



## Hollywood studios successfully enforce breach of copyright judgment against Ontario website operator

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Citing the internet's unique potential "to cause harm anywhere and everywhere", Madam Justice Lax of Ontario's Superior Court of Justice enforced a New York District Court judgment earlier this month against the operators of Ontario-based websites that facilitated the illegal copying and downloading of movies.<sup>1</sup>

The defendants, Click Enterprises Inc. and its principal, Philip Evans, ran a series of websites, including *FlicksUnlimited.com* and *DownloadFreeFilms.com*, that offered their members tools to simplify and streamline the process of downloading copyrighted films. Despite representing to customers that their service was "100% legal", the defendants also offered customers the opportunity to purchase "Evidence Shredder" software to eliminate evidence of downloading infringing content from their personal computers.

Several movie studios, including Disney, Columbia Pictures, Warner Bros., Paramount Pictures, Universal, MGM and Twentieth Century Fox, sued Click and Evans in New York for breach of copyright and unfair competition in relation to the unauthorised copying of their films. After Click and Evans failed to defend the action, the studios obtained judgment against them for USD \$468,442.17 – an amount calculated based upon the revenues the defendants had received as a result of their illegal enterprise. The plaintiffs then sued to enforce the New York judgment in Ontario. Click and Evans opposed enforcement, claiming that the New York court had no jurisdiction over activities originating in Ontario and taking place over the internet.

In Canada, the judgments of foreign courts will almost always be enforced where the foreign court had a sufficiently real and substantial connection to the subject matter of the action to warrant taking jurisdiction. In the case of the internet, which so easily transcends borders, Canadian courts have prescribed a broad definition of jurisdiction that recognises the ability of courts of either the place of transmission or the place of reception to take jurisdiction.<sup>2</sup>

In this case, Justice Lax found that "it is inescapable that Click was making its services available to residents of the United States who wished to illegally download American films." She went on to find that the defendants' websites were available to residents of New York through normal distributive channels and that their products caused harm there. She further observed that the plaintiffs' decision to bring their action in New York was "arguably fairer to [Click] than if it had been brought, as it might have been, in a more geographically remote jurisdiction such as California."

As the New York court had properly taken jurisdiction and the defendants could establish none of the very limited defences to enforcement, such as a denial of procedural natural justice, fraud or public policy reasons,<sup>3</sup> the judgment was enforced.

It is clear from this decision, among others, that website operators cannot expect to hide behind Canada's borders when engaging in wrongful commercial activity on the borderless internet. The internet's promise of easy access to an international marketplace for goods and services carries with it the possibility of being required to defend litigation

in foreign jurisdictions where the seller's only presence is a "virtual" one.



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<sup>1</sup> *Disney Enterprises Inc. et al. v. Click Enterprises Inc.* 2006 CANLII 10213 (Ont.S.C.) – April 5, 2006.

<sup>2</sup> See the previous *Litigator – Electronic Edition* article by Michael Osborne “Does world-wide web mean worldwide liability for cyber libel?” at: [http://www.agolaw.com/reslibrary\\_article.asp?article=cyberlibel](http://www.agolaw.com/reslibrary_article.asp?article=cyberlibel)

<sup>3</sup> For a discussion of the defences available to the enforcement of foreign judgments, link to our previous article, “Canada’s top court highlights the perils of ignoring foreign actions,” *The Litigator*, May 2004 at: <http://www.agolaw.com/litigatorca.asp?file=litigator/may04/page1>