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COMPUTER, INTERNET, ELECTRONIC COMMERCE AND ARTIFICIAL INTELLIGENCE LAW

Sookman

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What's New in this Update

This release features updates to the Quantum Table: Copyright Infringement. This release also features updates to the case law annotations in Appendix § E3:1 *Personal Information Protection Act* under Appendix E3. British Columbia in Appendix E. Personal Information Protection.

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Highlights

- **Quantum Table – Copyright Infringement – Site-Blocking Order –** The Plaintiffs produce, own, and/or distribute popular motion pictures and television programs. Before the action was commenced, the Defendant John Doe 1 operated an online piracy platform under the name "Soap2day". The platform provided unlimited and unauthorized access to thousands of motion pictures and television programs, including a large number of works owned by the Plaintiffs. The Plaintiffs report a growing trend, whereby infringing platforms that are successfully deactivated are promptly replaced by copycat sites. Platforms such as 123movies, Popcorn Time, and The Pirate Bay have all been shut down or blocked at one time or another, only to be replaced by identical sites with similar domain names. Copyright owners are forced into a digital game of "whack-a-mole": each time a site is deactivated, another immediately appears in its place. Traffic to domains that are subject to site-blocking orders may be disrupted, but the overall traffic to copycat sites is undiminished. Applying the considerations identified by this Court in its previous jurisprudence to the Plaintiff's motion for a Site-Blocking Order, the Plaintiffs have demonstrated that: (a) the Order is necessary and the most, if not the only, effective remedy to put an end to the copyright infringing activities of the Defendants and of those who imitate their platforms; (b) the Order is not unnecessarily complex, and implementation costs are demonstrated to be low or negligible; (c) the Order is dissuasive, does not unduly limit the rights of others, and is limited in reach – to the extent that third parties who have not had an opportunity to make representations in the context of the present motion believe they are affected by the Order, they will have the right to seek its variation upon being so affected; and (d) the Order is fair and reflects a careful weighing of the rights of those involved. The Order provides that it will terminate two years from the date of issuance, unless the Court orders otherwise: *Bell Media Inc. v. John Doe 1 (Soap2day)*, 2025 FC 133 (F.C.).
- **Personal Information Protection – British Columbia – *Personal Information Protection Act* – Section 12(1)(e) – Collection of Personal Information Without Consent – Case Law –** Clearview raised two arguments on the merits of the Decision. The first related to whether the Commissioner's interpretation of information that was "available to the public" (or "publicly available") was unreasonable. In the proceeding before the Commissioner, Clearview sought an exemption for its collection, use and disclosure of personal information without the consent of the affected individuals, on the strength of ss. 12(1)(e), 15(1)(e) and 18(1)(e) of *Personal Information Protection Act* (*PIPA*). Those provisions all provide an exemption if the personal information "is available to the public from a source prescribed for the purposes of this paragraph". Clearview took issue with the Commissioner's reasons concluding that personal information published on social media websites is not publicly available within the meaning of ss. 12(1)(e), 15(1)(e) and 18(1)(e) of *PIPA*, and s. 6 of the *PIPA Regulations*. In particular, Clearview argued that the Commissioner: (1) did not "substantively engage with the purpose, text, or context" of the relevant statutory provisions and *PIPA Regulations*; and (2) did not address the arguments Clearview raised with the Privacy Commissioners. Justice Shergill dis-

agreed with Clearview on both fronts. Clearview's position was that the ordinary meaning of the words "publicly available" necessitates a broad definition that should have been employed by the Commissioner. Clearview argued that if any member of the public can access something on the internet, then that information is "publicly available" within the context of *PIPA*. Justice Shergill acknowledged that Clearview's interpretation was one possible way of considering the issue. However, Justice Shergill concluded that it was inferior to that adopted by the Commissioner. The Commissioner's interpretation was more attuned to the text, purpose, and context of the provision. The Commissioner took into account the particularly sensitive nature of biometric information and the impact its collection, use and disclosure can have on an individual. Given the highly sensitive nature of this biometric information, the Commissioner concluded that in the absence of an applicable exception, collecting such information requires explicit consent. Justice Shergill saw nothing unreasonable in the approach adopted by the Commissioner. It was consistent with the words of the Act and its purpose, and was supported by earlier decisions of the Commissioner. In Justice Shergill's view, the Commissioner was entitled to apply his specialized knowledge and expertise to the question of how social media websites should be treated within the context of *PIPA*. The Commissioner applied a definition that he believed was consistent with the text of the statute, as well as its purpose and context. Justice Shergill saw nothing unreasonable in the Commissioner's approach or the conclusions that he arrived at in relation to how to interpret "publicly available". Justice Shergill was satisfied that the "publicly available" analysis in the Decision bore the hallmarks of reasonableness — justification, transparency and intelligibility. The Commissioner: (1) examined the purpose, text, and context of the relevant statutory provisions; (2) was alive to Clearview's arguments and adequately responded to them; and (3) provided an internally coherent and rational chain of analysis which was justified in relation to the facts and law: *Clearview AI Inc. v. Information and Privacy Commissioner for British Columbia*, 2024 CarswellBC 3728, 2024 BCSC 2311 (B.C.S.C.).

- **Personal Information Protection – British Columbia – *Personal Information Protection Act* – Section 37 – Power to authorize organization to disregard requests – Case Law –** The Adjudicator was satisfied the Requests were frivolous within the meaning of s. 37(b) and authorized the organizations to disregard them. The respondent had already received the requested information prior to making the Requests and for that reason the Requests were made for a purpose other than gaining access to information. Further, the respondent's concerns about the adequacy of the response to their March 30, 2020 request were thoroughly investigated in the OIPC's complaint procedures. The Requests continued a well-established pattern in which the respondent would make an access request, receive a response, and then make multiple follow-up requests in order to take issue with the response they had received and otherwise continue the underlying dispute. The Requests were concerned with criticizing the organizations rather than with gaining access to information. The criticisms included making accusations of impropriety (cover up), expressing displeasure, and continuing the long-resolved employment dispute which led to the initial access request. The requests were frivolous because they were not made for a

legitimate purpose under *PIPA*. The Respondent had demonstrated a well-established practice of making multiple access requests for the same information that they had already received, with little regard for the impact on the organizations. There was no evidence that there were any live issues between the respondent and those organizations. The Requests repeat earlier requests related to an employment matter which was concluded by the workplace investigation years ago. If the respondent were to make a future request to the organizations related to the employment matter, there would be no new responsive records. The respondent's stated intention was to reveal an alleged cover up. There was no evidence of a cover up. It was appropriate to specifically authorize the organizations to disregard future requests from the respondent. Granting the organizations three years of relief from having to respond to any request from the respondent would best serve the purposes of s. 37: *Victory Square Law Office, Re*, 2025 CarswellBC 462, 2025 BCIPC 16, [2025] B.C.I.P.C.D. No. 16 (B.C.O.P.C.).

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