

## **Illicit IPTV Streaming Devices**

### **Views of BCE Inc., Quebecor Media Inc., and Rogers Communications Inc.**

#### ***Introduction***

1. BCE Inc. (Bell) is Canada's largest communications company, providing a comprehensive and innovative suite of broadband communications and content services to consumer, residential, business, not-for-profit and government customers in Canada. These include fibre-based IPTV and high-speed Internet services, 4G LTE wireless, satellite TV, home phone and business network and communications services, including data hosting and cloud computing. Bell Media is Canada's premier multimedia company with leading assets in television, radio, out of home and digital media, including CTV, Canada's #1 television network, and the country's most-watched specialty channels. Bell is also a significant investor in Canada's leading sport and entertainment institutions, the Montreal Canadiens and Maple Leaf Sports and Entertainment and owns and operates The Source, one of Canada's largest consumer electronics retailers with over 650 locations.
2. Rogers Communications Inc. (Rogers) is a leading diversified Canadian communications and media company. Rogers is Canada's largest provider of wireless communications services and one of Canada's leading providers of cable television, high-speed Internet, information technology, and telephony services to consumers and businesses. Rogers Media is engaged in radio and television broadcasting, televised and online shopping, magazines, digital media, and sports, including ownership of the Toronto Blue Jays and a significant investment in Maple Leaf Sports and Entertainment. Rogers is also the exclusive national broadcaster of the National Hockey League (NHL) in Canada.
3. Quebecor is a Canadian leader in telecommunications, news media, entertainment and culture. It comprises Videotron, the Québec leader in telecommunications and entertainment providing cable television, Internet access, cable telephone and mobile telephone services and TVA Group, the largest private French-language broadcaster in North America including TVA Network, the most popular television network in Québec, and TVA Sports, the official French-language broadcaster of the NHL in Canada. Quebecor owns Mels, which provides services to the film and television industry and owns Mels Studios. It also owns newspapers Le Journal de Montréal and Le Journal de Québec, more than 70 magazines through TVA Publications, and the largest group of French-language publishing houses in Canada. Quebecor also owns Distribution Select, Canada's largest independent distributor of music and videos, Le SuperClub Vidéotron and Microplay movie, TV, and console games retail stores, and two Québec Major Junior Hockey League teams: Remparts de Québec and Armada de Blainville-Boisbriand.
4. Bell, Rogers, and Quebecor (the Canadian Broadcasters and Distributors) are plaintiffs in a Federal Court action directed at the configuring, advertising, offering for sale or selling illicit set-top-boxes or related illicit IPTV subscriptions (the Canadian Action). Approximately 90

defendants are currently subject to an interlocutory injunction prohibiting such activities, with more defendants being added regularly

5. Given the significant detrimental impact of illicit IPTV streaming devices on the Canadian and global market, our experience with them (including our significant investment in the Canadian Action), and our belief in the importance of effective legal tools and global cooperation in combating this issue, the Canadian Broadcasters and Distributors are pleased to provide their views and supporting evidence in response to certain questions raised in the Intellectual Property Office's consultation.

***Q1: Please provide evidence of the scale of the problem of illicit IPTV streaming devices and the economic harm it is causing to broadcasters and content owners***

6. Concrete evidence on the scale of a piracy issue is notoriously difficult to generate, given the decentralized and illicit nature of the conduct. Nevertheless, it is clear that this problem has reached a worrying scale.
7. There are already approximately 90 defendants to the Canadian Action, many of whom regularly boast about having sold thousands of units or more. In addition, at any given time there can be more than 7,000 advertisements for illicit set-top-boxes on popular Canadian classifieds websites. The Canadian Broadcasters and Distributors believe the number of illicit set-top-boxes already in use by consumers in Canada easily numbers in the hundreds of thousands.
8. This causes significant harm to Canadian media and broadcast distribution companies. First, it makes it more difficult for content creators to sell the products they produce, making it less likely that they are produced in the first place. Similarly, it makes it impossible for a rightsholder to effectively monetize the rights that they purchase, making it less likely that the investment is made in bringing the content to a legitimate television station or OTT service in the domestic market. Finally, it causes a permanent loss of customers for legitimate broadcast distribution companies, reducing their ability and incentive to invest in broadband networks and other broadcast distribution infrastructure, as well as new and innovative products and services. As the Federal Court of Canada found:

The market for pre-loaded set-top boxes is rapidly and steadily growing, in a way that cannot be precisely quantified at the moment. The continuing sale of pre-loaded set-top boxes will "place devices in the hands of consumers which the plaintiffs, even if successful at trial, will not be able, in most cases, to locate or to effectively restrain" from accessing copyrighted content. Each user who purchases a pre-loaded set-top box has an incentive to permanently cancel his or her subscription to a distribution service.

***Q7: Please provide examples of where this issue has been raised with law enforcement agencies or government officials/ministers in other countries.***

9. The Canadian Broadcasters and Distributors have over the last year raised this issue in a number of cross-industry meetings with law enforcement agencies and officials in Canada and the United States to communicate the scale of the problem and the potential impact on consumers, legitimate businesses, and more broadly on the broadcasting and creative industries.
10. We believe that international cooperation amongst law enforcement, government agencies, and rightsholders will be crucial in combating this phenomenon. The content accessed unlawfully on illicit IPTV streaming devices is often produced in one country, uploaded in another, hosted in a third, and made available illegally on a device sold in a fourth through an application designed in a fifth. In these circumstances, effective enforcement requires a coordinated international approach.

***Q9: Are there examples of enforcement powers in other countries that have been introduced to deal with these issues? Please provide examples of approaches you are aware of in other countries and any evidence you have of their success.***

11. The Canadian Broadcasters and Distributors have devoted considerable time and resources to investigating and combating the proliferation of illicit IPTV streaming devices over the last year. Our experience suggests that, in addition to international cooperation, effective enforcement requires a full range of tools – no single approach is sufficient to combat the problem.
12. In the Canadian Action the Canadian Broadcasters and Distributors have obtained an interlocutory injunction from the Federal Court that recognizes the large and growing number of individuals and entities advertising, offering for sale, or selling pre-loaded set-top-boxes or associated subscriptions. To provide for an effective remedy in these circumstances, the injunction automatically and immediately applies to anyone added as a defendant to the case. Those persons then have fourteen days to bring a motion to challenge the application of the injunction to them in particular (e.g., on the basis that they are not actually engaged in the sale of pre-loaded set-top-boxes). Despite having added approximately 90 defendants to the case to date, the Court has not heard any such motion so far. An appeal of the interlocutory injunction was dismissed from the bench by the Federal Court of Appeal on March 20, 2017.
13. So far this remedy is temporarily limiting the irreparable harm that would otherwise occur to legitimate businesses in Canada and is essential to protecting the intellectual property rights of the Canadian Broadcasters and Distributors. Unfortunately, it alone is not sufficient to eliminate or render *de minimis* the impact of illicit IPTV streaming devices in the market. For example, it does not provide any remedy in respect of illicit IPTV streaming devices that are already in the possession of consumers, that come into the hands of consumers through

retailers as yet unknown to the Canadian Broadcasters and Distributors, or that are acquired by consumers other than through third party retailers (e.g., through websites that provide the instructions and applications required to be downloaded to create an illicit IPTV streaming device, and the means of signing up for subscriptions, if applicable). Moreover, until significant fines begin to be assessed in final judgments and other enforcement action (such as the seizure of infringing inventory) begins to be taken, in practice some defendants may not abide by the Federal Court's Order. In fact, the Canadian Broadcasters and Distributors have already had to bring two contempt charges in respect of instances where the injunction granted in the Canadian Action was not being complied with and are currently investigating compliance by other defendants.

14. In this respect, the Canadian Broadcasters and Distributors applaud the clear statements of the UK Intellectual Property Office regarding the illegality of these devices, as well as the enforcement action taken by UK authorities. Government and law enforcement play an indispensable role in deterring this unlawful behaviour.
15. While not a specific enforcement power introduced in Canada, the Canadian Broadcasters and Distributors also have pursued the take-down of sources of illegal content and servers (located around the world) involved in the distribution of that content to illicit IPTV streaming devices. In doing so, we have observed that there is a lot of redundancy built into these illegal distribution networks, whereby content is being made available from multiple sources in multiple geographic locations and distributed on multiple server networks. All of these factors limit the ability of rightsholders to effectively disrupt illicit streaming devices through the time-consuming and temporary process of issuing takedown notices.
16. Accordingly, the Canadian Broadcasters and Distributors believe that a regime such as the one established under section 97A of the *Copyright, Designs and Patent Act* can play an essential complementary role to other enforcement powers directed at individual actors. Such a regime provides a practical and effective remedy addressing the root problem of content being made available illegally online, and does so entirely within the domestic legal system, rather than requiring the cooperation of courts and individuals in countries with no or weak enforcement of international intellectual property law norms.

## **Conclusion**

17. The Canadian Broadcasters and Distributors would like to thank the UK Intellectual Property Office for the opportunity to participate in this important consultation and to emphasize the importance of international cooperation, active enforcement by government and law enforcement agencies, and the availability of a broad range of tools to address multiple aspects of piracy involving illicit IPTV streaming devices. We would be pleased to provide any additional information that would be helpful.