



CAUGHT IN THE HURT LOCKER: ILLEGAL DOWNLOADERS TO PAY UP

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After filing similar procedures in the United States and the United Kingdom, the American movie studio, Voltage Pictures LLC, copyright owner of the movie *The Hurt Locker*, is now prosecuting Canadian Internet users who illegally made the movie available for download through the BitTorrent protocol. The studio is claiming a sum of \$1,500 from each defendant.

To date, nearly thirty individuals residing in Quebec have received a letter from Voltage Pictures asking for payment under penalty of prosecution [Alain McKenna, «Téléchargement de The Hurt Locker: des internautes canadiens poursuivis», 28 novembre 2011, <http://technaute.cyberpresse.ca/nouvelles/internet/201111/28/01-4472247-telechargement-de-the-hurt-locker-des-internautes-canadiens-poursuivis.php>].

Identification of Users

Voltage Pictures first identified the IP addresses corresponding to the individuals who, according to the studio, illegally copied and distributed the movie. These IP addresses are unique addresses associated with each of the modems provided by Internet service providers, which allow the users to have access to the Internet. Voltage Pictures then turned towards the Federal Court in order to obtain the identity of the Internet users who were affiliated with those IP addresses.

In August 2011, the Federal Court issued an order [*Voltage Pictures LLC v. Untel*, 2011 CF 1024], in which the Internet service providers Bell Canada, Cogeco Câble, and Vidéotron were ordered to disclose the identity of their clients who were affiliated with the IP addresses identified by Voltage Pictures. Following the issuance of this order, Voltage Pictures was able to send formal notices to nearly thirty Quebec Internet users, whose identities had been revealed by their Internet service providers.

However, the identification of the actual individuals who have downloaded the illegal content will be difficult to assess. Indeed, the proliferation of shared networks between family members, roommates, colleagues, neighbours or in public areas, will make the identification of the real infringer very difficult.

Potential Consequences for Users

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The individuals who received a formal notice from Voltage Pictures now face two very unappealing alternatives. They must either pay the \$1,500 fine, as requested, or the legal fees required to contest the procedures, and thus potentially face statutory damages from \$500 up to \$20,000, in accordance with the *Copyright Act*. These are considerable sums, given that it generally costs between \$20 and \$30 to obtain a legal copy of the movie.

Similar Procedures to Come

If Bill C-11, which seeks a *Copyright Act* reform, was to be adopted in its current form, the statutory damages applicable to non-commercial infringements would be limited to \$5,000. However, it would be surprising to expect copyright owners to be dissuaded from seeking court orders, allowing them to obtain the identity of the Internet users that have illegally downloaded their work in view of such a limit. The receipt of a formal demand letter could indeed be sufficient in several cases to persuade individuals to pay the requested sums quickly, in order to avoid further legal proceedings.

In light of the court order issued by the Federal Court, individuals sharing illegal files on the Internet can no longer expect to hide behind the guise of their IP addresses to avoid legal proceedings, despite the fact that they cannot be directly identified by the distributors of copyrighted works. This decision, combined with the rise of new legal services for the electronic distribution of works in Canada, could therefore help to address the issue of illegal file sharing in the future.



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