that were seized during the

execution. In addition, he confirmed that he witnessed Marshall's computer being accessed remotely during the execution, and that this was being done by someone other than Marshall. Overall, Mr. Vranesh presented as being a forthright and credible witness.

[35] I will pause to observe that the parties agreed during an exchange that followed Mr. Vranesh's cross-examination that the reason he has not started to analyze the computer drives or servers is that he has not yet received the keywords from the Defendants, and therefore he cannot follow the protocol to purge privileged information from the information on those devices.[3] The Plaintiffs added that it would be inefficient and counterproductive to begin a forensic analysis of those devices until they have access to Marshall's computer password: Hearing Transcript, June 16, 2025 [**Day 1 Transcript**] at page 73.

[36] Mr. McGuigan is a Director of the Global Content Protection Department of the Motion Picture Association of Canada (the **"**MPA**"**). He was cross-examined on affidavits that he swore on June 3, 2022 (the **"**First McGuigan Affidavit**"**) and December 12, 2024 (the **"**Second McGuigan Affidavit**"**).[4] Among other things, he clarified that, at paragraph 130 of the First McGuigan Affidavit, his description of methods that individuals who are involved in unauthorized subscription services use to remain anonymous and/or avoid legal prosecution was not specifically intended to apply to any of the Defendants. Mr. McGuigan was also questioned about various foreign ISPs who he identified at paragraph 122 of the First McGuigan Affidavit as being hosting providers with servers that were being used to stream content to subscribers of

[3] Later in the hearing, Marshall explained that he believed the keywords list was with his former counsel, Mr. Paul Lomic, who then communicated to ISS Drapeau about that list. For the purposes of these reasons, nothing turns on this issue.
[4] The reference to the year 2022 on the signing page of that affidavit is evidently a typographical error.

Live247. He testified that neither he nor, to his knowledge, anyone else at the MPA contacted any of those entities in connection with the investigation into the Defendants' impugned operations.

[37] Mr. McGuigan also confirmed that the MPA sent a "cease and desist" order to an alleged copyright infringer in an unrelated matter. He also acknowledged that the MPA decided to proceed directly to litigation against the Defendants, rather than send them a "cease and desist" order. He explained that the decision as to whether to issue such an order or proceed directly to litigation is made on a case-by-case basis. In addition, he acknowledged that none of the Defendants were contacted by the MPA prior to the initiation of the Plaintiffs' infringement action. He also testified that when the Defendants' services were last monitored, "several domains were still online and several were down": Day 1 Transcript at pages 109–110.

[38] Mr. McGuigan presented as being a forthright and credible witness.

[39] Turning to Antonio, he conceded that he is aware that he is under an obligation under the Interim Order to disclose his financial information, and he has refrained from providing the transaction histories of his two Canadian bank accounts described further below in these reasons. When asked whether he would authorize his banks to disclose to the Plaintiffs the information described in the form that was included at Schedule III to the Interim Order, as required by the Interim Order, he replied "no": Day 1 Transcript at page 121.

[40] Antonio also explained that the two bank accounts in question were held jointly with his spouse, that she did not consent to signing Schedule III, and that she then "went and closed the accounts": Day 1 Transcript at page 123. He stated that she did so for the reasons that he gave in his opening remarks. In those remarks, Antonio explained that when he provided the Plaintiffs with the required Schedule III consent forms for his two banks, he excluded their transaction history after being advised that the privacy rights of his spouse and other third parties could not be guaranteed. He added that disclosing such history would have "devastating consequences on a personal level, trust, divorce, based on inherent trust in a relationship, marriage, and other potential legal consequences thereof": *ibid*. at page 44. He further added that his wife has been a teacher for 50 years, "does some serious religious work in the community in Peel, [and] runs a large amount of the work for the theology department for the churches:" *ibid*.

[41] In addition, Antonio confirmed that he sometimes goes by the name "Tony Roma," which appears in various documents filed by the Plaintiffs. He also maintained that he does not know much about computer technology. After resisting answering whether TonyRoma.biz is his website, he explained that he uses that website for emails. He also stated that he did not know what a particular record that was put to him during the hearing, and that reflected a payment to that website, was for.

[42] In response to the Plaintiffs' submission that he has not apologized for his contempt of the Interim Order, he stated that he was "not aware that that was something that should fit in" this proceeding, and that it should be the judge, not the Plaintiffs, who state whether he should apologize: Day 1 Transcript at pp 137–138. He also insisted that it is the Plaintiffs who should be

apologizing for some of the claims they have made about him. In any event, he proceeded to state that he is "sorry about all this situation": *ibid*. at page 137. He then reiterated, "I'm very sorry about the situation": *ibid*. at page 138. It appeared from the context that he was sorry about having to get involved in litigation before this Court, instead of being able to respond to a cease and desist order from the Plaintiffs. Later in the hearing, he repeated: "I am sorry about this … I didn't want to get involved in all this stuff, but I am here, and I'm doing my best": Day 2 Transcript at page 90.

[43] At times, Antonio was somewhat evasive and not always forthcoming in his testimony. At other times, he appeared to be genuinely attempting to answer questions to the best of his ability.

[44] Regarding Mr. Mark Davis' out of court cross-examination, Marshall focused on (i) issues related to the execution of the Interim Order, (ii) whether Mr. Davis might have a conflict of interest, and (iii) Mr. Davis' involvement in the execution of other Anton Pillar orders in the past. Given that Marshall did not address any issues relating to this Court's findings of contempt against him and Antonio, I will refrain below from further addressing that cross-examination.

[45] Turning to the transcripts of the examinations of Marshall and Antonio on discovery, it will suffice for the present purposes, and only as relevant background information, to observe that they reflect a consistent pattern of evasive, unforthcoming and even untruthful responses. In addition, their former counsel Mr. Lomic extensively objected to requests for responses and undertakings -- the Defendants ultimately answered five undertakings and maintained 105

objections. This prompted the Plaintiffs to bring a motion to compel answers to questions under objection and outstanding undertakings, which was granted by Justice Duchesne on April 29, 2024. Despite that Order, Marshall and Antonio continued to brazenly refuse to produce extensive information, thereby seriously frustrating the purpose of discovery.

VIII. Analysis

A. *General Principles*

[46] The principal objective of the law of civil contempt is to foster compliance with court orders: *Carey v Laiken*, 2015 SCC 17 [***Carey***] at para 30; *Bell Canada v Adwokat*, 2023 FCA 106 [***Adwokat***] at para 18. This is essential to maintaining public confidence in the administration of justice, supporting the rule of law, and ensuring that "social order prevails rather than chaos": *Morasse v Nadeau-Dubois*, 2016 SCC 44 [***Morasse***] at para 81, per Wagner J. (as he then was) (dissenting on other grounds); *Canada (Minister of National Revenue v Bjornstad*, 2006 FC 818 at para 4; see also *Canada (Human Rights Commission) v Canadian Liberty Net (CA)*, [1996] 1 FC 787 at 796 (CA); *United Nurses of Alberta v Alberta (Attorney General)*, 1992 CanLII 99 (SCC), [1992] 1 SCR 901 [***United Nurses***] at 931. This is because contempt of court is "a challenge to the judicial authority whose credibility and efficiency it undermines as well as those of the administration of justice": *9038-3746 Quebec Inc v Microsoft Corporation*, 2010 FCA 151 at para 18.

[47] Despite the compliance focus of proceedings for civil contempt, "one purpose of sentencing for civil contempt is punishment for breaching a court order": *Carey* at para 31, citing

Chiang (Trustee of) v Chiang, 2009 ONCA 3, 305 DLR (4th) 655 at para 117; see also *United Nurses* at 931; *Echostar Communications Corp v Rodgers*, 2010 ONSC 2164 [***Echostar***] at para 37, *Canadian Standards Association v PS Knight Co Ltd*, 2021 FC 1346 (CanLII) [***PS Knight***] at para 13. Indeed, an element of punishment may be entirely appropriate in cases of ongoing contempt: *Dish Network LLC et al v Butt et al*, 2022 ONSC 1710 at para 24, *PS Knight* at para 25.

[48] In cases of civil contempt, the usual principles of sentencing developed in the criminal contempt context apply: *Tremaine v Canada (Human Rights Commission)*, 2014 FCA 192 [***Tremaine***] at para 19; *Professional Institute of the Public Service of Canada v Bremsak*, 2013 FCA 214 [***Bremsak***] at para 35.

[49] These principles include parity, which requires the Court to have regard to the range of sentences imposed in the jurisprudence for similar types of contempt. In addition, the Court should ensure that the sentence is proportionate to the gravity of the contempt, subject to any appropriate adjustments for aggravating and mitigating circumstances: *Tremaine* at paras 21–22; *Bremsak* at para 35; *Bell Canada v Red Rhino Entertainment Inc*, 2021 FC 895 [***Red Rhino***] at paras 10–12, aff'd *Adwokat*.

[50] In considering the gravity of the contempt, the Court should consider "both 'the objective gravity of the contemptuous conduct [and] the subjective gravity of the conduct (i.e., whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness)'":

Tremaine at para 23, citing *Canada (Minister of National Revenue) v Marshall*, 2006 FC 788 [***Marshall***] at para 16 and *Bremsak* at para 35.

[51] Although some of the objectives of sentencing set forth in section 718 of the *Criminal Code*, RSC 1985, c C-46 [***Criminal Code***] are not applicable in the civil contempt context, the objectives of deterrence and denunciation are important to consider in this context: *Tremaine* at para 22; *Red Rhino* at paras 11–12.

[52] In the commercial context, the profitability of the offending conduct is also a relevant consideration: *Red Rhino* at para 14.

[53] The foregoing principles ought to be considered together with the principle of restraint, which holds that an individual should not be deprived of liberty if less restrictive sanctions may be appropriate, having regard to all of the circumstances: *Criminal Code*, paragraph 718.2(d); *Red Rhino* at para 12.

[54] Aggravating circumstances can include the duration of the conduct, its scale and scope, the extent of premeditation and deliberation involved, whether the conduct was motivated by greed, whether it continued after being found to constitute contempt, prior findings of contempt, whether the contempt was flagrant, lack of remorse, untruthfulness, whether the conduct provided the defendant with the opportunity to destroy evidence or move evidence or funds beyond the reach of the court, and whether the contemnor displayed blatant disregard for the rule of law: *Bremsak* at para 35; *Tremaine* at para 25; *Red Rhino* at para 13; *Warner Bros*

Entertainment Inc v White (Beast IPTV), 2023 FC 907 [***Beast IPTV***] at paras 95,114–117; *Echostar* at paras 54–57.

[55] Mitigating factors can include whether the contempt in question is a first offence, and whether the offender has apologized, accepted responsibility, made good faith attempts to comply, or taken steps towards rehabilitation: *Bremsak* at para 35; *Tremaine* at para 24; *Beast IPTV* at para 96.

[56] In applying the foregoing principles and considering aggravating and mitigating circumstances, the Court has wide discretion: *Tremaine* at para 26, *Beast IPTV* at para 93, *Red Rhino* at para 9.

B. *Assessment*

(1) The range of penalties for similar conduct

[57] The jurisprudence addressing penalties for conduct similar to the conduct at issue in this case is not extensive.

[58] In *Adwokat*, the Federal Court of Appeal (**"**FCA**"**) reviewed the range of penalties imposed by this Court for breaches of injunctions that were issued to protect the plaintiffs' intellectual property rights. The FCA observed that penalties previously imposed *in that context* ranged from fines of "a little over $1,500.00 to approximately $190,000.00," in 2023 dollars: *Adwokat* at para 24. The Court added that "[t]he majority of fines levied by the Federal Court are

at the lower end of the range": *Adwokat* at para 24. In the result, a majority of the FCA declined to increase the $40,000 penalty imposed at first instance by this Court, because it considered that this fine was "not clearly disproportionate with those levied in other cases when one considers the facts that were before the Federal Court in the instant case": *Adwokat* at para 26. Among other things, those facts included that another individual, Mr. Wesley, had been sentenced to fines of $15,000.00 and $30,000 for two successive instances of contempt of the very same injunction that was breached by the respondents in *Adwokat*: *Adwokat* at para 21. Despite the successive contraventions of this Court's Order by Mr. Wesley, a higher fine of $40,000.00 was imposed in *Adwokat* to reflect the more commercial and sophisticated nature of the respondents' operation: *Adwokat* at para 22.

[59] Notwithstanding the foregoing, Justice Gleason, writing for a majority of the Court, stated that "had the additional evidence that the appellants seek to adduce on appeal been before the Federal Court, I am of the view that a stiffer penalty may well have been appropriate and may have included a period of incarceration or a much greater fine": *Adwokat* at para 27. The evidence in question suggested that Mr. Adwokat's company, Red Rhino Entertainment Inc., had made lucrative sales in further violation of the injunction.

[60] Writing in dissent, Justice Goyette observed that the $40,000.00 fine imposed by this Court "is demonstrably unfit" and "a mere license fee": *Adwokat* at paras 63–64. However, she added that the evidence did not allow for the determination of a fine that would achieve deterrence. Consequently, she would have imposed a penalty of imprisonment of 15 days, as

initially requested by the appellants in their notice of motion before this Court, even though they no longer requested a penalty of incarceration on appeal: *Adwokat* at para 66.

[61] In the course of reaching this conclusion, Justice Goyette noted that in civil contempt cases involving copyright matters, she was only aware of three cases in the Federal Courts where incarceration had been ordered, although that specific penalty was only triggered if certain conditions were not met: *Adwokat* at para 58. That is to say, in each of those cases, the Court's order provided that the penalty of incarceration would be suspended if the infringing activity ceased within a specified number of days. For the present purposes, it is only necessary to briefly summarize those three cases immediately below.

[62] In *Lari v Canadian Copyright Licensing Agency*, 2007 FCA 127 [***Lari***], the FCA upheld a sentence of six months' imprisonment plus 400 hours of community service, served over 13 months. That sentence was imposed for a third conviction of contempt of court, consisting in the unauthorized and large scale copying and selling of textbooks. In addition, one of the acts of contempt "involved a refusal to give access to premises as ordered, thereby frustrating the execution of the order and avoiding the removal of unauthorized copies of textbooks": *Lari* at para 6. Moreover, "individual deterrence remained an elusive objective" as the individual continued his contemptuous conduct after being ordered to pay fines, statutory and punitive damages, and solicitor-client costs following his initial contempt convictions: *Lari* at paras 32–33.

[63] In *PS Knight*, Justice Christine Pallotta imposed a fine of $100,000 and a term of imprisonment of not less than six months, and then continuing for up to five years less one day, until the defendants (i) purged their contempt by demonstrating compliance with the injunctive and mandatory terms of this Court's judgment, and (ii) paid in full all damages, fines and costs owing under the initial judgment and her penalty order. In imposing those penalties, Justice Pallotta referenced the gravity of the offence, the defendants' open and public defiance of this Court's order for over one year, and the escalation of the defendants' contumacious conduct after being found in contempt: *PS Knight* at para 25. Justice Pallotta added that these penalties were "what is required to bring the Knight Parties into compliance with their legal obligations": *PS Knight* at para 25. Given that Mr. Knight did not appear at the sentencing hearing, Justice Pallotta added a term to her order to provide him with a further opportunity, upon arrest, to show cause why he should not be imprisoned for the period described above.

[64] In *Telewizja Polsat SA v Radiopol Inc*, 2006 FC 137 [***Polsat***], Justice Lemieux ordered the corporate defendant to pay a fine of $25,000 and sentenced the individual defendant to pay a fine of $10,000 and to serve a six-month term of imprisonment for continuing their unauthorized decoding and distribution of the plaintiffs' subscription programming signals. In imposing those penalties, Justice Lemieux observed that the defendants had (i) failed to appear at any stage of the Court's proceedings; (ii) deliberately flouted this Court's injunction, including by enhancing their infringing operations after its issuance; (iii) not expressed any regret or apology; and (iv) failed to respond to numerous overtures by the plaintiffs to resolve the issue: *Polsat* at paras 32, 40–42.

[65] In the course of briefly referencing the three cases discussed immediately above, Justice Goyette observed that the Federal Courts "have been much more lenient" than the Ontario Courts, which she stated likely would have imposed a sentence of incarceration on Mr. Adwokat had that matter been adjudicated before them: *Adwokat* at para 58. In support of this observation, Justice Goyette referenced *Dish Network LLC v Gill* (27 April 2018) Hamilton CV-13-40368 (Ont SC) [***Dish Network***] (imprisonment of 4 months for breaching a permanent injunction) and *DIRECTV Inc v Boudreau*, 2005 CarswellOnt 7026 (Ont SC) [***DIRECTV***], varied in 2006 CanLII 12962 (ON CA) [***DIRECTV* ONCA**] (imprisonment of 3 months for breaching an Anton Piller order and an injunction).

[66] I pause to observe that a breach of an injunction is not directly comparable to a breach of an Anton Piller order, "which, by its very nature, requires immediate compliance to be effective": *Beast IPTV* at para 145.

[67] Subsequent to the FCA's decision in *Adwokat,* Justice Lafrenière noted "the absence of any cases on point in this Court" in *the Anton Piller order context*. Consequently, he sought guidance from the sentences imposed by the Ontario Courts for breaches of Anton Piller orders in the IPTV context: *Beast IPTV* at para 158. Specifically, he discussed *DIRECTV, Echostar*, and *Bell Expressvu Limited Partnership v Rodgers,* Court No. 06-CL-6574, (unreported reasons of Mesbur J., dated September 18, 2006) [***Rodgers***].[5] The Plaintiffs in the present proceeding have also referred me to these cases.

[5] Justice Lafrenière described the unreported decision corresponding to Court No. 06-CL-6574 as being dated May 18, 2010. However, the reasons issued on that date were the those provided by Justice Cameron in relation to two different defendants in that case. The summary provided at paragraph 161 of Beast TV appears to be taken from a

[68] *Echostar* concerned the appropriate penalty to impose on the two individuals who wilfully and deliberately frustrated the purpose of an Anton Piller order by refusing to permit entry into their residence: *Echostar* at paras 32, 36, 44, 57 and 68. The defendants also flagrantly displayed a lack of respect for the court's orders: *Echostar* at paras 53 and 62. The defendants' contempt could not be cured, so the penalty was punitive rather than coercive. After reviewing the penalties of imprisonment imposed in several other cases, ranging from three to fifteen months, Justice Cameron sentenced the married defendants to four months' imprisonment each. Those sentences were ordered to be served on a consecutive basis, so that the defendants' daughter could remain in school and so that the couple could keep their restaurant running with the help of their children: *Echostar* at para 71. I observe in passing that the nature of the disrespect shown by the defendants towards the Court was more egregious than the disrespect shown by Antonio and Marshall.

[69] *Rodgers* concerned the sentencing of the *Echostar* defendants' son, who had been found in contempt for (i) failing to grant access immediately to a premise and to several websites, in violation of a previous Anton Piller order, and (ii) implementing a complicated scheme designed to conceal his activities: *Echostar* at para 67. The sentence imposed in *Rodgers* was four months' imprisonment. This decision is unreported and was not included in the Plaintiffs' Book of Authorities, but it can be gleaned from *Echostar*'s discussion of the case that Justice Mesbur was troubled by the consequences of the contempt for the plaintiff, and she considered it important that the sentence address both general and specific deterrence: *Echostar* at paras 56, 61; citing *Rodgers* at paras 91–92, 107. This was particularly so because of "clear evidence of both a

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passage in the unreported reasons of Justice Mesbur, dated September 19, 2006, and quoted at paragraph 67(c) of Justice Cameron's reasons.

satellite piracy community and constant communication amongst its members through ‘forums’ on various websites, most particularly the anton-piller.com website:” *Echostar* at para 61, citing *Rodgers* at para 91.

[70] *DIRECTV* involved the sentencing of an individual who was found guilty of contempt for failing to provide the passwords to access a satellite piracy website in breach of an Anton Piller order, and for continuing to operate that website in breach of an injunction. In the result, the defendant was sentenced to a term of imprisonment of three months for his contempt and a further six months for the serious prejudice that the permanent loss of evidence caused to both the plaintiffs and the administration of justice. In imposing this sentence, the court referenced the “quite egregious” gravity of the contempt, including the intentional nature of the contempt and the defendant’s knowledge of the consequences for the plaintiffs: *DIRECTV* at para 4. The court added that the defendant showed no remorse, was untruthful, and failed to attend the sentencing hearing: *DIRECTV* at para 6. In addition, the court noted the need for general and specific deterrence, referencing “evidence of a piracy community that keeps in communication about developments, so the sentence in a case such as this is likely to receive notice once word of it starts to get around”: *DIRECTV* at para 7.

[71] The three-month sentence imposed in *DIRECTV* was upheld by the Ontario Court of Appeal based on the “egregious and intentional” nature of the conduct. However, the additional six-month sentence was struck for having no basis in law, having been presented as a penalty for prejudice rather than contempt: *DIRECTV* ONCA.

[72] As noted by Justice Lafrenière in *Beast IPTV*, the common theme in the Ontario jurisprudence summarized above is that the sentence imposed should deter others in the IPTV piracy community from mimicking the contemnor's wrongdoing: *Beast IPTV* at para 162. As discussed further below, this is an important consideration in this case for two reasons. First, the jurisprudence reflects that there is an established IPTV piracy community that closely follows developments in the Anton Piller context, and then makes calculated decisions based on their assessment of the risks associated with engaging in piracy: *Beast IPTV* at para 152; *Echostar* at paras 61–63; *DIRECTV* at para 7. Second, it is clear that past penalties imposed for contempt of Anton Piller orders in the IPTV context were insufficient to deter Antonio and Marshall from their contemptuous conduct.

[73] In *Beast IPTV,* for reasons that were largely related to deterrence, Justice Lafrenière accepted the plaintiffs' recommendation of a penalty of two months' incarceration, notwithstanding that he considered it to be at the lower end of the spectrum: *Beast IPTV* at paras 150, 162. His emphasis on deterrence was attributable to the fact that it was "impossible for Mr. White to purge [his] contempt": *Beast IPTV* at para 149. Justice Lafrenière added that, were it not for the defendant's guilty plea, he would have been inclined to impose a longer sentence: *Beast IPTV* at para 168. In rejecting the community service alternative proposed by Mr. White, Justice Lafrenière stated that "[a] clear message should be sent to those who would ever contemplate frustrating the execution of an Order of this Court that jail time is not only a possibility but a likelihood": *Beast IPTV* at para 167.

[74] The Plaintiffs also referred me to *Sussex v Sylvester*, 2002 CarswellOnt 3893, [2002] OJ No 4350 [***Sylvester***], a contempt sentencing decision that imposed a six-month prison sentence for Mr. Sylvester's failure to comply with a court order to deliver, and prepare an inventory of, business records. Incarceration was deemed necessary given Mr. Sylvester's "continuing, deliberate and wilful contempt," the serious harm and prejudice of the contempt to the applicant, and the need for specific and general deterrence: *Sylvester* at paras 83–84. The court acknowledged that Mr. Sylvester belatedly complied to a very limited extent, but found that it was only for the purpose of giving an appearance of substantive compliance with the orders: *Sylvester* at paras 67–68. The court also rejected the possibility of a conditional sentence order of effective house arrest in lieu of imprisonment in order for Mr. Sylvester to continue to receive treatment for his medical issues. In rejecting that alternative of house arrest, the Court noted the "virtual certainty that he would not voluntarily comply": *Sylvester* at paras 86–96.

[75] In summary, the minimum sentence of six months requested by the Plaintiffs in the present case is broadly within the range of sentences imposed for contempt of court orders in the field of copyright infringement. Moreover, *PS Knight* is a precedent from this Court for an additional penalty of up to five years less a day to address ongoing non-compliance, by strongly encouraging that such non-compliance be cured. That penalty was subject to the proviso that it would be suspended if the defendants (i) purged their contempt by demonstrating compliance with the injunctive and mandatory terms of this Court's judgment, and (ii) paid in full all damages, fines and costs owing under the initial judgment and Justice Pallotta's penalty order.

[76] Additional examples where this Court ordered an additional period of imprisonment, beyond a stated minimum period, in the intellectual property law context to compel compliance with an order of the Court include *Trans-High Corporation v Hightimes Smokeshop and Gifts Inc*, 2015 FC 919 at para 38, and *Dursol-Fabrik Otto Durst GmbH & Co v Dursol North America Inc*, 2006 FC 1115 at para 112. This approach has also been adopted in other contexts: see e.g., *Warman v Canada (Human Rights Commission)*, 2012 FC 1296 at paras 35–36, aff'd *Tremaine*. This Court has also simply adopted the approach of ordering imprisonment for up to a stated maximum specific period of time to compel compliance with the Order in question: see e.g., *Canada (National Revenue) v Vallelonga*, 2013 FC 1155; C*anada (National Revenue) v Money Stop Ltd*, 2013 FC 133; *Canada (National Revenue) v Bélanger*, 2015 FC 35.

[77] Having regard to the foregoing, I consider that the penalties requested by the Plaintiffs are consistent with the parity principle. This is subject to the proviso that the indeterminate nature of the incarceration requested by the Plaintiffs would appear to be inconsistent with what is contemplated by Rule 472. I will return to this below.

(2) The gravity of the conduct

[78] In considering the gravity of the contempt, the Court should consider "both 'the objective gravity of the contemptuous conduct [and] the subjective gravity of the conduct (i.e., whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness)'": see para 49 above.

[79] Regarding objective gravity, Antonio's outright refusal to cooperate with ISS Davis "completely frustrated the execution of the Order" and "was nothing short of a challenge to the Court": *Macciacchera 2* at paras 117, 123. That conduct included refusing to let ISS Davis enter Antonio's house for the purposes of executing the Interim Order, repeatedly closing the door to his house despite being informed that this was prohibited by the Interim Order, and then refusing to comply with paragraphs 24(b) and 25 of that Order, including by refusing to disclose his banking transaction data. The latter refusal continues to this day.

[80] By refusing to permit entry into his house, Antonio impeded ISS Davis from preventing the potential destruction or removal of evidence, and the transfer of funds beyond the jurisdiction of the Court, which was a key objective of the Interim Order: *Macciacchera 2* at paras 110–111, 114; *Macciacchera 3* at paras 55, 81.

[81] Likewise, Marshall's ongoing refusal to provide the password to his personal computer and to disclose all information pertaining to his assets has completely frustrated one of the main objectives of the Interim Order and represents a direct challenge to the Court.

[82] In my view, the foregoing conduct on the part of Antonio and Marshall is at the high end of the objective gravity scale.

[83] Turning to subjective gravity, in *Macciacchera 2*, I found that Antonio "intentionally failed to take actions that were required by the Interim Order," including the actions contemplated by paragraphs 24(b) and 25 of that Order: *Macciacchera 2* at para 89. I added that

Antonio's intent "rose to the level of contumaciousness" and that he showed "complete disregard for the Interim Order": *Macciacchera 2* at paras 99, 121.

[84] Insofar as Marshall is concerned, Justice Rochester (as she then was) found that he understood that there was information on his computer that fell within the scope of the Interim Order, and that he was obliged to disclose it: *Macciacchera 3* at para 122. However, he refused to provide his password, stating: "There is evidence against me [on the computer] that I don't want to login for you to collect information against me": *Macciacchera 3* at para 122. Justice Rochester proceeded to conclude that Marshall, Star Hosting Limited, and Roma Works Limited deliberately disobeyed paragraphs 24, 25 and 30 of the Interim Order: *Macciacchera 3* at paras 134, 150, 159, 167, 174.

[85] In my view, the deliberate flouting of the Interim Order by both Antonio and Marshall falls at the high end of the subjective gravity scale.

(3) General and specific deterrence

[86] In considering the importance of deterrence, sentencing courts should assess both general and specific deterrence: *Tremaine* at para 22.

[87] The jurisprudence in the area of IPTV piracy reflects that general deterrence is a particularly important factor in this context. This is because there is evidence of a piracy community that actively monitors developments in the Anton Piller Order enforcement context,

and then makes calculated decisions based on an assessment of the risks and rewards associated with piracy and findings of contempt: see paras [69–70 and 72] above.

[88] The high potential rewards associated with contempt of Anton Piller orders in the IPTV piracy context mitigate in favour of penalties that are sufficient to ensure that the expected value of such contempt remains negative, after taking account of the low probability of detection, litigation and conviction: see, in the price-fixing context, *Canada v Maxzone Auto Parts (Canada) Corp*, 2012 FC 1117 at paras 61, 67.

[89] The fact that IPTV piracy continues in the face of several penalty orders that have sought to deter it weighs in favour of greater penalties than have been imposed in the past.

[90] This is particularly so with respect to the penalties that have been imposed by this Court. I agree with Justice Lafrenière that "[i]t is important to dispel the notion that this Court, the go-to forum for intellectual property litigation, is more lenient than provincial superior courts" (*Beast IPTV* at para 165). Likewise, I concur with Justice Goyette that "[t]he Federal Court should not be a safe haven for persons in contempt": *Adwokat* at para 58.

[91] Turning to specific deterrence, Marshall and Antonio remain in ongoing, brazen, contempt of the Interim Order. The nature of that contempt is such as to completely frustrate important components of the Interim Order. This calls for a penalty that is sufficiently serious to maximize the potential to achieve full compliance with the curable aspects of the Interim Order

that are currently at issue before me, and to deter Marshall and Antonio from engaging in future conduct that is similar to their non-curable contempt of the Interim Order.

(4) Denunciation and punishment

[92] Notwithstanding the compliance focus of sentencing in the area of civil contempt, other important objectives of sentencing include denunciating and punishing such conduct: *Bremsak* at para 66; *Red Rhino* at paras 6–7 and 11.

[93] This is particularly the case for contemptuous conduct that completely or largely frustrates a Court Order, and that defiantly challenges the Court's authority. The contumacious contempt of Antonio, including in relation to paragraphs 24(b) and 25 of the Interim Order, falls into this category. The same is true of Marshall's contempt, including in relation to paragraphs 24, 25 and 30 of that Order.

(5) Profitability of the conduct

[94] Mr. McGuigan conservatively estimated that the Defendants' SSTV Services generated approximately $1.517 million USD per year. This estimate was based on his cautious estimate that the SSTV Services had approximately 10,500 unique subscribers per month, each of whom paid a subscription of $ 12 USD per month. Mr. McGuigan calculated the 10,500 figure by assuming that each of the unique[6] visitors to Live247, StreamTVNow and Starstreams.tv

[6] Mr. McGuigan's investigation revealed that, in the twelve months ending January 2022 the Live247 Web Portal (live247.tv) received 72,276 visits per month (18,883 from unique users), the StreamTVNow domain (streamtvnow.tv) received 92,904 visits per month (24,718 from unique users), and the StarStreamsTV domain

accesses those services using the three different devices that are allowed. He then deducted the resulting figure by a "bounce rate" (to reflect the approximate number of visitors who only visited the websites in question for a brief period of time): First McGuigan Affidavit at paras 124 127.

[95] Mr. McGuigan was not cross-examined on the foregoing estimates.

[96] The Plaintiffs added that their ability to estimate the Defendants' revenues has been further complicated by the likely reality that a portion of those revenues is obscured in cryptocurrencies, some of which are hidden in Hong Kong, Panama and/or Thailand.

[97] Despite not cross-examining Mr. McGuigan on the foregoing estimates, Marshall maintained during the hearing that Mr. McGuigan's assumptions were faulty.

[98] In any event, in the absence of the information that Marshall and Antonio have refused to disclose, the Plaintiffs have no evidence regarding the expenses associated with operating the SSTV Services. Consequently, it is not possible for the present purposes to estimate the profitability of the ongoing contempt of the Interim Order by Antonio and Marshall.

(6) Aggravating factors

(starstreams.tv) received 24,588 visits per month (7,390 from unique users). The "bounce rates" for each of these services was 25% for Live247, 48% for StreamTVNow, and 38% for Starstreams.tv.

[99] As I have noted, aggravating circumstances can include the duration of the conduct, its scale and scope, the extent of premeditation and deliberation involved, whether the conduct was motivated by greed, whether it continued after being found to constitute contempt, prior findings of contempt, whether the contempt was flagrant, lack of remorse, untruthfulness, whether the conduct provided the defendant with the opportunity to destroy evidence or move evidence or funds beyond the reach of the court, and whether the contemnor displayed blatant disregard for the rule of law: see paragraph [54] above.

[100] With the exception of prior findings of contempt, I am satisfied beyond a reasonable doubt that all of the other circumstances listed immediately above exist in the present case, for both Marshall and Antonio.

[101] Regarding the duration and ongoing nature of their contemptuous conduct, Marshall and Antonio explicitly acknowledged during the penalty hearing that they have been in ongoing contempt of the provisions of the Interim Order that are at issue in this proceeding, since the execution date in June 2022 – more than three years ago. They openly stated that they have no intention of curing their contempt, and that they would simply like to serve their sentence and put the issue behind them once and for all: Day 1 Transcript at pages 47–48, 75–76, 121 and 124; Day 2 Transcript at pages 107, 131–134, 140, 145, 148–149, 156.

[102] Insofar as premeditation and deliberation in their contemptuous conduct is concerned, it bears underscoring that Marshall and Antonio’s refusal to comply with the provisions of the Interim Order that are at issue in this penalty proceeding is ongoing and brazen, to the point of

defiance. As noted immediately above, it is also openly acknowledged. Further, as found during the contempt proceedings that preceded this penalty proceeding, their contempt was deliberate: see paragraphs [83–85] above.

[103] Regarding the scale and scope of their contempt, Antonio's ongoing breach of paragraphs 24(b) and 25 of the Interim Order, and Marshall's ongoing breach of paragraphs 24, 25 and 30, go to the heart of that Order. Without the transactions data from the two Canadian bank accounts that Antonio maintained, and without the password to Marshall's personal computer and the details of the two Hong Kong bank accounts that are at issue in this penalty proceeding, the Plaintiffs' ability to move the underlying action forward is completely frustrated. I also consider that the scale and scope of the impugned SSTV Services is relevant to a consideration of the scale and scope of Marshall's and Antonio's contempt. In this regard, Marshall and Antonio were involved in what Justice Lafrenière described as "a sophisticated operation" that involved "dozens of television receivers, encoders, and servers allegedly responsible for capturing and redistributing infringing television content on a massive scale through the SSTC services": *Macciacchera 1* at para 46. I am satisfied beyond a reasonable doubt that this is an accurate description of the scale and scope of the SSTV Services.

[104] Beyond the foregoing, and as I have noted, I have previously found Antonio's contempt in relation to the attempted execution of the Interim Order to be flagrant and contumacious: see paragraphs [24 and 83] above. I am satisfied that the same can be said of Marshall's ongoing defiant contempt of the Interim Order.

[105] Moreover, Marshall has never apologized or demonstrated any remorse for his contempt; and the only apology given by Antonio was *for having become involved in* these proceedings: see paragraph [42] above. I consider that such apology was not an apology for having refused to cooperate with the execution in the Interim Order and for having refused to provide the transaction data for his two Canadian banking accounts to the Plaintiffs.

[106] Furthermore, Marshall has been untruthful from the outset of the Plaintiffs' efforts to execute and enforce the Interim Order: *Macciacchera* 3 at paras 138, 147–148, 158. Likewise, Antonio has consistently obfuscated the degree of his involvement with the SSTV Services.

[107] In addition, as I have noted, the contempt of both Antonio and Marshall provided them with the opportunity to destroy evidence or move evidence or funds beyond the reach of the court: see paragraphs [9 and 80–81] above, and paragraph 146 below.

[108] Antonio also conceded during the penalty hearing that there is an element of greed in IPTV piracy: Day 2 Transcript at pages 90-91.

[109] Finally, it bears repeating here that Antonio and Marshall have displayed open disregard for the rule of law and this Court. Right from the day of the attempted execution of the Interim Order, they have attempted to take the law into their own hands by deciding when and under what circumstances they will comply with various provisions of the Interim Order, if at all.

(7) Mitigating factors

[110] Mitigating factors can include whether the contempt in question is a first offence, and whether the offender has apologized, accepted responsibility, made good faith attempts to comply, or taken steps towards rehabilitation: see para [55] above.

[111] It appears that this is the first time that either Marshall or Antonio has been found guilty of contempt. However, relative to the considerations discussed in parts VII.B. (2) – (6) above, I consider this to merit minor weight in my overall assessment of the appropriate penalties to Order against each of them.

[112] Regarding the other factors mentioned in paragraph [110] above, Marshall has not apologized. However, now that he has been found guilty of four charges of contempt, he has accepted some responsibility for that conduct. This is reflected in his recognition that a sentence of incarceration would be appropriate in the particular circumstances of this case. I am prepared to consider the sentence he has recommended to constitute both some acceptance of responsibility and a very small initial step towards rehabilitation. Nevertheless, given the relatively minor nature of the penalty he has recommended (one week for each of the three "clear failures to comply with the Order" that he is prepared to recognize), these factors merit only minimal weight in my overall assessment. The same is true with respect to Mashall's partial compliance with the Interim Order on the execution date. That partial compliance was and remains eclipsed by his ongoing refusal to provide (i) the password to his personal computer and (ii) authorization to permit the two Honk Kong banks where two of the corporate Defendants have accounts, to disclose information relating to those accounts to the Plaintiffs. Accordingly, such partial compliance merits only very minor weight in my overall assessment.

[113] Marshall maintains that another mitigating circumstance is that he was a customer of one of the Plaintiffs, Rogers Media Inc. (**"**Rogers**"**), and that Rogers ought to have known that his Internet account was associated with some of the activities that are at issue in the underlying action. Marshall asserts that Rogers' failure to block, stop or terminate the link between his Internet account and the third party servers who have been associated with unauthorized streaming services, ought to be considered to be a mitigating consideration. In my view, this is not a mitigating factor in the particular circumstances of this case. Rogers was entirely within its rights to choose to proceed against Marshall by participating in the underlying action, rather than by taking one or more of the steps suggested by Marshall.

[114] Marshall asserts that another mitigating factor is that he has been deprived of potential exculpatory evidence, by the failure of the Plaintiffs to fully explore the computer drives and servers that were seized during the execution of the Interim Order. However, I accept the Plaintiffs' explanation that it would be inefficient and counterproductive to begin a forensic analysis of those devices until the Plaintiffs have access to Marshall's computer password. In addition in the absence of the keywords from the Defendants, the Plaintiffs cannot follow the protocol to purge privileged information from the information on those devices: see paragraph [35] above. If Marshall has been deprived of any potential exculpatory evidence, this is entirely of his own doing. Consequently, this consideration merits no weight in my overall assessment of the appropriate penalty to impose on Marshall for his past and ongoing contempt of the Interim Order.

[115] Marshall and Antonio also both maintain that they should be given some credit for providing some of their banking information: see *Macciacchera 2* at paras 113-114, and *Macciacchera 3* at paras 156-157 and 166. However, in the absence of the banking information they continue to refuse to supply, the information they have disclosed has very limited value. Accordingly, this factor merits negligible weight in my overall assessment.

[116] Antonio further asserts that his age and medical condition are mitigating factors. However, the evidence of his "health conditions" is too vague and imprecise to merit any material weight in my overall assessment. I will return to this at paragraphs [128-129] below. Insofar as Antonio's age (73) is concerned, I accept that this is a mitigating factor. In the particular circumstances of this case, I consider that this factor, together with the fact that Antonio appears to have been less involved than Marshall, weighs in favour of a lower initial period of imprisonment than what I consider to be appropriate for Marshall. More specifically, these considerations weigh in favour of ordering Antonio to spend an initial period of only four months in prison, versus the six months that I consider to be appropriate for Marshall.

[117] In addition, Antonio submits that a further mitigating factor is that the two Canadian bank accounts in respect of which he continues to refuse to provide transaction histories were jointly held with his spouse, who has since closed those accounts. He states that he refuses to provide the transaction histories to avoid "devastating consequences on a personal level," including divorce, the undermining of his matrimonial trust, "and other potential legal consequences thereof": Day 1 Transcript at page 44; see also para [40] above. He explains that this is because

the account transaction histories include transactions of a personal and private nature, and he believes his spouse's privacy cannot be assured: Day 1 Transcript at page 43.

[118] In an affidavit sworn on February 10, 2024, Antonio further explained that lawyers representing his spouse "strongly suggested to [her] that all joint accounts and information with her name be withdrawn from all documents" and that "[a]ccounts were closed, out of my control". When I asked him why he didn't simply seek to redact the confidential information in question, he explained that he was advised that this could cost him between $30,000 and $50,000 in legal fees.

[119] These are not acceptable reasons for refusing to comply with an Order of the Court. They are also not mitigating considerations when considering the appropriate penalty for such a refusal. As explained in *Macciacchera* 2, at para 119, if there is any personal or private information in the transactions data pertaining to the two bank accounts that Antonio jointly held with his spouse, the appropriate course of action would be to redact that information, subject to the Court's oversight. The fact that significant costs may be associated with compliance with a Court order is not a legitimate basis for refusing to comply. The Court will generally be prepared to consider how such costs could potentially be reduced.

[120] In the interests of completeness, I will pause to observe that, in the affidavit mentioned immediately above, Antonio referenced correspondence between his lawyer at the time, Tanya Gulati, and counsel to the Plaintiffs. However, Plaintiffs' counsel confirmed during the hearing that this correspondence related to the Plaintiffs' request that Antonio pay his cost awards: Day 2

Transcript at page 165. Accordingly, I agree with the Plaintiffs that Antonio's reference to such correspondence is not relevant for the present purposes.

[121] Antonio maintains that a further mitigating consideration is that he was shocked, flustered and in his pyjamas when ISS Davis arrived at his door with several other individuals to execute the Interim Order. However, this has no bearing whatsoever on Antonio's ongoing, defiant, contempt of paragraphs 24(b) and 25 of the Interim Order. I also consider that it merits little weight in relation to the non-curable contempt of which I found him to be guilty, particularly given that the attempted execution of the Interim Order persisted for several hours: see *Macciacchera 2* at paras 120-123.

[122] Finally, Marshall submits that the outstanding cost Orders previously issued against him and Antonio, respectively, in these contempt proceedings should be factored into my current assessment of the appropriate penalties to impose for their contempt of the Interim Order. In this regard, Justice Rochester (as she then was) ordered Marshall and the corporate defendants (other than Roma Works Panama) to pay the Plaintiffs costs of $375,312.93, inclusive of legal fees, disbursements and taxes thereon: *Macciacchera 3* at paragraph 6 of the Order issued. In addition, I ordered Antonio to pay costs of $91,742.86, inclusive of legal fees, disbursements and taxes: *Bell Media Inc. v Macciacchera (Smoothstreams.tv)*, 2023 FC 1698 [***Macciacchera 4***] at paragraph 1 of the Order issued. Despite the fact that both of these cost awards were ordered to be payable forthwith, they remain unpaid. This alone could provide a legitimate basis for not treating those cost awards as a mitigating factor. An additional reason why I consider it appropriate to not giving material weight to this factor is that those cost awards related solely to

the costs associated pursuing the contempt proceedings. In the particular circumstances of this case, I consider that it would not be in the interests of justice to effectively give Marshall and Antonio credit for those costs, in determining the appropriate penalty that should be imposed for their ongoing and defiant contempt. I will simply add in passing that the Plaintiffs are not seeking a financial penalty against any of the defendants, so the issue of ability to pay a financial penalty does not arise.

(8) Appropriate penalties in the circumstances

[123] In considering the appropriate penalties to impose against Marshall and Antonio, it is important to keep in mind that the principal objective of the law of civil contempt is to foster compliance with court orders. It bears underscoring that this is essential to maintaining public confidence in the administration of justice, supporting the rule of law, and ensuring that "social order prevails rather than chaos": *Morasse* at para 81, per Wagner J. (as he then was) (dissenting on other grounds): see paragraph [46] above.

[124] Maintaining public confidence in the administration of justice, and respect for court orders, may require a penalty of imprisonment in certain circumstances. These include "where the refusal to comply with an Order frustrates the gathering of important information necessary for the resolution of a complex situation, with adverse consequences to the Plaintiff": *Echostar* at para 55. A significant period of incarceration may also be required to deter others, and indeed the defendants themselves, from similar conduct in the future, and to appropriately denunciate such conduct: *Echostar* at paras 58–63. Moreover, the imposition of such a penalty can sometimes

provide the only realistic basis for hope that a recalcitrant contemnor will cure their non-compliance with a Court Order.

[125] Based on my assessment of the factors discussed in the preceding sections immediately above, I consider that penalties towards the high end of the spectrum are required. More specifically, I consider that penalties greater than those recommended by Marshall and Antonio, but modified in two respects from what the Plaintiffs recommended, would be appropriate.

[126] In summary, the contemptuous conduct of both Marshall and Antonio falls towards the high end of the scale of objective and subjective gravity. That conduct also calls for a penalty that will provide a higher degree of general deterrence than past penalties for contempt appear to have achieved in the IPTV piracy context. The penalty also needs to be sufficiently strong to have a real potential to compel Marshall and Antonio to cure their ongoing contempt of paragraphs 24, 25 and 30 of the Interim Order. Moreover, the penalty must be sufficient to express a high degree of denunciation, and to include an element of punishment for the brazen, defiant and open contempt that Marshall and Antonio have shown to this Court. Finally, the penalty must reflect the numerous aggravating factors that I have found, beyond a reasonable doubt, to exist. At the same time, the penalty should also reflect some minor adjustment for the mitigating factors I have identified above.

[127] In my view, the penalties recommended by Antonio and Marshall, and summarized at paragraphs [5 and 6] above, would not reflect the gravity of their past and ongoing contempt, or the other considerations summarized at immediately above. Such penalties would also fail to

address the ongoing contempt on the part of each of Antonio and Marshall. This would be entirely inconsistent with the principal objective of the law of civil contempt, namely, to foster compliance with court orders: see paragraph [46] above.

[128] In recommending an intermittent sentence of incarceration, Antonio referenced his "age (73) and health conditions". However, the only evidence he provided in relation to his "health conditions" was a letter dated 12 June 2025 from Dr. Michael Kogon. That letter simply stated that Dr. Kogan saw Antonio on that date following an unspecified medical procedure the prior week, and that Antonio "may require additional appointments, procedures, assessments and interventions over the next several months related to his underlying medical issue."

[129] I consider that this evidence of "health conditions" is too vague and imprecise to provide the basis for an intermittent sentence in circumstances like those that exist in the present case, where the seriousness of the defendant's contempt strongly weighs in favour of a non-intermittent period of incarceration. Likewise, I do not consider that Antonio's age, or the combination of his age and his unspecified "health conditions", are sufficient to justify an intermittent sentence in these circumstances. As discussed at paragraph [116] above, the more appropriate manner in which to take account of these considerations is to sentence Antonio to a lesser initial period of incarceration than what was requested by the Plaintiffs.

[130] With this adjustment, together with a second modification to limit the maximum potential period of incarceration to five years less one day, I conclude that the penalties recommended by

the Plaintiffs would be much more appropriate than those recommended by Antonio and Marshall.

[131] The penalties recommended by the Plaintiffs are summarized at paragraphs [29–30] above. In brief, the Plaintiffs recommended that Marshall and Antonio be incarcerated (a) until they comply with specific provisions of the Interim Order, as extended by the Interlocutory Order, and in any event, (b) a period of no less than six months. For Marshall, the specific provisions are contained in paragraphs 24, 25 and 30 of the Interim Order. Those provisions concern the disclosure of the password to his personal computer and all information pertaining to his assets. For Antonio, the specific provisions of the Interim Order are contained in paragraph 24(b) and 25 of the Interim Order. They concern the disclosure of information pertaining to his assets, including the transaction data pertaining to the two bank accounts referenced in paragraph [30] above.

[132] The Plaintiffs explained during the penalty hearing before me that their request for a period of incarceration of no less than six months is for the non-curable contempt findings, and that their request that Marshall and Antonio be incarcerated "until they comply" with the Interim Order applies to the curable contempt findings: Day 2 Transcript at page 12. The Plaintiffs further explained that their request for a minimum period of incarceration of six months is also based on the defiant nature of the contempt: Day 2 Transcript at page 161.

[133] The Plaintiffs stated that their request for a minimum penalty of six months for the non-curable portion of their contempt falls within the purview of Rule 472(b) and that their request

for incarceration until Marshall and Antonio comply with paragraphs 24, 25 and 30 of the Interim Order is contemplated by Rule 472(a): Day 2 Transcript at page 160.

[134] For convenience, I will reproduce Rule 472 below:

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

[135] Although the wording of Rule 472(a) is somewhat awkward, a contextual reading of Rule 472 as a whole does not contemplate the imposition of an indeterminate period of incarceration beyond five years: *PS Knight* at para 24; *Canada (National Revenue) v Bosnjak*, 2013 FC 399 at para 20. Moreover, the indeterminate nature of the penalty sought by the Plaintiffs in relation to

the curable portion of Antonio's and Marshall's contempt does not appear to be consistent with the common law of contempt: see Jeffrey Miller, *The Law of Contempt in Canada*, 3rd ed (Toronto: Thompson Reuters, 2023) at p 363. In addition, during the penalty hearing, the Plaintiffs suggested that such an indeterminate penalty may not be consistent with the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11: Day 2 Transcript at page 15: but see *Réception de Zenda Glenhill Holdings Corporation*, 2022 QCCA 270 (CanLII) [***Zenda Glenhill***] at para 20.

[136] While the Plaintiffs maintain that their requested penalty is "exactly the same penalty that was issued by Madam Justice Palotta [sic] in the P.S. Knight case" (Day 2 Transcript at page 160), that is not so. Justice Pallotta explicitly stated that "[w]hen a person is found in contempt, Rule 472 of the FC Rules authorizes the Court to impose a sentence of less than five years": *PS Knight* at para 24. She then proceeded to order that Mr. Knight "shall remain imprisoned until the Knight Parties have purged their contempt, up to a maximum sentence of five years less one day." As I have previously noted, the Order issued in that case also provided that the stipulated periods of incarceration would be suspended if the Knight Parties purged their contempt within ten days of the date of the Order.

[137] Turning to Rule 472(b), the words "if the person fails to comply with the order" [emphasis added] suggest that it is forward-looking in orientation, in the sense that the penalty of imprisonment for a period of less than five years would be triggered by a failure to comply with the order *in the future*. Consequently, the Plaintiffs' request for a minimum penalty of six months for the non-curable *past* contempt does not appear to fall within the purview of Rule 472(b).

[138] Moreover, given that the principal objective of the law of contempt is to foster compliance with court orders, it would be incongruous for the maximum sentence imposable under Rule 472(b) for ongoing contempt to be a period of less than five years, whereas the maximum sentence available under Rule 472(a) for past, non-curable contempt, would be a period of more than five years.

[139] Considering all of the foregoing, the penalty requested by the Plaintiffs will need to be modified to ensure that the maximum period of incarceration ordered in an effort to compel Marshall and Antonio to cure their ongoing contempt of paragraphs 24, 25 and 30 of the Interim Order, in Marshall's case, and paragraphs 24(b) and 25, in Antonio's case, does not exceed five years less one day.

[140] I pause to observe that during the hearing, the Plaintiffs' counsel acknowledged that they had previously represented to the Defendants that "the maximum would be five years" and that they were "not fighting for indefinite incarceration": Day 2 Transcript at page 15.

[141] In my view, Rule 472(a) is sufficiently broad to apply to both curable and non-curable contempt. As there is no other provision in Rule 472 that might contemplate non-curable contempt, it would be incongruous to interpret Rule 472(a) in a manner that would not permit a penalty for such contempt. In the present proceeding, such an interpretation of Rule 472(a) would leave the Court unable to sanction either (i) Antonio's refusal to open the door to his residence for the purposes of permitting the Interim Order to be executed, or (ii) Marshall's refusal to provide the password to his computer for the purposes of, among other things,

transferring to ISS Drapeau control over the infrastructure of the SSTV Services and preserving evidence regarding those services.

[142] Given the foregoing, I consider that Rule 472(a) is sufficiently broad to contemplate both (a) an initial six-month period of imprisonment for both the past incurable and the past curable portions of Marshall's and Antonio's contempt; and (b) a further period of incarceration of up to five years less one day, to address the ongoing nature of the contempt, in an effort to put it to an end. *PS Knight* and *Tremaine* are examples of cases where a similar approach was taken, although without specifically grounding the penalty in Rule 472(a) or specifically distinguishing between the curable and non-curable aspects of the contempt in question.

[143] For greater certainty, I consider that, insofar as incurable past contempt is concerned, a penalty of imprisonment for a specified period such as six months or four months falls within the purview of the first of the alternative penalties provided for in Rule 472(a), namely, imprisonment "for a period of less than five years." Insofar as ongoing curable contempt is concerned, imprisonment for a period of up to five years less one day would fall within the purview of the second alternative type of sentence, namely, imprisonment "until the person complies with the order."

[144] Although the use of the definitive article "the" in the phrase "complies with the order" appears, on a literal reading, to refer back to the penalty order mentioned in the "chapeau" language of Rule 472, this court's jurisprudence has generally treated the relevant order for the purposes of Rule 472 to be the order in respect of which the defendant was found to be in

contempt. However, given that this issue is not entirely free from doubt, I will order Antonio, Marshall, Star Hosting Limited and Roma Works Limited, respectively, to comply with paragraphs 24, 25 and 30 of the Interim Order, such that a failure to do so will also constitute a breach of that penalty order itself.

[145] I recognize that Antonio and Marshall appear to be first-time offenders and that special care should therefore be given to whether a custodial sentence is appropriate: *Winnicki v Canada (Human Rights Commission)*, 2007 FCA 52 at para 20. However, "there is no firm rule that a first offender on a contempt of court cannot receive a custodial sentence": *9038-3746 Quebec Inc v Microsoft Corporation*, 2010 FCA 151 at para 10. Whether it is appropriate to impose such a sentence will depend on the particular circumstances of the case at hand. These include whether the contempt is continuing and flagrant: *The Law of Contempt in Canada*, at 363-364. In my view, a non-intermittent custodial sentence is entirely appropriate in the particular circumstances of this case.

[146] To summarize, based on my assessment above, I consider that the appropriate penalty for Marshall's past non-curable and curable contempt of paragraphs 24, 25 and 30 of the Interim Order is six months' imprisonment, and that the appropriate penalty for his ongoing contempt would be for him to remain in prison for a total period of up to five years less one day or until he cures that contempt, whichever comes first. For greater certainty, this total period shall include the initial period of six months imprisonment. I find that this initial period of incarceration is also appropriate given the flagrant nature of Marshall's contempt of paragraph 20 of the Interim

Order, which prevented ISS Drapeau from being able to secure control over the infrastructure of the SSTV Services.

[147] I consider that the appropriate penalty for Antonio's past contempt of paragraphs 24(b) and 25 of the Interim Order is four months' imprisonment, and that the appropriate penalty for his ongoing contempt of those provisions is for him to remain in prison for a total period of five years less one day or until he cures that contempt, whichever comes first. For greater certainty, this total period shall include the initial period of four months imprisonment. I find that this initial period of incarceration is also appropriate given the flagrant nature of Antonio's non-curable contempt of paragraphs 30 and 37 of the Interim Order.

IX. Conclusion

[148] For the reasons set forth above, I consider that the penalties recommended by Marshall and Antonio would not be sufficient to reflect the very serious, flagrant, defiant and ongoing nature of their contempt. Instead, I find that the penalties recommended by the Plaintiffs would be more appropriate, with two modifications. The first of those modifications is to reduce the initial period of imprisonment for Antonio from the six months requested by the Plaintiffs to four months. The second modification is to reduce the maximum overall period of imprisonment to five years less one day, for each of Marshall and Antonio. This modification will eliminate the indeterminate nature of the penalties requested by the Plaintiffs, namely, that Marshall and Antonio remain imprisoned "until [they] comply" with the Interim Order.

[149] Accordingly, I will order that Marshall be imprisoned for an initial period of six months for his past contempt of paragraphs 24, 25 and 30 of the Interim Order, and that he remain imprisoned for a total period of up to five years less one day or until he cures his ongoing contempt of those paragraphs, whichever comes first. For greater certainty, this total period shall include the initial period of six months' imprisonment. In deciding upon the initial period of six months' imprisonment, I have also taken into account the defiant nature of Marshall's past contempt, including in relation to paragraph 20 of the Interim Order, as this prevented ISS Drapeau from gaining control over the infrastructure of the SSTV Services, as contemplated by that paragraph. It also provided Marshall with the opportunity to destroy evidence or move evidence or funds beyond the reach of the court.

[150] Turning to Antonio, I will order that he be imprisoned for an initial period of four months for his past contempt of paragraphs 24(b) and 25 of the Interim Order, and that he remain imprisoned for a total period of up to five years less one day or until he cures his ongoing contempt of those paragraphs, whichever comes first. For greater certainty, this total period shall include the initial period of four months' imprisonment. In deciding upon this initial period of imprisonment, I have also taken into account the defiant nature of Antonio's past contempt, including in relation to paragraphs 30 and 37 of the Interim Order, as this provided Antonio with the opportunity to destroy evidence or move evidence or funds beyond the reach of the court.

[151] I will suspend the issuance of a warrant of committal for a period of 14 days to permit Marshall and Antonio to put their respective affairs in order before commencing their incarceration.

[152] Should Marshall and/or Antonio cure their ongoing non-compliance with the Interim Order (as extended by the Interlocutory Order) during this 14-day period, they will only have to serve their initial periods of imprisonment described above, i.e., six months for Marshall and four months for Antonio.

[153] During the hearing, Marshall requested that the penalty imposed by the Court reflect "finality", so that he and Marshall would not continue to be exposed to "this rinse and repeat endless cycle of, you know, 'When are you going to give us the password?' You know, here take a month in jail and then take a break, and then take another month. I think we'd all be better served with some kind of finality in some way": Day 1 Transcript at page 76.

[154] Later in his closing remarks, Marshall further explained as follows:

> I just feel that based on the law if someone's taking a penalty for not providing the computer password, as in this example, like myself, then I don't think that the plaintiffs should be allowed to have their cake and eat it too in terms of penalize the defendant and then also be able to benefit from any information years later that may arise.
>
> Day 2 Transcript at pages 133-134.

[155] Marshall added:

> So it would be expected that any decision that you render would be final in nature, wouldn't be like okay spend a week in jail, come out, how do you feel, are you going to comply, okay another week in jail in lieu of, no, it's two weeks in jail and then it's done, as an example. I would view that as being charged for the same thing twice -- more than once.
>
> So we ask you to obviously render a decision that -- where we don't need to meet again for the same things.

Day 2 Transcript at page 145.

[156] In essence, Marshall would like to be able to serve a single penalty for the past and ongoing contempt of which they have been found guilty, and then put the matter behind them once and for all, without ever having to cure their ongoing compliance.

[157] This would permit the Defendants to completely frustrate the Plaintiffs' ability to obtain the information they require to advance their underlying action for copyright infringement. This would also be inconsistent with the principal objective of the law of civil contempt, namely, to foster compliance with court orders: see para [46] above and *Zenda Glenhill* at para 25. As the Ontario Court of Appeal has explained:

> [44] … To permit only one penal … sanction for the ongoing breach of an order deprives the court of the ability to impose measured, but incremental, sanctions to obtain compliance with that order. In other words, if the court can impose only one period of incarceration for a civil contempt, then it cannot address, in any meaningful way, a contemnor's continuing defiance. If repeated penal sanctions are permitted, the court can always address a concern that these sanctions may become oppressive.
>
> *Chiang (Re)*, 2009 ONCA 3 (CanLII) **[*Chiang*]**

[158] Ultimately, the Court in *Chiang* declined to definitively determine the issue, because a prior consent order entered into between the parties expressly provided for a further period of incarceration if the defendants continued to refuse to comply with their undertakings to cure their contempt: *Chiang* at para 47. The Court also distinguished the situation before it from that in *Braun (Re)*, 2006 ABCA 23 (CanLII) at paras 18-28, where the Alberta Court of Appeal rejected the proposition that a civil contempt may warrant successive orders imposing incremental penal

sanctions. In *Braun*, the Court reasoned that once an act of contempt, even of an ongoing nature, is punished, "the contemnor should not be punished further for what is effectively the same contempt", *Braun* at paras 21-23, quoting *Enfield London Borough Council v Mahoney*, [1983] 2 All ER 901 at 908 (CA): but see *Doobay v Diamond*, 2012 ONCA 580 (CanLIi) at paras 35-37, leave to appeal dismissed 2013 CanLII 18850 (SCC) and *Zenda Glenhill* at paras 30-34. Nevertheless, the Court in *Braun* added that "if the unpurged contempt affects the fair adjudication of the [underlying] suit, non-penal sanctions may still be invoked": *Braun* at para 28.

[159] Given that it is unnecessary to make a definitive determination on this issue at this time, I consider it appropriate to refrain from doing so, particularly given the unsettled state of the jurisprudence on this point and the fact that it was not fully argued before me. If, at the end of the periods of imprisonment set forth in the Order below, Marshall and Antonio remain in non-compliance with any of the provisions of the Interim Order in respect of which they have been found guilty of contempt, the issue of this Court's ability to impose further sanctions for their ongoing contempt can be determined at that time.

[160] During the penalty hearing, Marshall also requested that he be permitted to have a break during his incarceration, between September 12 and September 26, 2025, so that he could travel to and attend an overseas conference. He explained that he booked his arrangements for the conference "many years in advance": Day 2 Transcript at page 157.

[161] Given the ongoing, defiant, nature of Marshall's contempt, I decline to exercise my discretion to grant this relief. In effect, Marshall is requesting leniency and indulgence from a court whose orders he continues to brazenly defy. His conduct does not warrant such leniency and indulgence. Moreover, in light of the potential length of the period of incarceration that I will be ordering for him, I am concerned that there is a non-trivial risk that he may not return to Canada.

[162] Marshall also made a related request for the return of his and Antonio's passports "in a timely manner": Day 2 Transcript at page 98. Justice Duchesne ordered Marshall and Antonio to deliver those passports to the Court prior to the commencement of the penalty hearing after the Plaintiffs brought a motion seeking that relief, as well as more extensive related relief that Justice Duchesne declined to grant. The Plaintiffs' based their motion on the risk that Marshall and Antonio would attempt to avoid incarceration by fleeing Canada: *Bell Media Inc v Macciacchera (Smoothstreams.tv)*, 2025 FC 461, at paras 41-45. Ultimately, Justice Duchesne ordered the passports to be filed under seal with the Registry until the delivery of the penalty judgment and all appeals therefrom. I will Order below that Marshall's and Antonio's passports remain under seal with the Registry until their penalties, as possibly varied on appeal, have been served in full. This is subject to any further Order that may be made in relation to Marshall's and Antonio's ongoing contempt.

[163] Finally, in their written and oral submissions, the Plaintiffs drew the Court's attention to the fact that they had over-redacted certain materials out of an abundance of caution, in the public version of the motion record they filed for the penalty hearing. The Plaintiffs explained

that the over-redactions generally concern evidence uncovered during the execution of the Interim Order and the entire transcripts of the Plaintiffs' discovery of Marshall and Antonio: Day 1 Transcript at pages 142-143. However, the public motion record filed by the Plaintiffs appears to reflect much more extensive redactions, beyond those that have been previously Ordered by the Court.

[164] During the hearing, the Plaintiffs explained that they were not aware of what the Defendants consider to be confidential within those materials. I indicated that this would need to be resolved, because the Court does not accept over-redactions out of an abundance of caution: Day 1 Transcript at 82. Rule 151(2) of the Rules requires the Court to be satisfied that material be treated as confidential, before making an order to preserve the confidentiality of the material. In turn, this requires the party seeking the order to meet the test set forth in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522 [***Sierra Club***], at 543-544; *Sherman Estate v Donovan*, 2021 SCC 25 at paras 7-8 and 37-43 and 86-103; *9219-1568 Quebec Inc v Canada (Privacy Commissioner)*, 2024 FCA 38 at para 16.

[165] Having regard to the foregoing, I gave the Defendants two weeks after date of the penalty hearing to (i) review the Plaintiffs' motion record, (ii) identify anything that they consider should be covered by a confidentiality order, and then (iii) advise the Plaintiffs. Once again, I referred to the need to consider *Sierra Club*: Day 1 Transcript at pages 144-145. However, given that I have not heard back from the parties regarding this issue, I will order below that the Defendants file their submissions regarding which redacted material in the Plaintiffs' public motion record should remain confidential, within 14 days of the date of the Order. Before doing so, they shall

consult with the Plaintiffs regarding those submissions. Those submissions should provide the basis for maintaining each requested redaction. For greater certainty, the Defendants need not address the material in respect of which this Court has previously issued a confidentiality Order, e.g., the redacted material in Mr. McGuigan's affidavits. To the extent that the Plaintiffs may have redacted any additional information, beyond that described above and beyond what is already subject to a confidentiality order, they shall explain the basis for their redactions.

X. Costs

[166] It is customary practice in contempt cases to impose costs on a solicitor-client basis: *Lari* at para 38, citing *Pfizer Canada Inc v Apotex Inc*, [1998] CanLII 8951 at para 8; *Beast IPTV* at para 172; *Macciacchera 4* at para 17. In my view, there is no reason to depart from that principle in the present proceeding.

[167] During the penalty hearing, I agreed with the Plaintiffs' request for an opportunity to provide their support for their request on costs at a later date. Accordingly, I will order below that the Plaintiffs shall provide that support no later than 14 days following the issuance of my Order below. Given that costs have already been ordered in relation to the contempt hearings for each of Marshall and Antonio, the relevant costs for the present purposes are solely those incurred in relation to the penalty stage of these contempt proceedings.

ORDER in T-1257-22 (Penalty for Contempt)

THIS COURT ORDERS that:

1. The Defendant Marshall Macciacchera is sentenced to imprisonment for an initial period of six months, and shall remain imprisoned for a total period of up to five years less one day or until he cures his ongoing contempt of paragraphs 24, 25 and 30 of the Anton Piller Order issued by Justice Vanessa Rochester (as she then was) on June 28, 2022 (the **"Interim Order"**), which were extended by paragraphs 10, 11 and 13 of an Order issued by the Honourable Justice Roger Lafrenière on November 22, 2022 (the **"Interlocutory Order"**), whichever comes first. For greater certainty, the total period of up to five years less one day mentioned above shall include the initial period of six months' imprisonment. The curing of his ongoing contempt shall include disclosing:

    a. the password and/or any other means necessary to access the contents of the computer copied during the execution of the Interim Order at 259 Dunlop Street, unit 202, Barrie, Ontario, Canada; and

    b. all information pertaining to his assets, including by providing a written consent in the form of Schedule III of the Interim Order for the HSBC bank account(s) associated with the documents found at Exhibit DSD-18 to the affidavit of Daniel S. Drapeau dated July 22, 2022.

2. The Defendant Antonio Macciacchera is sentenced to imprisonment for an initial period of four months, and shall remain imprisoned for a total period of up to five

years less one day or until he cures his ongoing contempt of paragraphs 24(b) and 25 of the Interim Order (which were extended by paragraphs 10(b) and 11 of the Interlocutory Order), whichever comes first. For greater certainty, the total period of up to five years less one day mentioned above shall include the initial period of four months' imprisonment. The curing of Antonio's ongoing contempt shall include disclosing all information pertaining to his assets, including by providing a written consent in the form of Schedule III of the Interim Order for TD Bank Account No 508502269, and Royal Bank of Canada Account No 0015-5167283.

3. The ongoing breach of the Interim Order by Marshall or Antonio shall be considered to constitute a breach of this Order. For greater certainty, Marshall shall immediately cease his ongoing contempt of paragraphs 24, 25 and 30 of the Interim Order, as extended by the Interlocutory Order; and Antonio shall immediately cease his ongoing contempt of paragraphs 24(b) and 25 of the Interim Order, as extended by the Interlocutory Order.

4. The Plaintiffs shall provide support for their costs, on a solicitor-client basis, within 14 days of the date of this Order. Such costs shall be limited to those incurred in connection with the penalty stage of these contempt proceedings.

5. The passports of each of the Defendants Marshall Macciacchera and Antonio Macciacchera shall remain under seal in the Court's Registry until their respective penalties, as possibly varied on appeal, have been served in full. This is subject to any further Order that may be made in relation to Marshall's and Antonio's ongoing contempt.

6. The Defendants Marshall Macciacchera and Antonio Macciacchera shall file with the Court their submissions regarding which redacted material in the Plaintiffs' motion record should remain confidential, within 14 days of the date of this Order. Before doing so, they shall consult with the Plaintiffs regarding those submissions. Those submissions should provide the basis for maintaining each requested redaction. To the extent that the Plaintiffs may have redacted any additional information, beyond that described above and beyond what is already subject to a confidentiality Order, they shall explain the basis for their redactions. For greater certainty, the parties need not address the material in respect of which this Court has previously issued a confidentiality Order.

7. The Registry shall issue the Warrant of Committal attached at Appendix "1" hereto 14 days after the date of this Order.

8. If the Defendant Marshall Macciacchera and/or the Defendant Antonio Macciacchera cure(s) their ongoing contempt of the Interim Order within the aforementioned 14-day period, they will only have to serve their initial period of imprisonment, namely, six months in Marshall's case and four months in Antonio's case. For greater certainty, in the event that Marshall cures his ongoing contempt of the Interim Order (as extended by the Interlocutory Order) within 14 days of the date of this Order, the second part of his penalty, stipulating a period of incarceration beyond the initial six-month period, will be suspended. Likewise, in the event that Antonio cures his ongoing contempt of the Interim Order (as extended by the Interlocutory Order) within 14 days of the date of this Order, the

second part of his penalty, stipulating a period of incarceration beyond the initial four-month period, will be suspended.

"Paul S. Crampton"
Chief Justice

Federal Court  Cour fédérale

Appendix "1"

Date: 20250815

Docket: T-1257-22

Citation: 2025 FC 1378

Ottawa, Ontario, August 15, 2025

PRESENT: Chief Justice Paul Crampton

BETWEEN:

BELL MEDIA INC.
ROGERS MEDIA INC.
COLUMBIA PICTURES INDUSTRIES, INC.
DISNEY ENTERPRISES, INC.
PARAMOUNT PICTURES CORPORATION
UNIVERSAL CITY STUDIOS LLC
UNIVERSAL CITY STUDIOS PRODUCTIONS LLP
WARNER BROS. ENTERTAINMENT INC.

Plaintiffs

and

MARSHALL MACCIACCHERA dba SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA dba SMOOTHSTREAMS.TV
ARM HOSTING INC.
STAR HOSTING LIMITED (HONG KONG)
ROMA WORKS LIMITED (HONG KONG)
ROMA WORKS SA (PANAMA)

Defendants

WARRANT OF COMMITTAL

AND TO ALL PEACE OFFICERS AND ALL POLICE OFFICERS:

AND TO ALL OFFICERS OF THE ROYAL CANADIAN MOUNTED POLICE:

WHEREAS by Order of the Court dated August 21, 2024, the Honourable Justice Vanessa Rochester (as she then was) found the defendant Marshall Macciacchera (**"Marshall"**) in contempt of court for disobeying several provisions of an Order that she issued on June 28, 2022 (the **"Interim Order"**), including paragraphs 24, 25 and 30 thereof, which were extended by paragraphs 10, 11 and 13 of an Order issued by the Honourable Justice Roger Lafrenière on November 22, 2022 (the **"Interlocutory Order"**);

AND WHEREAS by Order of the Court dated June 7, 2023, I found the defendant Antonio Macciacchera (**"Antonio"**) in contempt of court for disobeying several provisions of the Interim Order, including paragraphs 24(b) and 25 thereof, which were extended by paragraphs 10(b) and 11 of the Interlocutory Order;

AND WHEREAS by Order dated August 15, 2025 (the **"Penalty Order"**), I sentenced Marshall to a period of incarceration for his contempt on the following terms:

> The Defendant Marshall Macciacchera is sentenced to imprisonment for an initial period of six months, and shall remain imprisoned for a total period of up to five years less one day or until he cures his ongoing contempt of paragraphs 24, 25 and 30 of the [Interim Order], as extended by paragraphs 10, 11 and 13 of the Interlocutory Order, respectively, whichever comes first. For greater certainty, the total period of up to five years less one day mentioned above shall include the initial period of six months' imprisonment. The curing of his ongoing contempt shall include disclosing:

a. the password and/or any other means necessary to access the contents of the computer copied during the execution of the Interim Order at 259 Dunlop Street, unit 202, Barrie, Ontario, Canada; and
b. all information pertaining to his assets, including by providing a written consent in the form of Schedule III of the Interim Order for the HSBC bank account(s) associated with the documents found at Exhibit DSD-18 to the affidavit of Daniel S. Drapeau dated July 22, 2022.

AND WHEREAS, in the Penalty Order, I also sentenced Antonio to a period of incarceration for his contempt on the following terms:

> The Defendant Antonio Macciacchera is sentenced to imprisonment for an initial period of four months, and shall remain imprisoned for a total period of up to five years less one day or until he cures his ongoing contempt of paragraphs 24(b) and 25 of the Interim Order, as extended by paragraphs 10(b) and 11 of the Interlocutory Order, whichever comes first. For greater certainty, the total period of up to five years less one day mentioned above shall include the initial period of four months' imprisonment. The curing of his ongoing contempt shall include disclosing all information pertaining to his assets, including by providing a written consent in the form of Schedule III of the Interim Order for TD Bank Account No 508502269, and Royal Bank of Canada Account No 0015-5167283.

AND WHEREAS, in the Penalty Order, I further stipulated as follows:

If the Defendant Marshall Macciacchera and/or the Defendant Antonio Macciacchera cure(s) their ongoing contempt of the Interim Order within the aforementioned 14-day period, they will only have to serve their initial period of imprisonment, namely, six months in Marshall's case and four months in Antonio's case. For greater certainty, in the event that Marshall cures his ongoing contempt of the Interim Order (as extended by the Interlocutory Order) within 14 days of the date of this Order, the second part of his penalty, stipulating a period of incarceration beyond the initial six-month period, will be suspended. Likewise, in the event that Antonio cures his ongoing contempt of the Interim Order (as extended by the Interlocutory Order) within 14 days of the date of this Order, the second part of his penalty, stipulating a period of incarceration beyond the initial four-month period, will be suspended.

YOU ARE HEREBY ORDERED to:

1. Arrest Marshall Macciacchera, whose last known address is 313-3651 Major Mackenzie Drive Woodbridge, Ontario L4H 0A2, if it is necessary to do so in order to take him into custody;
2. Deliver Marshall Macciacchera to the nearest corrections or detention facility, to admit and detain him to serve the full penalty that was ordered against him, as described above;
3. Arrest Antonio Macciacchera, whose last known address is 32 Brownlee Avenue, Woodbridge, Ontario, L4L 8H4, if it is necessary to do so in order to take him into custody; and

4. Deliver Antonio Macciacchera to the nearest corrections or detention facility, admit and detain him to serve the full penalty that was ordered against him, as described above;

THIS WARRANT DOES NOT EXPIRE.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1257-22
STYLE OF CAUSE:	BELL MEDIA INC. ET AL v MARSHALL MACCIACCHERA ET AL
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 16, 2025
ORDER AND REASONS:	CRAMPTON CJ
DATED:	AUGUST 15, 2025

APPEARANCES:

Guillaume Lavoie Ste-Marie Christopher Guaiani	FOR THE PLAINTIFFS
Marshall Macciacchera Antonio Macciacchera	FOR THE DEFENDANTS ON THEIR OWN BEHALVES

SOLICITORS OF RECORD:

Smart & Biggar LLP Montréal, Quebec	FOR THE PLAINTIFFS