

Federal Court of Appeal

BETWEEN:

**BMG CANADA INC., EMI MUSIC CANADA, A DIVISION OF EMI GROUP
CANADA INC., SONY MUSIC ENTERTAINMENT (CANADA) INC.,
UNIVERSAL MUSIC CANADA INC., WARNER MUSIC CANADA LTD.,
BMG MUSIC, ARISTA RECORDS INC.,
ZOMBA RECORDING CORPORATION, EMI MUSIC SWEDEN AB,
CAPITOL RECORDS INC., CHRYSALIS RECORDS LIMITED,
VIRGIN RECORDS LIMITED, SONY MUSIC ENTERTAINMENT INC.,
SONY MUSIC ENTERTAINMENT (UK) INC., UMG RECORDINGS INC.,
MERCURY RECORDS LIMITED AND WEA INTERNATIONAL INC.**

**Appellants
(Plaintiffs)**

-and-

JOHN DOE, JANE DOE ET AL.

(Defendants)

-and-

**SHAW COMMUNICATIONS INC., ROGER CABLE COMMUNICATIONS INC.,
BELL CANADA, TELUS COMMUNICATIONS INC., AND VIDÉOTRON LTÉE**

**Respondents
(Third Party Respondents)**

-and-

CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

Intervener

**MEMORANDUM OF FACT AND LAW OF THE THIRD PARTY RESPONDENT
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MEMORANDUM OF FACT AND LAW OF THE THIRD PARTY
RESPONDENT VIDÉOTRON LTÉE

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Court File No. A-203-04
(T-292-04)

FEDERAL COURT OF APPEAL

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CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

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**MEMORANDUM OF FACT AND LAW OF THE THIRD PARTY RESPONDENT
VIDÉOTRON LTÉE**

PART I – FACTS

1. On February 11, 2004, third party Respondent Vidéotron Ltée was served with the Motion Record of Appellants by which such Appellants were asking the Federal Court for an order requiring certain productions by the Internet service provider business unit of the third party Respondent Vidéotron Ltée.
2. Schedule “A” attached to Appellants’ Notice of Motion, contained in Appellants’ Motion Record, mentioned Peer-to-Peer Network Pseudonyms, IP addresses, and the date and time such IP addresses were allegedly used by two (2) subscribers of third party Respondent Vidéotron Ltée.
3. With the information provided by Appellants, third party Respondent Vidéotron Ltée was and is able to identify the subscribers who used such IP addresses at the date and time mentioned in Appellants’ Schedule “A”.
4. By letter dated February 17, 2004, the solicitor for third party Respondent Vidéotron Ltée confirmed to the solicitors for Appellants that third party Respondent Vidéotron Ltée would not oppose the granting of the order that was the object of the Motion Record of Appellants.

Correspondence dated February 17, 2004; A.B., Vol. X, tab. 31, p. 2807

Points in issue

PART II – POINTS IN ISSUE

5. The issue to be determined on this appeal on which third party Respondent Vidéotron Ltée wishes to make submissions is the following:

- a) The motions judge erred in construing and applying the *Copyright Act*.

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Submissions

PART III – SUBMISSIONS

6. Third party Respondent Vidéotron Ltée agrees with the submissions made by Appellants under the heading “*iii. The motions judge erred in construing and applying the Copyright Act*”, paragraphs 57 to 76, pages 19 to 26 of Appellants’ Memorandum of Fact and Law. Third party Respondent Vidéotron Ltée adopts those submissions as its own and incorporates them herein by reference so as to form part of the present Memorandum of Fact and Law.

7. Third party Respondent Vidéotron Ltée agrees to protect its clients’ privacy. Third party Respondent Vidéotron Ltée does not agree to protect its clients’ piracy.

8. In light of the evidence provided to it, and the applicable law and the submissions above, third party Respondent Vidéotron Ltée supports Appellants in their Notice of Motion on the copyright issues noted above.

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Order Requested

PART IV – ORDER REQUESTED

9. Third party Respondent Vidéotron Ltée hereby confirms that it is able to comply with the order requested by Appellants and described on page 29 of Appellants' Memorandum of Fact and Law.

The whole respectfully submitted

Montréal, August 5, 2004

(S) **J. SERGE SASSEVILLE**

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