

Federal Court of Appeal



Cour d'appel fédérale

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TO/À	
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Court No: A-203-04
 BMG Canada Inc. et al v. John Doe & Shaw Communications et al

FROM/DE	
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8 } 1st Order = 2 pages
 2nd Order = 3 pages
 3rd Order = 2 pages

Comments/Commentaires
Please find attached <u>three separate</u> Orders of the Court (Evans J.A.). Certified copies will follow by mail. <div style="text-align: right;"> M.K. </div>

Federal Court of Appeal



Cour d'appel fédérale

Date: 20040719

Docket: A-203-04

Ottawa, Ontario, July 19, 2004

PRESENT: The Honourable Mr. Justice Evans

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, ARTISTA 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 AND ALL THOSE PERSONS WHO ARE INFRINGING
COPYRIGHT IN THE PLAINTIFFS' SOUND RECORDINGS**

(Defendants)

and

**SHAW COMMUNICATIONS INC., ROGER CABLE COMMUNICATIONS
INC., BELL CANADA, TELUS INC., AND VIDEOTRON LTEE.**

**Respondents
(Third Party Respondents)**

and

THE CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC**intervener****ORDER**

UPON a motion by the appellants (plaintiffs), respondents (Third Party respondents) and intervener seeking an Order to amend the title of proceedings, without costs;

AND UPON reading the consent of the parties filed;

THE COURT HEREBY ORDERS that the name of the respondent (Third Party respondent), TELUS INC., in the title of proceedings is changed from "TELUS INC." to "TELUS COMMUNICATIONS INC."

"John M. Evans"

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20040719

Docket: A-203-04

OTTAWA, ONTARIO, JULY 19, 2004

Present: EVANS J.A.

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 AND ALL THOSE PERSONS WHO ARE INFRINGING
COPYRIGHT IN THE PLAINTIFFS' SOUND RECORDINGS**

(Defendants)

and

**SHAW COMMUNICATIONS INC., ROGERS CABLE COMMUNICATIONS INC.,
BELL CANADA, TELUS INC., AND VIDEOTRON LTEE.**

**Respondents
(Third Party Respondents)**

and

CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

Intervener

ORDER

UPON motions pursuant to Rules 109 and 369, by Business Software Alliance, Canadian Alliance Against Software Theft, Entertainment Software Alliance and Software & Information Industry Association (“BSA”) and by The Canadian Motion Picture Distributors Association (“CMPDA”) for leave to intervene in the appeal;

WHEREAS the test applicable for the exercise of the Court’s discretion under Rule 109(1) has been established by the jurisprudence, in particular *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, [2000] F.C.J. No. 220 (F.C.A.) and *Apotex Inc. v. Eli Lilly Canada Inc.* (2001), 11 C.P.R. (4th) 486 (F.C.A.);

AND WHEREAS the proposed interveners have only a jurisprudential interest in the outcome of this appeal;

AND WHEREAS, insofar as the appeal raises questions of copyright law, the questions primarily concern copyright law as applied to recorded music, not to motion pictures or software, the products in which the interveners’ clients have copyright;

AND WHEREAS, insofar as the appeal does raise more general questions of copyright law, the appellants, respondents and intervener are well placed to argue them and the proposed interveners are unlikely to bring a different perspective on them that will assist the Court;

THE COURT HEREBY ORDERS that the motions are dismissed.

“John M. Evans”

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20040719

Docket: A-203-04

OTTAWA, ONTARIO, JULY 19, 2004

Present: EVANS J.A.

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 AND ALL THOSE PERSONS WHO ARE INFRINGING
COPYRIGHT IN THE PLAINTIFFS' SOUND RECORDINGS**

(Defendants)

and

**SHAW COMMUNICATIONS INC., ROGERS CABLE COMMUNICATIONS INC.,
BELL CANADA, TELUS INC., AND VIDEOTRON LTEE.**

**Respondents
(Third Party Respondents)**

and

CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

Intervener

ORDER

UPON a motion by the intervener, Canadian Internet Policy and Public Interest Clinic (“CIPPIC”), pursuant to Rules 369 and 399 of the *Federal Court Rules, 1998*, to vary an Order of the Court (Stone J.A.), dated May 18, 2004, giving leave to CIPPIC to intervene in the appeal and prescribing the terms of the intervention;

AND UPON noting that Rule 399(2) permits the Court to vary an order only by reason of a matter that arose or was discovered subsequent to the making of the order or where the order was obtained by fraud;

AND UPON it appearing to the Court that the criteria in Rule 399(2) have not been met and that the time has expired within which a motion may be brought under Rule 397 for the reconsideration of the Order;

THE COURT HEREBY ORDERS that the intervener’s motion is dismissed, but without prejudice to the exercise of discretion by the panel that hears the appeal to permit CIPPIC more than 15 minutes for its oral argument.

“John M. Evans”

J.A.