

Court File No. T-2058-12

FEDERAL COURT

B E T W E E N:

VOLTAGE PICTURES LLC

Plaintiff/Moving Party

- and -

JOHN DOE and JANE DOE

Defendants

- and -

TEKSAVVY SOLUTIONS INC.

Responding Party

- and -

SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND  
PUBLIC INTEREST CLINIC

Intervenor

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This is the CROSS-EXAMINATION of BARRY LOGAN, on his affidavit sworn December 7, 2012 herein, taken at the offices of Network Reporting & Mediation, Suite 3600, 100 King Street West, Toronto, Ontario, on the 5th day of June, 2013.  
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A P P E A R A N C E S:

JAMES ZIBARRAS } Solicitor for the Plaintiff/  
JOHN PHILPOTT } Moving Party

NICHOLAS McHAFFIE Solicitor for the Responding Party

DAVID FEWER Solicitor for the Intervenor

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\*\*\*No undertakings noted in transcript\*\*\*

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1 --- UPON COMMENCING AT 10:09 A.M.

2 BARRY LOGAN; Sworn

3 CROSS-EXAMINATION BY MR. FEWER:

4 1. Q. Mr. Logan, could you please spell your  
5 name?

6 A. Certainly, it's Barry, B A R R Y, last  
7 name is Logan, L O G A N.

8 2. Q. What is your occupation?

9 A. I'm an investigator.

10 3. Q. And with which firm are you an  
11 investigator?

12 A. Canipre.

13 4. Q. And how do you spell that?

14 A. C A N I P R E.

15 5. Q. And your position there is as an  
16 investigator?

17 A. I'm an investigator and the managing  
18 director.

19 6. Q. Are you also an owner?

20 A. I'm also the owner.

21 7. Q. Okay, we'll come back to that. Could  
22 you please describe your education?

23 MR. ZIBARRAS: Sorry, what education?

24 BY MR. FEWER:

25 8. Q. You have a university degree?

1 A. No, I do not.

2 9. Q. College diploma?

3 A. Yes I do.

4 10. Q. From what institution?

5 A. Canador College of Applied Arts and  
6 Technology.

7 11. Q. And what's your diploma in?

8 A. Law and security administration.

9 12. Q. What year did you get your diploma?

10 A. 1992.

11 13. Q. Have you undertaken any additional  
12 education?

13 A. Numerous courses over the last 20 years  
14 in computer crime, computer investigation, Internet  
15 investigation and so on.

16 14. Q. Give me an example of the kinds of  
17 institutions you've taken these courses at?

18 A. These are largely specialty courses  
19 offered over the courses of two or three days in either  
20 California, New Orleans, Louisiana, here in Toronto,  
21 Montréal. I provided some courses myself as well in  
22 Santa Monica to the high-tech crime unit of the Federal  
23 Bureau of Investigation.

24 15. Q. You provided locations, but could you  
25 provide institutions that offered the courses that

1           you've taken?

2                   A.    I can't recall the names of the  
3           providers.  It's been about seven years since I've last  
4           taken any type of formal training.

5    16.            Q.    And I take it you've had no formal  
6           training in law?

7                   A.    That's correct.

8    17.            Q.    I'd like to turn to, ask you a little  
9           bit about the background of your company, Canipre.  You  
10          are the owner and managing director and principal  
11          forensic consultant, according to your affidavit.  
12          That's all correct?

13                   A.    Yes.

14    18.            Q.    Can you describe the ownership structure  
15          of Canipre?

16                   MR. ZIBARRAS:  That's irrelevant.

17          --- REFUSAL NO. 1

18          BY MR. FEWER:

19    19.            Q.    Is it a corporation, is it a sole ---?

20                   MR. ZIBARRAS:  Why is this relevant to this  
21          motion?

22                   MR. FEWER:  I want to understand who's the  
23          controlling mind of Canipre and how ---?

24                   MR. ZIBARRAS:  Yeah, but why?

25                   MR. FEWER:  Because it goes to the economic

1 business model.

2 MR. ZIBARRAS: What economic business model?

3 MR. FEWER: That Canipre operates under and  
4 that it's applying in its role in this litigation.

5 MR. ZIBARRAS: Well, that's totally  
6 irrelevant to this motion, so don't answer that.

7 --- REFUSAL NO. 2

8 BY MR. FEWER:

9 20. Q. All right, nothing on -- so, you won't  
10 even answer whether the company is incorporated or  
11 unincorporated?

12 MR. ZIBARRAS: No, he can answer that.

13 THE DEPONENT: Incorporated.

14 BY MR. FEWER:

15 21. Q. And it's private?

16 A. Correct.

17 22. Q. Are you the sole shareholder or are  
18 there other shareholders as well?

19 MR. ZIBARRAS: Don't answer that.

20 --- REFUSAL NO. 3

21 BY MR. FEWER:

22 23. Q. All right, let's turn to the number of  
23 employees of Canipre. How many full-time employees are  
24 there at Canipre?

25 MR. ZIBARRAS: Don't answer that.

1 --- REFUSAL NO. 4

2 BY MR. FEWER:

3 24. Q. How many employees worked on the Voltage  
4 investigation?

5 MR. ZIBARRAS: Sorry, I'm just trying to  
6 understand again how this is relevant to the motion.

7 MR. FEWER: We're trying to understand the  
8 business model that's underlying this litigation.

9 MR. ZIBARRAS: But you understand Mr. Fewer  
10 that this isn't a discovery in a lawsuit. There's a  
11 simple motion for the production of customer names  
12 associated with IP addresses. There's a simple test  
13 that applies to that motion. If you can tell me how  
14 the number of his employees in any way relates to that  
15 motion it would be of great assistance to us.

16 MR. FEWER: Well, you are familiar with the  
17 scope of our intervention order? We made it clear in  
18 that intervention order and in other correspondence to  
19 the court that we would be asking the court to consider  
20 the business model underlying this litigation in  
21 determining whether or not to grant the order sought in  
22 the motion. So, these questions are all directly  
23 applicable to that aspect of our intervention.

24 MR. ZIBARRAS: It's our position that that is  
25 an irrelevant consideration for the court, just like

1 your business model is completely irrelevant to this  
2 motion and your number of students or employees and  
3 your relationship and your income from CIPPIC is  
4 completely irrelevant. So I'm not going to let Mr.  
5 Logan answer those questions, so it's going to be a  
6 blanket refusal on all that.

7 --- REFUSAL NO. 5

8 MR. FEWER: This may be a quick interview  
9 then.

10 BY MR. FEWER:

11 25. Q. Let's go to the services your company  
12 offers. Some of the documents I've provided -- I'll  
13 enter the first nine pages as Exhibit 1. Mr. Logan,  
14 you recognize these documents as coming from the  
15 Canipre website?

16 MR. ZIBARRAS: Do you want to just review  
17 them quickly?

18 BY MR. FEWER:

19 26. Q. Correct?

20 MR. ZIBARRAS: Just let him review the nine  
21 pages that you gave us.

22 THE DEPONENT: I recognize pages 1 to 7 and  
23 page 9.

24 BY MR. FEWER:

25 27. Q. You don't recognize the Reputation

1 Management Printout?

2 A. I recognize it. It's not a service that  
3 we provide though. This would strike me as a cached  
4 copy of the Canipre website.

5 --- EXHIBIT NO. 1: First nine pages of printed material  
6 from Canipre Website. (Page 8 identified as cached copy)

7 BY MR. FEWER:

8 28. Q. So, the first page of the documents  
9 states, "They all know it's wrong and they're still  
10 doing it". You recognize this as the splash page or  
11 the homepage of the Canipre website?

12 A. That's correct, I do.

13 29. Q. And, "They all know it's wrong and  
14 they're still doing it", that refers to what?

15 A. Theft of content.

16 30. Q. File sharing in particular?

17 A. Not necessarily file sharing, no.

18 31. Q. Who is the "they" that all know it's  
19 wrong?

20 A. People, Internet users.

21 32. Q. And the "they" is the same "they";  
22 Internet users are still doing it?

23 A. Correct.

24 33. Q. So the first page says, "They all know  
25 it's wrong". If we go to the fourth page, under

1 Protection Services, there we now say "90% of those  
2 downloading pirated content know it's wrong". Is that  
3 correct?

4 A. That's a statement we have on our  
5 website. That is correct.

6 34. Q. I'm curious where these figures come  
7 from? Can you enlighten me?

8 A. I would say that the figures are not  
9 necessarily reflecting actual statistics. I would  
10 actually hazard to say that the 90% is a low number.

11 35. Q. So, there's no source that you can point  
12 to for either "They all know it's wrong", or for the  
13 90% figure?

14 A. No, that's an experienced-based  
15 statement.

16 36. Q. Now, the second page of the first  
17 exhibit is a printout from again your website  
18 describing your enforcement services. So this page  
19 reads, "When all else fails it takes handcuffs and a  
20 court order to get their attention", and this reference  
21 is the enforcement and copyright infringement work that  
22 your firm undertakes?

23 A. That is correct.

24 37. Q. And your firm, this page continues to  
25 describe the nature of the work that it's done, "Our

1 work has supported the order of multimillion dollar  
2 damages awards, injunctions, seizure of assets and  
3 incarceration”?

4 A. That is correct.

5 38. Q. And is that an accurate description of  
6 the scope of the work that your firm has undertaken in  
7 the past?

8 A. Most definitely.

9 39. Q. Page 4 talks about the protection  
10 services your firm offers. Can you describe the  
11 containment service that you're advertising here?

12 A. Containment service is largely a service  
13 that we provide that identifies the initial  
14 introduction of pirated content to online portals and  
15 containing that pirated content from spreading.

16 40. Q. And can you describe the saturation  
17 services? You described it here as, and I'll quote,  
18 “Through a unique approach to content seeding, Canipre  
19 ensures that locating pirate content is a frustrating  
20 and difficult process. A proprietary saturation  
21 application introduces harmless data files across  
22 multiple bit torrent and peer-2-peer networks. Canipre  
23 spoof files also have the capacity to incorporate  
24 educational, promotional or other messages intending to  
25 influence the downloader's behaviors”.

1           Can you in layman's terms describe what you  
2 do with your saturation service?

3           MR. ZIBARRAS: No, it's proprietary. It's a  
4 service that he provides to clients. You're not a  
5 client. If you wish to become a client you can take  
6 advantage of it. That's a description. It's a fair  
7 description, it's a full description. We don't want to  
8 get into any more details.

9       41.           Q.    I would ask if this is a service that  
10 you offered Voltage, the plaintiff in the action.

11           MR. ZIBARRAS: I think that's up to him and  
12 Voltage and that it's irrelevant.

13       BY MR. FEWER:

14       42.           Q.    I would ask more particularly, is it a  
15 service that you offered Voltage in respect of this  
16 litigation?

17           MR. ZIBARRAS: Let's take that under  
18 advisement.

19       --- UNDER ADVISEMENT NO. 1

20           MR. FEWER: Can't get any more relevant to  
21 the litigation than that question.

22           MR. ZIBARRAS: Look, we're not in litigation;  
23 this is a motion, right? This is a very discreet  
24 motion. It's not a discovery in ongoing litigation  
25 against defendants who have been identified, so the

1 role here is very limited, Mr. Fewer. And there's a  
2 time and a place for everything. If we ever get to the  
3 litigation there may be a broader scope of relevance,  
4 but we haven't been able to start any lawsuits yet, as  
5 you know.

6 MR. FEWER: We'll turn the two pages further  
7 down, the 'Reporting' section. I've very interested in  
8 these services and how they pertain to this litigation.  
9 So, in the first paragraph under the subheading  
10 "Intelligence is a raw material. Successful  
11 intellectual property rights enforcement depends on  
12 it". The website states, "Canipre harvests information  
13 from across the digital universe using proprietary  
14 technologies. We have the global data that can tell us  
15 when, where and how your intellectual property is being  
16 compromised".

17 Is that an accurate description of the  
18 information services that your firm offers?

19 A. Yes.

20 43. Q. And again, I would suggest that this is  
21 an accurate description of the services you offered the  
22 plaintiff in this particular action?

23 A. A portion of this service is relevant to  
24 our client's interests, yes.

25 44. Q. Could you tell me which portion that is?

1           A.    Sure.  It would be under the subheading  
2           of 'User Metrics'.

3    45.           Q.    Can you describe that service, that  
4           portion of the service?

5           A.    The paper says, "By auditing download  
6           trends of peer-2-peer and torrent users Canipre creates  
7           a marketing profile of internet users on a country,  
8           regional, and/or city specific basis.  Canipre is able  
9           to view specific media files acquired through  
10          unauthorised download and determine what titles are  
11          actively downloaded or subject to a download attempt".

12   46.           Q.    The monitoring service is characterized  
13          as "Online Monitoring underpins the success of any  
14          Internet antipiracy program.  This activity is a  
15          systematic, ongoing procedure that deploys manual and  
16          specialized surveillance across all Internet portals.  
17          Canipre provides coverage across: Torrents/ P2P  
18          Networks/ Streaming Sites/ User Generated Channels/  
19          Server Farms, Cyber Lockers/ UseNet/ Social Media  
20          Portals/ Private and Community FTP Platforms".

21                   All of that remains an accurate description  
22                   of your monitoring services?

23           A.    It does, yes.

24   47.           Q.    Were those services engaged in the  
25           present action, or partially engaged in the present

1 action?

2 A. In this action there is partial  
3 monitoring -- what this site is doing is marketing the  
4 broad spectrum of the total universe of Canipre's  
5 services. So, where monitoring has been used in the  
6 Voltage Pictures matter, monitoring is also used in  
7 other client matters as well. And there are two  
8 different types of monitoring.

9 So, we monitor peer-2-peer and bit torrent  
10 transactions. We also monitor private FTP platforms as  
11 well that we've penetrated over the last 15 years. So,  
12 there are two different types of applications for  
13 monitoring.

14 48. Q. The one that focuses on P2P networks and  
15 a second one that focuses on private and community FTP  
16 platforms. Did I understand that correctly?

17 A. And server farms and UGC, yes.

18 49. Q. Sorry I'm not the most technically  
19 gifted individual. Could you explain what a private  
20 and community FTP platform is?

21 MR. ZIBARRAS: Hold on, that's not what he's  
22 using in this litigation.

23 MR. FEWER: I want to understand that so I  
24 can make an assessment on my own whether that's the  
25 case.

1 THE DEPONENT: Sorry your question?

2 BY MR. FEWER:

3 50. Q. Can you tell me what a private and  
4 community FTP platform is?

5 A. Sure. A private FTP would be an invite-  
6 only, a membership required portal from which to  
7 acquire content. That content can be films,  
8 television. It can be software, the entertainment  
9 software. Any type of digitized content, those private  
10 FTP forms are typically on occasion locked to an IP  
11 address, locked to a computer, locked to a membership.

12 There are recurring fees that we pay to  
13 retain our memberships at those locations.

14 MR. ZIBARRAS: Okay, that's enough.

15 BY MR. FEWER:

16 51. Q. FTP stands for file transfer protocol.  
17 Am I correct?

18 A. Correct.

19 52. Q. And that is a different transfer  
20 protocol than would be used in a bit torrent transfer,  
21 for example?

22 A. Correct.

23 53. Q. The two would not intermingle?

24 A. Correct.

25 54. Q. Though the same content may be

1 distributed via both networks?

2 A. That is correct.

3 55. Q. Maybe acquired by an FTP platform and  
4 further distributed by a peer-2-peer. Am I correct?

5 A. That's correct.

6 56. Q. Is there a difference in your  
7 characterization of torrents and peer-2-peer networks  
8 on this description?

9 A. I'm sorry I'm not understanding the  
10 question.

11 57. Q. Well, the website lists torrents and  
12 peer-2-peer networks separately. Is one not simply a  
13 subgroup of the other?

14 A. No.

15 58. Q. Can you explain the difference for me?

16 A. A torrent network differs from a  
17 decentralized system, such as Gnutella or ED2K, E-  
18 Donkey, Limewire. They're different methods of  
19 obtaining content.

20 59. Q. So, we would not characterize -- by  
21 torrents we're talking bit torrent?

22 A. Correct.

23 60. Q. And you would not characterize bit  
24 torrent as a peer-2-peer network?

25 A. I would classify bit torrent as a peer-

1 2-peer network, yes.

2 61. Q. You would?

3 A. Yes, I would.

4 62. Q. Sorry I'm confused. I thought I just  
5 heard you say that the two were distinct?

6 A. They are distinct in how they operate  
7 and how we can monitor them and the data that we can  
8 collect from them.

9 63. Q. Is it fair to say that the bit torrent  
10 protocol is one protocol that a peer-2-peer network may  
11 avail itself of?

12 A. That would be true, yes. I would add  
13 it's also the most preferred method.

14 64. Q. Streaming sites. Do I understand this  
15 to be simply, click your mouse and the content plays?  
16 There's no permanent download. Am I correct?

17 A. There can be a permanent download, yes.

18 65. Q. How would this happen, may I ask?

19 A. Through a capture, a stream capture.

20 66. Q. Is this specialized software or would  
21 the average user have this on their Windows machine  
22 that they would buy from a store?

23 A. No, it is a specialized software  
24 application that is readily available for download for  
25 free from numerous places online.

1           67.           Q.    What can I ask are user generated  
2           channels?

3                   MR. ZIBARRAS:  Can I ask what again the  
4           relevance of this is?  I know you might find it very  
5           interesting, but we don't necessarily, so I'd like to  
6           keep the questions to what is relevant in this motion.

7                   MR. FEWER:  His answer will tell me whether  
8           or not it's relevant to the action.  He's  
9           characterizing this as a service.  He's identified it  
10          as a class of services that he's offered the plaintiff.

11                   MR. ZIBARRAS:  Why don't you start asking him  
12          if that applies to this litigation in anyway, and then  
13          if it does then he can tell you about it?

14                   MR. FEWER:  Again, I'd like to understand  
15          what it is so I can make that assessment on my own,  
16          rather than allow him to sit as the judge of what's  
17          relevant and what's not relevant.

18                   MR. ZIBARRAS:  But you know what it is,  
19          right?

20                   MR. FEWER:  I don't know what user generated  
21          channels are, no.

22                   MR. ZIBARRAS:  You have no idea?

23                   MR. FEWER:  I can guess, but it would be a  
24          guess.

25                   MR. ZIBARRAS:  Again, we can be here all day

1 with you covering the whole spectrum of what's out  
2 there. It has to be relevant to what's part of this  
3 litigation, so if it's not part of this litigation  
4 we're not here just for the academic exercise of going  
5 through this, right? You can research this on your  
6 own. You have your own experts, you can ask them. You  
7 don't have to ask Mr. Logan.

8 MR. FEWER: I'm afraid I do, because Mr.  
9 Logan is the only person who knows what he did in  
10 undertaking this investigation.

11 MR. ZIBARRAS: Right.

12 BY MR. FEWER:

13 68. Q. Mr. Logan, I will take your counsel's  
14 advice and ask whether in your view user generated  
15 channels, server farms, cyber lockers, UseNet or social  
16 media portals are relevant at all to your retainer with  
17 Voltage?

18 A. No, they are not.

19 69. Q. Thank you. And I understand from the  
20 description of the early warning system service that  
21 you offer that that's not relevant either to your work  
22 with Voltage in this action?

23 A. You are correct.

24 70. Q. Now, am I correct also in understanding  
25 that there's nothing special about these services that

1           require a particular client for you to be using these  
2           services? You can use these services to understand  
3           what's happening, for market research purposes for  
4           example, to understand what's happening in the file  
5           sharing world. Is that correct?

6                       MR. ZIBARRAS: Don't answer that.

7           --- REFUSAL NO. 6

8           BY MR. FEWER:

9           71.           Q.    Let's turn to the Reputation Management  
10           Service. I understand you to say that you no longer or  
11           have never offered this service to the public?

12                       A.    We offered that service for a very brief  
13           period of time in conjunction with an American law firm  
14           and a Florida-based investigation company, both of  
15           which were using our service to do their work.

16           72.           Q.    You advertise at the bottom of that page  
17           a briefing kit. Do you still have such a briefing kit?

18                       MR. ZIBARRAS: Don't answer that.

19           --- REFUSAL NO. 7

20           BY MR. FEWER:

21           73.           Q.    Let's move on to Takedown Services. The  
22           site's description, Canipre's description of this  
23           service is as follows; "The rules have changed. Bill  
24           C-11 gives intellectual property rights holders a  
25           powerful tool with powerful teeth. Over the last five

1 years Canipre has interdicted an estimated 40 million  
2 files and issued more than 3,500,000 takedown notices,  
3 with a compliance rate of 100%. Now legislation gives  
4 us the tools to aggressively deploy this experience to  
5 the benefit of intellectual property rights holders in  
6 ways that are directly measureable on your bottom  
7 line".

8 Can you please describe to me the nature of  
9 this service? It's not completely clear from the  
10 description here what this entails.

11 A. We monitor various aspects of the  
12 Internet. We identify pirated content that we are  
13 retained to identify. We issue takedown notices. We  
14 monitor for compliance for takedown. We create a  
15 report and provide that back to our clients.

16 74. Q. Does your monitoring go beyond the  
17 intellectual property works that your principals have  
18 retained you to monitor?

19 A. No.

20 MR. ZIBARRAS: I don't even understand the  
21 question.

22 MR. FEWER: Well, he made a specific point to  
23 say that we've been retained to monitor.

24 MR. ZIBARRAS: Right.

25 MR. FEWER: That strikes me as fairly narrow.

1 I'm simply asking whether it goes beyond that.

2 THE DEPONENT: So how it works is we are paid  
3 money to monitor for ABC Film of a company who has  
4 purchased that service. We monitor those properties,  
5 or that property. We identify it as being available  
6 for download online. We issue a takedown notice. We  
7 monitor for the site operator or for the host to comply  
8 with that takedown notice.

9 Once it's taken down it goes into a record at  
10 the end of the month or the reporting cycle. We  
11 generate a report back to our client.

12 BY MR. FEWER:

13 75. Q. Now, if I understand correctly in Canada  
14 it would be the notice and notice system, C-11 doesn't  
15 contain a notice and takedown requirement. And in fact  
16 the notice + notice system's not even in force yet in  
17 Canada. This is a service you offer notwithstanding  
18 what C-11 says and notwithstanding the law. Do I  
19 understand that?

20 A. Correct.

21 76. Q. This strikes me as an excellent way to  
22 drum up business. You identify infringing content on  
23 the Internet and take that evidence to potential  
24 clients. Is that an activity that you've undertaken?

25 MR. ZIBARRAS: Don't answer that.

1 --- REFUSAL NO. 8

2 BY MR. FEWER:

3 77. Q. Is that an activity that you've  
4 undertaken with respect to Voltage in this lawsuit?

5 MR. ZIBARRAS: Don't answer that.

6 --- REFUSAL NO. 9

7 BY MR. FEWER:

8 78. Q. So, in the provision notice + notice the  
9 website reads, "ISPs are now compelled to give notice  
10 to customers who are infringing on property rights.  
11 Canipre's proprietary technology is in place to  
12 identify infringement and deploy notice to those ISPs  
13 quickly and efficiently".

14 You would agree that the first part of that  
15 description is not completely accurate? The law is in  
16 fact not in place and ISPs are not in fact compelled to  
17 do so?

18 A. What I would say is that that page was  
19 created at the time that C-11 was implemented. The  
20 site has not been updated since the non-implementation  
21 of that portion of C-11.

22 79. Q. And can you confirm that this was not in  
23 fact what Voltage retained you to do with respect to  
24 this action?

25 A. Can you repeat the question?

1 80. Q. Yes. This is the takedown services.

2 A. Yes.

3 81. Q. And I'm asking you in particular with  
4 respect to notice + notice, or even with respect to  
5 notice and takedown, that this is not what Voltage  
6 retained you, the plaintiff in this action, retained  
7 you for in respect of this action?

8 A. The plaintiff in this matter did not  
9 retain us to provide notice + notice services.

10 82. Q. And in fact at no point has Canipre  
11 offered any notice of infringement to any John Doe or  
12 Jane Doe, consistent with this service?

13 MR. ZIBARRAS: Well hold on. He's told you  
14 about Canipre or Voltage in this litigation?

15 MR. FEWER: Canipre.

16 MR. ZIBARRAS: Just Canipre?

17 MR. FEWER: Yeah.

18 THE DEPONENT: The question, Mr. Fewer, is?

19 BY MR. FEWER:

20 83. Q. That Canipre in fact has not provided  
21 notice to any John Doe or Jane Doe in connection with  
22 this litigation?

23 A. No, we have not.

24 84. Q. Are you aware of whether any notice has  
25 been provided in this litigation by any party with

1 respect to the subject matter of the litigation?

2 A. That's outside the scope of my function  
3 in the litigation.

4 85. Q. Can I ask if you could make an inquiry  
5 and get back to me about that? I'm particularly  
6 interested in the timing of any such notice; was it  
7 before or after the filing of the Statement of Claim in  
8 this litigation?

9 MR. ZIBARRAS: We'll take that under  
10 advisement. I don't think there's anything contentious  
11 about that.

12 MR. FEWER: I just need to know one way or  
13 the other.

14 MR. ZIBARRAS: Why don't we go off the record  
15 quickly, because we can probably get an answer?

16 --- OFF THE RECORD (10:43 A.M.) ---

17 --- UPON RESUMING (10:44 A.M.) ---

18 MR. ZIBARRAS: So, I think I can answer your  
19 question, Mr. Fewer. Notice has been provided through  
20 Teksavvy to its customers that there is litigation  
21 pending. It is not notice in the typical notice +  
22 notice form that is contemplated by the *Copyright Act*,  
23 which section hasn't come into effect yet, but it is  
24 notice of the litigation and to preserve evidence. And  
25 as I understand it that notice was given after the

1 Statement of Claim was issued.

2 BY MR. FEWER:

3 86. Q. And isn't it a fact that Voltage argued  
4 that no claim was necessary in this case? That no  
5 notice was necessary in this case?

6 MR. ZIBARRAS: I don't know -- I can't recall  
7 that -- oh, you mean notice + notice?

8 MR. FEWER: That there was no requirement and  
9 no need for Voltage or Teksavvy to provide notice to  
10 its customers of the allegation of infringement?

11 MR. ZIBARRAS: As I understand it we  
12 consented right in the beginning that Teksavvy could  
13 give its customers notice and in fact that was done.

14 MR. PHILPOTT: It was noted. It wasn't a  
15 requirement.

16 MR. FEWER: You argued that it wasn't  
17 necessary?

18 MR. ZIBARRAS: Right.

19 MR. FEWER: But you went along with it?

20 MR. ZIBARRAS: Yes.

21 MR. PHILPOTT: Not legally necessary.

22 MR. FEWER: Very good. Let's resume, Mr.  
23 Logan.

24 BY MR. FEWER:

25 87. Q. I want to get a better understanding of

1 the types of customers that Canipre services. Voltage  
2 is ---?

3 MR. ZIBARRAS: No, I'm not going to let him  
4 talk about his other customers. This isn't an  
5 opportunity to give notice to the world about who's  
6 monitoring their IP and what potential lawsuits are  
7 down the road.

8 MR. FEWER: I would not ask about particular  
9 customers. I understand that there'd be obligations of  
10 confidentiality that attach to that. I'm hoping to get  
11 a description of the customers as a class, to get a  
12 better understanding of how Canipre sees itself  
13 operating in this space.

14 MR. ZIBARRAS: No.

15 MR. FEWER: And the role that it's fulfilling  
16 in this particular litigation.

17 MR. ZIBARRAS: It's completely irrelevant to  
18 this motion. I appreciate your interest in my client -  
19 - in Canipre, but it's not part of the litigation.

20 BY MR. FEWER:

21 88. Q. Let's move on. I have a small number of  
22 questions about some of the technical issues and  
23 definitions that came up. Hopefully we can go through  
24 these quickly.

25 A. Okay.

1           89.           Q.    Mr. Logan, can you please provide me  
2                           with your understanding of what an IP address is?

3                           A.    An IP address is a numerical identifier  
4                           assigned to a device that is connected to a computer  
5                           network.

6           90.           Q.    What's the difference between static and  
7                           dynamic IP address?

8                           A.    Static IP address would be a constant  
9                           numerical identifier assigned to a device, whereas a  
10                          dynamic address can and will change in time.

11          91.           Q.    The majority of Canadian IP addresses  
12                           are they static or dynamic IP addresses?

13                          A.    I'm not aware of that statistic, without  
14                          guessing.

15          92.           Q.    Internet service providers they assign  
16                           IP addresses to their customers, correct?

17                          A.    To my understanding yes, that is  
18                          correct.

19          93.           Q.    And Internet service providers may  
20                           change the IP address they assign to particular  
21                           customers over time. Is that correct?

22                          A.    That is correct, especially in the case  
23                          of a dynamic address.

24          94.           Q.    You earlier characterized an IP address  
25                           as being assigned to equipment, for lack of a better

1 word, as distinct from individuals. That gives to mind  
2 the reality that IP addresses do not disclose a  
3 particular identity. They disclose a location of  
4 equipment, or -- I think that's the right description;  
5 a location of equipment to which the IP address had  
6 been assigned. Would you agree with that  
7 characterization?

8 A. In part I would. I would also say that  
9 the IP address that is assigned by the ISP could in  
10 fact identify an individual once the IP address is  
11 reconciled by the ISP at the date and time it was  
12 assigned to the device.

13 95. Q. And what individual would that  
14 identification finger, for lack of a better phrase?

15 A. That information would identify the line  
16 account holder.

17 96. Q. So, a subscriber?

18 A. A subscriber, yes.

19 97. Q. And the subscriber may be an individual  
20 or an organization or a corporation such as your own?

21 A. Or CIPPIC.

22 98. Q. University of Ottawa.

23 A. We've actually done a study there.

24 99. Q. And in fact, because we're identifying a  
25 subscriber and the equipment located at the

1 subscriber's address there may be any number of people  
2 on the other side of that equipment. Any number of  
3 people using the equipment assigned to the IP address?

4 MR. ZIBARRAS: Well, don't guess. You're  
5 asking him to guess, right?

6 MR. FEWER: No, it's whether that is a true  
7 statement or a false statement. That is a true  
8 statement?

9 THE DEPONENT: Can you repeat the statement?

10 BY MR. FEWER:

11 100. Q. Sure. I'll rephrase it and try to make  
12 it a little clearer for you. An IP address identifies  
13 at best we've acknowledged a subscriber and it  
14 identifies equipment. Different individuals may use  
15 that equipment, and so the IP address does not identify  
16 the user of the equipment, correct?

17 MR. ZIBARRAS: Well, again you're asking him  
18 to guess, because it could identify a user, so I don't  
19 know how that is helpful. It could be a single user  
20 using an equipment that's the account holder and the  
21 only person accessing their equipment.

22 101. Q. I would say other evidence -- I would  
23 argue that other evidence would have to link an  
24 individual user to that equipment. The IP address by  
25 itself, correct, does not identify the user of the

1 equipment but merely the subscriber.

2 MR. ZIBARRAS: That's an argument. It's not  
3 a fact question. It's an argument. You're putting an  
4 argument to him. He's a fact witness.

5 MR. FEWER: Well, I would suggest that I'm  
6 merely trying to acknowledge what I wouldn't have  
7 thought was a controversial point, that a subscriber is  
8 distinct from an Internet user, from a user of  
9 equipment.

10 MR. ZIBARRAS: That's an argument. If  
11 there's a specific -- if he has specific knowledge  
12 about a particular user that you want to ask him about  
13 that's fine, but you're putting an argument to him.

14 --- REFUSAL NO. 10

15 BY MR. FEWER:

16 102. Q. At paragraph 19 of your affidavit you  
17 stated that, "Only an ISP can correlate the IP address  
18 to the real identity of its subscriber. Without the  
19 involvement of the ISP, Voltage will be unable to  
20 determine the identities of those persons who are  
21 distributing their copyrighted works".

22 My question is correlated to that. It's  
23 trying to establish that we need additional evidence to  
24 identify a particular internet user on the basis of an  
25 IP address?

1                   MR. ZIBARRAS: You want the subscriber, the  
2                   account holder. That's exactly what he says here.

3                   BY MR. FEWER:

4       103.           Q.    What you've attested to is that Voltage  
5                   will be unable to determine the identities of those  
6                   persons who are distributing their copyrighted works.

7                   MR. ZIBARRAS: Right, because all we have is  
8                   an IP address.

9                   BY MR. FEWER:

10      104.          Q.    My understanding is that you haven't  
11                   sued subscribers you've sued infringers or alleged  
12                   infringers. Is that understanding not correct?

13                   MR. ZIBARRAS: Okay, let me try and simplify  
14                   this. Canipre identifies IP addresses that were  
15                   involved in the uploading or downloading of our  
16                   client's copyrighted works. The ISP is the only entity  
17                   that can tell us the person or subscriber or entity  
18                   behind that IP address. That's all we want, right?  
19                   That's the only link to an entity beyond just an IP  
20                   address, so a person or a company. It's not  
21                   complicated, that's all we want, right?

22                   MR. FEWER: In this motion you need to  
23                   understand the identity of the subscriber?

24                   MR. ZIBARRAS: Correct.

25                   MR. FEWER: So that you can undertake your

1 second phase of the investigation?

2 MR. ZIBARRAS: Correct.

3 MR. FEWER: To get evidence about who the  
4 actual internet user is?

5 MR. ZIBARRAS: Right, but that's the subject  
6 of the litigation, not of this motion.

7 MR. MCHAFFIE: Well, with respect. Sorry, I  
8 know this is not my cross-examination, but I'm just  
9 maybe frustrated down at this end of the table because  
10 I can't believe what's going on here given what's been  
11 said in the Court. The Court itself said, and you  
12 appreciate that our client continues to have an  
13 interest, notwithstanding we're not taking a position?

14 But just so that everybody can work on the  
15 same page, the Court itself said that there are factual  
16 matters that require more explanation. What is the  
17 link between IP numbers and the alleged copyright  
18 infringers is a direct or indirect, is it a link to a  
19 device or to an individual. Again, more information or  
20 submissions may be of assistance to the Court.

21 So, that factual, what was described as  
22 factual matter by the Court when they had Mr. Logan's  
23 affidavit in front of it, the Court itself said the  
24 questions such as Mr. Fewer was asking was information  
25 that may be of assistance the Court. So, I'm not

1           trying to get in the way and you can make the refusals  
2           you want to make, but I'm just trying to assist in  
3           indicating what the Court seems to think what was going  
4           to be useful from a factual basis.

5                     MR. FEWER: My own sense is that this is not  
6           a controversial question.

7                     MR. ZIBARRAS: Right, so I think we answered  
8           it; we're getting the subscriber information.

9                     MR. FEWER: The question that I've asked is  
10          at the end of the day the subscriber may be different  
11          than the Internet user. On the other side of the  
12          equipment associated with an IP address there may be a  
13          multitude of users who may or may not be the John and  
14          Jane Does identified in this suit.

15                    MR. ZIBARRAS: And again, that's an argument,  
16          right? It's not a fact, it's an argument. If you want  
17          to make that argument make that argument, sir, this is  
18          a fact witness. He doesn't know who is on the other  
19          side of that account, right? So, it's not a fact  
20          question for Mr. Logan to answer.

21                    You can ask the subscriber himself or herself  
22          that fact question. You're asking him to guess? How  
23          does he know?

24                    MR. FEWER: Well I'm asking him if it's  
25          possible at the end of the day.

1           MR. ZIBARRAS: But anything is possible. If  
2 you just want to know if it's possible, what's the use  
3 of that? It's an argument.

4           MR. FEWER: Well there's a number of factual  
5 items that have been dealt with in all of our  
6 affidavits about circumstances under which somebody  
7 other than the subscriber may be responsible for the  
8 activity that your client has monitored.

9           MR. ZIBARRAS: Look, we say it's completely  
10 irrelevant at this stage of the process because no one  
11 knows, right? And there's no way to know and you can't  
12 stop the identification of a subscriber based on  
13 speculation and guesswork, because there's only one  
14 route and the route is from the ISP to the subscriber  
15 and then from the subscriber we can see what's going to  
16 happen.

17           But, there's no other route. There's one  
18 route, the Court has to follow that route. All these  
19 issues are argument that can be raised at a later  
20 stage. That's our legal position. It's always been  
21 our legal position and it's going to be our legal  
22 position at the motion.

23           So, Mr. Logan doesn't live in these  
24 households, he's not a family member in these  
25 households. He doesn't have knowledge about who's

1 using the computers and who isn't. But don't put  
2 argument to him and don't make him guess about what's  
3 happening in a household.

4 BY MR. FEWER:

5 105. Q. And that is Mr. Logan's position as  
6 well? You cannot guess about what is happening in a  
7 household?

8 MR. ZIBARRAS: Why should he guess?

9 BY MR. FEWER:

10 106. Q. All right. Let's move on.

11 MR. ZIBARRAS: Again, not to emphasize the  
12 point repeatedly, but we're not dealing with the  
13 litigation itself right now. We're dealing with a  
14 simple motion for the production of information from a  
15 third party.

16 BY MR. FEWER:

17 107. Q. All right, Mr. Logan, let's discuss  
18 about some of the equipment that can be on the other  
19 side of an IP address. WiFi routers may be on the  
20 other side of an IP address, correct?

21 MR. ZIBARRAS: Just hold on. Carry on.

22 MR. FEWER: Mr. Zibarras, is Mr. Logan being  
23 put forth as an expert?

24 MR. ZIBARRAS: No.

25 MR. FEWER: Not as an expert?

1 MR. ZIBARRAS: No, he's a fact witness.

2 BY MR. FEWER:

3 108. Q. Mr. Logan, are you familiar with how bit  
4 torrent networks function?

5 A. Yes I am.

6 109. Q. What is a bit torrent network?

7 A. It's a network system of various  
8 computers interconnected to one another using an  
9 instruction to communicate.

10 110. Q. Is this a network in the way that the  
11 Internet is a network? Or is this a network in the  
12 sense that particular computers may be linked to one  
13 another in respect of a particular transaction?

14 A. Correct, your latter comment.

15 111. Q. The latter comment. So, it would be  
16 correct to characterize one bit torrent network as  
17 being the individuals involved in a swarm or a common  
18 upload/download activity in respect to a particular  
19 file?

20 A. Correct.

21 112. Q. What is a peer in the context of a bit  
22 torrent protocol network?

23 A. A peer is a computer machine that is  
24 connected to that network.

25 113. Q. And what are seeders in the context of a

1 bit torrent protocol network?

2 A. A seeder is a computer machine offering  
3 the distribution of a given content.

4 114. Q. Does a peer act as a seeder?

5 A. A peer can act as a seeder, yes.

6 115. Q. Must a peer act as a seeder?

7 A. No, it does not.

8 116. Q. Can a seeder act as a peer?

9 A. Well, I would say a seeder is a peer.

10 117. Q. And it must act as a peer?

11 A. A seeder is a peer. A seeder -- let's  
12 break it down to seed. A seed is 100% of a file. That  
13 file is resident on a computer connected to -- the  
14 computer becoming a peer connected to the network, so  
15 in effect a seeder is a peer.

16 118. Q. Are there servers on a bit torrent  
17 network?

18 A. No.

19 119. Q. There's no centralized server on a bit  
20 torrent network, correct?

21 A. That is correct.

22 120. Q. But there may be decentralized servers  
23 operating on a bit torrent network. Is that not  
24 correct?

25 A. There may be.

1       121.           Q.    Does your service offer a server on a  
2                    bit torrent network?

3                    A.    No, it does not.

4       122.           Q.    So, to connect to a bit torrent network  
5                    one must either be downloading or offering other  
6                    content for others to download, or otherwise hosting  
7                    content on a peer or seeder.  Is that correct?

8                    A.    Correct.

9       123.           Q.    Is it possible to upload content through  
10                   a bit torrent network without being aware that one is  
11                   doing so?

12                   MR. ZIBARRAS:  Do you know?

13                   THE DEPONENT:  Yes.

14                   BY MR. FEWER:

15       124.           Q.    And how might that be?

16                    A.    Failure to read the instruction on how a  
17                    bit torrent client works.

18       125.           Q.    Where would the instruction be located?

19                    A.    Like any other software application  
20                    there's an instruction usage manual within the help  
21                    file.

22       126.           Q.    Within the help file of your bit torrent  
23                    client software?  Do I understand that?

24                    A.    Correct.

25       127.           Q.    Can you give me an example of such a bit

1 torrent client software?

2 A. There's many -- µTorrent would be one,  
3 yes.

4 128. Q. And µTorrent has a help file?

5 A. µTorrent has a help file. It also has a  
6 manual available for users.

7 129. Q. Does that manual come with the client  
8 when you download it?

9 A. What happens today with µTorrent I'm not  
10 too certain. There was a point in time where they were  
11 bundled together, yes.

12 130. Q. Now, some clients I understand and by  
13 clients I mean software that a user would download and  
14 install on their machine that would enable them to  
15 share files using bit torrent transfer protocol, so  
16 that we're all sharing the same language.

17 Some clients I understand come with default  
18 or automatic settings with respect to offering content  
19 to third parties through the network. Is this true?

20 A. I would be guessing at that.

21 131. Q. You don't know that µTorrent for example  
22 has default settings about sharing?

23 MR. ZIBARRAS: Yeah, but you just said some  
24 clients. He doesn't know what you're thinking. You  
25 don't know what he's thinking, right? So, if you want

1 to give him examples he can tell you if he knows.

2 MR. FEWER: That's specifically about  
3 µTorrent, but my guess is Mr. Logan knows a lot more  
4 about bit torrent than I. He may be aware of other  
5 popular clients that have this feature. I wouldn't  
6 want to limit the scope of his response artificially.

7 BY MR. FEWER:

8 132. Q. The question to repeat it is are you  
9 aware that there are some bit torrent clients that have  
10 defaults or automatic settings that enable sharing?  
11 And by sharing I mean making content available to third  
12 parties through the network?

13 A. I am. I'm also aware that the default  
14 settings usually contain an explanation of, if they're  
15 changed what happens. So, in other words if you turn  
16 off your sharing capability your download speed greatly  
17 -- significantly decreases.

18 133. Q. Where would this description be located?

19 A. Within the client, specifically within  
20 the client -- I couldn't cite.

21 134. Q. Within the client. Fair enough. If you  
22 turn to your affidavit? At paragraph 10 in the second  
23 sentence you state, "The forensic software search bit  
24 torrents corresponding to Voltage's copyrighted works  
25 and identify the IP address of each seeder or peer who

1 is offering any of these files for transfer or  
2 distribution. This information is available to anyone  
3 that is connected to the P2P network". And by the P2P  
4 network here we're talking exclusively about the bit  
5 torrent network?

6 A. Yes.

7 135. Q. How did Canipre connect to the bit  
8 torrent network in order to search it?

9 MR. ZIBARRAS: Is that relevant?

10 MR. FEWER: May be, depends on his answer.

11 MR. ZIBARRAS: I guess I'm just struggling to  
12 understand what you're asking with that question.

13 MR. FEWER: Well, this goes to how the  
14 cardinal evidence relied upon by your client came  
15 before the Court.

16 MR. ZIBARRAS: Okay, that's fine.

17 MR. FEWER: It's pretty -- I can't get more  
18 central than this question actually.

19 MR. ZIBARRAS: I just wasn't sure what your  
20 question was, but I understand now. Go-ahead.

21 BY MR. FEWER:

22 136. Q. So the question again was how did  
23 Canipre connect to the bit torrent network in order to  
24 search it?

25 A. I logged into the forensic software,

1           which was operating on the network. The forensic  
2           software itself is separate from me, it is not Canipre.

3       137.           Q.    How did the forensic software get on the  
4           network?

5                    A.    The forensic software has been in  
6           operation for a considerable amount of time prior to  
7           Canipre's involvement with the forensic software. I  
8           believe the forensic software is in operation in a  
9           number of European countries as well as Western  
10          countries.

11       138.           Q.    Is this forensic software a service  
12           that's Canipre subscribed to or purchased?

13                    A.    It is a license that we have.

14       139.           Q.    This is not software that you personally  
15           install?

16                    A.    That's correct.

17       140.           Q.    Where does this software server reside?

18                    MR. ZIBARRAS: I don't want him to answer  
19           those kinds of questions given the nature of this  
20           industry.

21                    MR. FEWER: In the sense that it's  
22           confidential?

23                    MR. ZIBARRAS: Well, in the sense that some  
24           people like you're trying to protect through your  
25           intervenor status would be very interested in that

1 information to try and launch cyber-attacks on the  
2 software that's been threatened many times already  
3 since this litigation began.

4 MR. FEWER: Well, I'm going to object to that  
5 characterization. In no way am I here to protect  
6 people launching cyber-attacks, and I resent the  
7 implication that that would be the case, Mr. Zibarras.

8 MR. ZIBARRAS: Well, have you read your  
9 website?

10 MR. FEWER: I wrote a good chunk of it, yes.

11 MR. ZIBARRAS: Well anyway, I don't want any  
12 information being disclosed that's going to compromise  
13 either Canipre or the software or their location.

14 MR. FEWER: Let's go general.

15 BY MR. FEWER:

16 141. Q. I take it the software does not reside  
17 in this country?

18 MR. ZIBARRAS: Again, I don't know how that's  
19 relevant.

20 MR. FEWER: I'm now very interested about the  
21 kind of care and control that the parties to this  
22 litigation might have with respect to this forensic  
23 software. Nothing in your affidavit, this affidavit,  
24 led me to understand that the forensic software was  
25 anything other than software operating under your care,

1 custody and control. Now I understand that's not the  
2 case, you're a mere subscriber to a service, a third-  
3 party service.

4 BY MR. FEWER:

5 142. Q. Is that correct?

6 A. Canipre is a licensee user of the  
7 software.

8 143. Q. Is there a client on your computers that  
9 you use that permits you to access the software?

10 A. There is a portion of a client, or there  
11 is a client that I use to access the software for  
12 reporting purposes.

13 144. Q. The other access that you may make of  
14 the software is through a web portal?

15 A. Correct.

16 145. Q. A secure web portal I hope?

17 A. Highly.

18 146. Q. Do you have a license agreement or a  
19 subscription agreement with the proprietor of the  
20 forensic software?

21 A. I do.

22 147. Q. Can we ask that that be produced?

23 MR. ZIBARRAS: No.

24 --- REFUSAL NO. 11

25 MR. FEWER: And the grounds for the refusal?

1 MR. ZIBARRAS: Irrelevance again. His  
2 license agreement is about as relevant as your  
3 agreement with CIPPIC.

4 MR. FEWER: I would beg to differ, but that's  
5 a matter for somebody else.

6 BY MR. FEWER:

7 148. Q. Mr. Logan, you had permission from  
8 Voltage to connect to the bit torrent network using  
9 their forensic software with respect to the subject  
10 matter of this litigation, correct?

11 MR. ZIBARRAS: You mean was he acting for  
12 Voltage?

13 MR. FEWER: He was acting under Voltage's  
14 instructions.

15 THE DEPONENT: Yes, but I think your  
16 understanding of how the system works differs from how  
17 it actually works.

18 BY MR. FEWER:

19 149. Q. I'm struggling to understand this and  
20 running up against refusals. Perhaps you'd care to  
21 volunteer some information for the benefit of the Court  
22 as well as for my own education?

23 A. The software scans the torrent networks  
24 for properties subject to investigation or monitoring.  
25 The software collects the transactional data between

1 users, peers, seeders. It captures that data, which  
2 includes the IP address, and captures a portion of the  
3 file that has been shared. It identifies the portion  
4 of that file as belonging to a pirated copy of the  
5 particular title, film property.

6 All of that data is secured, stored and is  
7 accessible only through an interface for reporting  
8 purposes. So, in other words I can't access the  
9 database directly. I operate in interface that draws  
10 data from the database.

11 150. Q. But I still don't understand how this  
12 forensic software interacts with the bit torrent  
13 network. You earlier described a bit torrent network  
14 as a fairly dynamic thing. It's the sum of the  
15 entities participating in a particular transfer with  
16 respect to a particular file. Do you still hold to  
17 that definition?

18 A. Can you repeat that for me, please?

19 151. Q. We defined a bit torrent network as a  
20 dynamic thing being the sum of its participants,  
21 effectively. Those entities participating in the  
22 transfer, making available upload, download of a  
23 particular file. And so, for Voltage -- I beg your  
24 pardon -- for this forensic software to be running on  
25 this network, searching this network and gathering

1 evidence about the nature of this network, it must also  
2 be participating in this network?

3 A. Correct.

4 152. Q. This means that the software is itself  
5 making available content; downloading and uploading  
6 content to the network?

7 A. No, it is not. The software is not a  
8 conventional bit torrent client. Its connection to a  
9 seeder offering the content is limited to a handshake.  
10 We don't distribute, or it doesn't distribute, or it  
11 has never distributed content.

12 153. Q. Can you help me understand the  
13 difference between a handshake and the other  
14 characteristics of participation in a bit torrent  
15 network that we previously discussed and I had thought  
16 settled?

17 A. I can to a certain degree. A handshake  
18 between two computers is akin to me saying hi, David  
19 and you saying hi, Barry. We can communicate. That's  
20 the communication. Hi computer, you have content  
21 available I'm looking for. Yes, I do -- that's the  
22 handshake, the recognition.

23 154. Q. So, there is a connection made between  
24 the participants on a network and the forensic  
25 software?

1 A. Correct.

2 155. Q. But none of the content? It goes either  
3 way?

4 A. Incorrect.

5 156. Q. Explain?

6 A. You as the seeder or the offerer, or the  
7 making available of the content provide that content to  
8 us. We take that piece of digital evidence and we set  
9 it in a shelf.

10 157. Q. My understanding is you set a portion of  
11 it on a shelf?

12 A. Because it's a packet of data. So,  
13 we're capturing the data packets. Those data packets  
14 relate to an IP address at a particular date, time and  
15 second. We take that and it sits into a digital shelf.

16 The next network or the next seeder provides  
17 us with content that we've requested and that is how  
18 the system works.

19 158. Q. And at the end of the day you will,  
20 through the forensic software's participation in this  
21 network, it will have downloaded a complete copy of the  
22 work in question?

23 A. Absolutely.

24 159. Q. Will you be able to understand from the  
25 evidence you've gathered what content refers to which

1 IP address?

2 A. Correct.

3 160. Q. And the converse of this is true, you  
4 will not -- the forensic software will not be  
5 downloading a complete copy of the software from any  
6 one particular participant on the bit torrent network?

7 MR. PHILPOTT: A copy of the software?

8 BY MR. FEWER:

9 161. Q. A copy of the content.

10 A. No, we do acquire a copy of the content,  
11 a complete copy of the content, to ensure that when  
12 we're collecting MR. MCHAFFIE's IP address that he in  
13 fact does have a copy of one of the titles that's  
14 suggested in the affidavit here. The analysis of the  
15 hash values for the 16 Kb data packets belong only to  
16 one file, which is the hash that we've collected,  
17 viewed and said yes, that's the file.

18 And that data packet that belongs to a  
19 specific location in that file came from that IP  
20 address that that individual used. So, we can marry  
21 the hash value to the data pack, to the actual file, to  
22 the IP address, to the date and time of the  
23 transaction. It really doesn't get any more clear that  
24 that.

25 162. Q. I understand that. Two questions ago I

1 think I asked, you get a complete copy from multiple  
2 users. The question that I followed that with was that  
3 what correlates to that is that you do not get a  
4 complete copy from any single user. You've downloaded  
5 portions. You've used the hash tag to satisfy yourself  
6 that the portion you downloaded from a particular IP  
7 address corresponds to a particular file. Have I  
8 translated your description adequately?

9 A. No, let's go over it again. Can you  
10 repeat it?

11 163. Q. You do not download -- my question to  
12 you -- I'm looking for confirmation -- you do not  
13 download a complete file from a particular user? You  
14 don't get a one-to-one?

15 A. Right there -- that is correct.

16 164. Q. How you get your complete copy is from  
17 multiple users. You then use the hash tag associated  
18 with the packets, bit torrent slice and dice, to  
19 associate particular slices that you downloaded from  
20 particular IP addresses with the file as a whole?

21 A. Those IP addresses have a complete copy  
22 of the file or in the process of acquiring a complete  
23 copy of the file.

24 165. Q. And you verify this through the hash tag  
25 and through the fact that you're downloading the

1 complete file from multiple sources?

2 A. Correct, so that when we have a complete  
3 copy of the file I can play it back and say yes, that's  
4 the film, David Fewer goes to Hollywood. There's no  
5 question about it that's the film. It's not in the  
6 affidavit list I just made that one up.

7 166. Q. It's a boring film.

8 A. All of them are. But the software, the  
9 application does the actual analysis because a  
10 particular movie file has maybe 4.5 billion data packs  
11 to make that one single movie. So, it's an extreme  
12 amount of data that is not humanly computable.

13 167. Q. From what you've told me you will also  
14 gather information, you also gather data packets from  
15 the target content from individuals who start a  
16 download and stop it, correct?

17 A. I believe there's a set of rules in the  
18 system, in the software, the forensic software  
19 application that cancels out those downloads. But I  
20 don't want to speak to that. I'm not the person who  
21 coded the application.

22 168. Q. I guess what I'm asking is, do you have  
23 confidence -- how can you have confidence that all of  
24 the IP addresses you've identified have in fact either  
25 downloaded or made available a complete work?

1           A.    The exchange of the data can be no other  
2           explanation.  If there's three users on the network one  
3           of them has the complete copy.  The other two are  
4           acquiring the copy from him.  All three of them are  
5           providing a copy to me.  Those data packages have a  
6           unique fingerprint on them that belong to that complete  
7           copy.  If the power goes out on user number two or on  
8           user number three, I believe that there are a set of  
9           rules in the application that can identify that, but  
10          again I'm not the individual to speak to that question.

11                 MR. FEWER:  I would ask for confirmation on  
12          that.

13                 MR. ZIBARRAS:  We'll take it under  
14          advisement.

15          --- UNDER ADVISEMENT NO. 2

16          BY MR. FEWER:

17    169.           Q.    So, when downloading did Canipre or the  
18           forensic software also make the works available to  
19           others?

20                 A.    You've asked me that.

21    170.           Q.    And your answer is no?

22                 A.    That's correct.

23    171.           Q.    How do you know that the forensic  
24           software is never distributed?

25                 A.    That's what I've been advised.  I've

1 read reports, I've read engineering reports. I have no  
2 reason to believe that any of the reports that I've  
3 read on the software application would be misleading to  
4 me.

5 MR. FEWER: Again, we'd like confirmation of  
6 that from the ---.

7 MR. ZIBARRAS: Take it under advisement.

8 --- UNDER ADVISEMENT NO. 3

9 BY MR. FEWER:

10 172. Q. Paragraph 11 you identify identifying  
11 information; the IP address assigned to the peer by his  
12 or her Internet service provider at the time of the  
13 distributed file. The date and time at which the file  
14 was distributed by the seeder or peer, the peer-2-peer  
15 network utilized by the peer, and the file's metadata,  
16 which includes the name of the file and the size of the  
17 file and you've collectively described this as the file  
18 data. Does the forensic software record any other  
19 information?

20 MR. ZIBARRAS: Do you know?

21 THE DEPONENT: I'm not completely satisfied  
22 on the answer I can give you for that.

23 MR. ZIBARRAS: I can take that under  
24 advisement as well, if you want us to get you an  
25 answer?

1 MR. FEWER: I would like an answer.

2 --- UNDER ADVISEMENT NO. 4

3 MR. ZIBARRAS: Okay, is there anything  
4 specific that you had in mind or are concerned about?

5 MR. FEWER: It's a privacy matter. I want to  
6 ensure that ---.

7 THE DEPONENT: Well, so if there are other  
8 data collected I can tell you that it's nothing related  
9 to web-based activities or marketing or cookies, or you  
10 know, what they did last week on Google images.

11 BY MR. FEWER:

12 173. Q. I'm curious about what is captured for  
13 example by Meta data, which you did not define  
14 exhaustively, but merely said includes the name of the  
15 file, the size of file. What other information may be  
16 in there that's pertinent?

17 A. The client that was used.

18 174. Q. User name and e-mail addresses; are  
19 these kinds of things captured?

20 A. No. I wish.

21 175. Q. I believe you answered these questions,  
22 but I'm going to state them a little more broadly to  
23 make sure that I do not miss anything. So, did you or  
24 anyone acting under the authority of Canipre or the  
25 plaintiff seed a file or otherwise make a file

1 available to the bit torrent network pertaining to the  
2 works identified in your affidavit?

3 MR. ZIBARRAS: That's answered.

4 MR. FEWER: It's not. This is a much more  
5 broadly worded question and I've broadened it out  
6 beyond merely himself and the forensic software to  
7 capture anybody in his organization or the plaintiff's.

8 THE DEPONENT: No.

9 BY MR. FEWER:

10 176. Q. Did you or anyone acting under the  
11 authority of Canipre or the plaintiff make available to  
12 the bit torrent network a tracker file pertaining to  
13 the works identified in your affidavit?

14 A. No.

15 177. Q. You use a version of Guardaley as your  
16 forensic software, correct?

17 A. Correct.

18 178. Q. I've asked you to produce a license  
19 agreement -- what version number will that license  
20 agreement say?

21 A. 1.47.

22 179. Q. That was I understand a typographical  
23 error that crept into your first report, your first  
24 affidavit which suggests that you're using version 1.2?

25 A. The first affidavit suggests 1.2. The

1 version was actually 1.47.

2 180. Q. I asked whether it was a typographical  
3 error.

4 A. Yes, it is a typographical error.

5 181. Q. You're not, I understand, familiar with  
6 the judgment in Guardaley Limited v. Baumgarten Brandt,  
7 is a judgment of the 3rd of May, 2011. German case,  
8 case number 16055/11?

9 MR. ZIBARRAS: German case?

10 BY MR. FEWER:

11 182. Q. German case.

12 MR. MCHAFFIE: You have to say that out loud.  
13 Unfortunately the reporter won't pick that up.

14 THE DEPONENT: Draw a picture.

15 BY MR. FEWER:

16 183. Q. You're not familiar with that case?

17 A. No, I'm not familiar with that case.

18 184. Q. That's a case in which Baumgarten Brandt  
19 had entered into a relationship with Guardaley, filed a  
20 suit after discovering that Guardaley was aware of  
21 flaws in its technology, but that Guardaley had refused  
22 or chosen not to disclose those flaws to Baumgarten?

23 MR. ZIBARRAS: That's not a question.

24 MR. FEWER: No, no, I'm just giving him the  
25 context otherwise he's going to be confused.

1 BY MR. FEWER:

2 185. Q. So I'm guessing that the answer to each  
3 of these questions is affirmative, that you have not --  
4 you did not know that a German court found that the  
5 Guardaley forensic software includes mere inquiries  
6 regardless as to whether or not a file was actually  
7 shared? You're not aware that a Court held that?

8 A. No. That would predate any involvement  
9 of mine.

10 186. Q. And you are not aware that that Court  
11 held that Guardaley Forensic software identifies people  
12 who neither upload nor download?

13 A. No.

14 187. Q. You're not aware that the Court held  
15 that Guardaley operates as a honeypot? That is, they  
16 represent by means of a falsified bit field. That it  
17 was always in possession of 50% of the file being  
18 sought?

19 A. No.

20 188. Q. And you are not aware that that court  
21 found that Guardaley does not indicate how it  
22 identified each IP address, so there's no way to  
23 discern actual infringers from the innocent? You're  
24 not aware of the court having reached that conclusion?

25 A. No -- I -- no.

1 189. Q. And you're not aware that on May 3, 2011  
2 that state court of Berlin found those allegations to  
3 be truthful and ruled against Guardaley?

4 A. No, I'm not aware of that.

5 190. Q. Let's talk about your relationship with  
6 the plaintiff. You indicate on page -- I think it's  
7 the very first page of your affidavit, paragraph 2,  
8 that Voltage is a movie production company based in Los  
9 Angeles, California and that Voltage retained Canipre  
10 to investigate whether its films were being copied and  
11 distributed by Canadian members of peer-2-peer online  
12 networks and to support the associated litigation.

13 When did Voltage retain you to so  
14 investigate?

15 A. I recall it being August 2012.

16 191. Q. And did you approach Voltage for this  
17 retainer or did Voltage approach you for this retainer,  
18 and by you I mean Canipre?

19 A. They approached Canipre.

20 192. Q. Did you have evidence prior to Voltage  
21 approaching Canipre of Voltage's content being  
22 distributed over the Internet?

23 A. Sorry, can you repeat that?

24 193. Q. Did you have evidence prior to Voltage  
25 approaching Canipre of Voltage's content being

1 distributed over the Internet?

2 A. No.

3 194. Q. And you had no evidence of such  
4 distribution prior to the entering into of your  
5 retainer with Voltage?

6 A. No, I did not.

7 195. Q. Have you brought with you a copy of your  
8 retainer agreement with Voltage?

9 A. I don't have a retainer agreement with  
10 Voltage. That's not standard operating practice in the  
11 industry that I work in.

12 196. Q. If you have a retainer -- how would you  
13 characterize the form of this retainer?

14 A. Teleconference, oral agreement,  
15 description of services, description of needs.

16 197. Q. Oral or written description of services  
17 and description of needs?

18 A. Oral.

19 198. Q. Is there any written document evidencing  
20 this retainer agreement between the parties?

21 A. No. We usually communicate by  
22 telephone.

23 199. Q. Do you communicate via e-mail?

24 A. No.

25 200. Q. With respect to this retainer?

1                   MR. ZIBARRAS: I think we've gone far enough  
2                   down this road.

3                   --- REFUSAL NO. 12

4                   BY MR. FEWER:

5                   201.            Q.    What can you tell me about this word  
6                   "retained" in paragraph 2 of your affidavit? "Voltage  
7                   retained Canipre".

8                   A.    "Voltage retained Canipre to investigate  
9                   whether its films were being copied and distributed by  
10                  Canadian members of peer-2-peer online networks".

11                  202.           Q.    And is Canipre like CIPPIC a pro bono  
12                  organization?

13                  MR. ZIBARRAS: I don't really think we need  
14                  to get into his financial circumstances again, he's not  
15                  a defendant.

16                  MR. FEWER: We are going to get into them.

17                  MR. ZIBARRAS: It's a refusal.

18                  BY MR. FEWER:

19                  203.           Q.    The question was are you operating pro  
20                  bono?

21                  MR. ZIBARRAS: Don't answer that.

22                  --- REFUSAL NO. 13

23                  BY MR. FEWER:

24                  204.           Q.    Can you provide me with particulars of  
25                  the manner in which Voltage is going to be remunerated

1 for its services to Canipre in respect to the subject  
2 matter of this litigation?

3 MR. ZIBARRAS: Don't answer that.

4 --- REFUSAL NO. 14

5 MR. FEWER: I'd ask you to produce any  
6 documents evidencing the retainer. Any documents  
7 evidencing the manner, scope and amount of compensation  
8 Voltage is to receive for its participation in this  
9 venture?

10 MR. ZIBARRAS: I think that's definitely  
11 refused and I think it highly inappropriate.

12 --- REFUSAL NO. 15

13 BY MR. FEWER:

14 205. Q. All right, let's move on to some  
15 additional questions with respect to the retainer.  
16 Does Canipre's remuneration with respect to the subject  
17 matter of this action depend in any way on its outcome?

18 MR. ZIBARRAS: Irrelevant.

19 --- REFUSAL NO. 16

20 MR. FEWER: It's a refusal to answer?

21 MR. ZIBARRAS: It's again a strong refusal  
22 and I think it's completely improper for you to try and  
23 make an issue of something that's completely irrelevant  
24 to the motion for the purposes of your website.

25 MR. FEWER: Mr. Zibarras, again I resent

1           characterization of my involvement here as anything  
2           other than a genuine attempt to get to the bottom of  
3           the nature of this venture.

4                   MR. ZIBARRAS: Right, but the nature of the  
5           venture ---.

6                   MR. FEWER: And to understand why a court is  
7           going to be faced with what appear to be repeated  
8           motions involving potentially thousands of John and  
9           Jane Doe's.

10                   MR. ZIBARRAS: Illegally downloading pirated  
11           content, so ---.

12                   MR. MCHAFFIE: Oh, you've already decided  
13           that?

14                   MR. ZIBARRAS: So, the nature of your  
15           questions is going to the people that are going to your  
16           website that are going to want to get this kind of  
17           information from your website. It has nothing to do  
18           with the motion. It's completely improper to try and  
19           investigate his company on a financial basis.

20                   MR. FEWER: Three quick comments. One, again  
21           to reiterate, the benefit of this cross-examination  
22           does not accrue to CIPPIC or its website, it's to  
23           assist the Court.

24                   MR. ZIBARRAS: So, will you be posting or not  
25           posting this transcript on your website then, like

1           you've posted everything else?

2                   MR. FEWER: We haven't posted everything  
3 else. We do operate in the public. I think Teksavvy  
4 has been much more transparent in terms of posting its  
5 content, but that's neither here nor there.

6                   MR. ZIBARRAS: And if you're operating in the  
7 public keep your questions limited to what's relevant.

8                   MR. MCHAFFIE: Sorry, are you saying that  
9 whether a factual witness is paid and has a vested  
10 interest in the outcome of litigation is not a relevant  
11 question to the credibility of that witness?

12                   MR. ZIBARRAS: Sorry, who ---?

13                   MR. MCHAFFIE: I'm just fascinated down at  
14 this end of the table, that's all.

15                   MR. ZIBARRAS: I know, so why is that on the  
16 record -- your fascination?

17                   MR. MCHAFFIE: Because you've refused a  
18 question.

19                   MR. ZIBARRAS: That's irrelevant.

20                   MR. FEWER: Obviously we think it's relevant.

21                   MR. ZIBARRAS: You're asking an investigator  
22 retained by a company protecting its intellectual  
23 property and you want to know his financial  
24 circumstances as relevant?

25                   MR. MCHAFFIE: Yes, absolutely, absolutely.

1                   MR. ZIBARRAS: Well again, I strongly object  
2                   ---.

3                   MR. MCHAFFIE: I know. You have refused,  
4                   that's fine. You've refused. Presumably we're not  
5                   going to ---.

6                   MR. ZIBARRAS: And I've told you why I object  
7                   as well.

8                   MR. MCHAFFIE: No, I'm sure it's firm. We  
9                   don't have the ruling on it yet.

10                  MR. ZIBARRAS: I don't need to hear your  
11                  position. If you have more questions move on.

12                  MR. MCHAFFIE: But the personal aspersions I  
13                  kind of find surprising, I've got to say, but that's  
14                  for a different venue, I'm sure.

15                  MR. ZIBARRAS: Because Mr. Fewer's trying to  
16                  justify his position. So, if you have any questions  
17                  move on, otherwise we've been here long enough and we  
18                  can put an end to this.

19                  MR. FEWER: Well I would just say again, I'm  
20                  surprised to hear you're characterizing all the John  
21                  and Jane Does as illegally acting. Again, that's a  
22                  question for the judge to identify.

23                  MR. ZIBARRAS: That's our position.

24                  MR. FEWER: This motion is going to identify  
25                  subscribers who may or may not have anything to do with

1 the transactions that are alleged to be infringing.

2 MR. ZIBARRAS: But that's what we want to  
3 know. We want to know exactly what they had to do with  
4 the transactions and we want the information so we can  
5 examine them.

6 MR. FEWER: So, you have my questions and I  
7 have your refusals.

8 BY MR. FEWER:

9 206. Q. All right. Let's move on to Exhibit 2.

10 This is the document that follows the material from the  
11 website. So, this is an article written by Gillian  
12 Shaw on November 27, 2012, published in the Vancouver  
13 Sun. This particular version was downloaded from the  
14 Ottawa Citizen's webpage.

15 --- EXHIBIT NO. 2: Article by Ms. Gillian Shaw dated  
16 November 27, 2012 entitled: "Company collects data on  
17 millions of illegal downloaders in first step to crack  
18 down on piracy in Canada"

19 MR. ZIBARRAS: Why is this -- is this in my  
20 client's affidavit?

21 MR. FEWER: These are statements pertinent to  
22 the action.

23 MR. ZIBARRAS: This is a cross examination on  
24 an affidavit. Is this in my client's affidavit?

25 MR. FEWER: I'm asking the questions, Mr.

1 Zibarras.

2 MR. ZIBARRAS: Well, I'm interested to see  
3 what your questions are and the purpose of them.

4 MR. FEWER: I want to ensure that Mr. Logan  
5 has said the things that he is attributed to having  
6 said.

7 BY MR. FEWER:

8 207. Q. Mr. Logan, Ms. Shaw says that you state  
9 that, "The door is closing. People should think twice  
10 about downloading content they know isn't proper". You  
11 did in fact say that?

12 MR. ZIBARRAS: Why is this relevant? Let me  
13 know why it's relevant because I'm again questioning  
14 the purpose of your examination.

15 MR. FEWER: Again, it goes to why this entire  
16 action is in front of the Federal Court.

17 MR. ZIBARRAS: To shut down piracy. So, I  
18 don't understand how it's relevant to the motion.

19 MR. FEWER: It would appear that Mr. Logan is  
20 also talking about this action and talking about  
21 shutting down piracy, and for that reason I'm asking  
22 him whether these statements are properly attributed to  
23 Mr. Logan.

24 MR. ZIBARRAS: I want you to keep asking your  
25 questions. I'm going to object, but I want them on the

1 record because we'll be having something to say about  
2 this at the motion. Go-ahead.

3 BY MR. FEWER:

4 208. Q. Mr. Logan, as I asked, Ms. Shaw says  
5 that you say that, "The door is closing. People should  
6 think twice about downloading content they know isn't  
7 proper". Did you in fact say that?

8 MR. ZIBARRAS: Don't answer, irrelevant.

9 --- REFUSAL NO. 17

10 BY MR. FEWER:

11 209. Q. Ms. Shaw goes on to say that you told  
12 her that, "While last week's court case (referring of  
13 course to the NGN litigation, not to the Teksavvy  
14 litigation) involved only 50 IP addresses. This  
15 company is involved in another case that will see  
16 thousands of Canadians targeted in a sweep aimed at  
17 deterring Internet users from illegally downloading  
18 movies and other digital content".

19 MR. ZIBARRAS: Don't answer that, that's  
20 irrelevant for this motion, but carry on asking.

21 --- REFUSAL NO. 18

22 BY MR. FEWER:

23 210. Q. You did in fact make that statement?

24 MR. ZIBARRAS: Don't answer that, carry on.

25 BY MR. FEWER:

1           211.           Q.    And in so making that statement you were  
2                   referring to the present litigation, I understand?

3                   MR. ZIBARRAS:   Don't answer that.

4           --- REFUSAL NO. 19

5           BY MR. FEWER:

6           212.           Q.    Mr. Logan, Ms. Shaw goes on to say that  
7                   you said that, "His company (referring I take it to  
8                   Canipre) has files on one million Canadians who are  
9                   involved in peer-2-peer file sharing and have  
10                  downloaded movies from bit torrent sites, identifying  
11                  through Internet protocol addresses collected over the  
12                  past five months".

13                  MR. ZIBARRAS:   Don't answer that.

14           BY MR. FEWER:

15           213.           Q.    Did you in fact say that?

16                  MR. ZIBARRAS:   Don't answer that because it's  
17                  irrelevant to this motion.

18           --- REFUSAL NO. 20

19           BY MR. FEWER:

20           214.           Q.    And do you in fact have files on one  
21                   million Canadians who are involved in peer-2-peer file  
22                   sharing?

23                  MR. ZIBARRAS:   It's irrelevant.

24           BY MR. FEWER:

25           215.           Q.    And have downloaded movies from bit

1 torrent sites over the past five months?

2 MR. ZIBARRAS: It's irrelevant.

3 --- REFUSAL NO. 21

4 MR. ZIBARRAS: And if you continue badgering  
5 my client like this we're going to leave this  
6 examination.

7 MR. FEWER: Mr. Zibarras, these are  
8 statements made by your client about this case that I'm  
9 putting to him.

10 MR. ZIBARRAS: But they have absolutely no  
11 relevance to this motion. Tell me how they're relevant  
12 to this motion, because you're wasting my time, you're  
13 wasting Mr. Logan's time and you're wasting the court  
14 reporter's time. So, if you want to keep badgering  
15 this witness we're going to leave, with irrelevant  
16 questions. It's completely improper.

17 MR. FEWER: They're well within the scope of  
18 cross-examination.

19 MR. ZIBARRAS: Tell me how, if that's your  
20 position?

21 MR. FEWER: I mean I'm not going to convince  
22 you.

23 MR. ZIBARRAS: No, but tell me because I'd  
24 like it on the record, because I want to know why you  
25 say it's relevant.

1 MR. FEWER: It's pertinent to the grounds of  
2 our intervention. The grounds of our intervention  
3 included the nature of the relationship between Canipre  
4 and Voltage and the nature of the lawsuits in front of  
5 the Court. The Court in fact in its judgment expressed  
6 concern about the potential for its services to be  
7 overwhelmed by motions in these types of cases.

8 Here is Mr. Logan talking about millions of  
9 files. It strikes me as directly responsive to the  
10 good judge's concerns.

11 MR. ZIBARRAS: It's completely irrelevant to  
12 the test.

13 BY MR. FEWER:

14 216. Q. So Mr. Logan, Ms. Shaw quotes you again  
15 in this paragraph as saying that, "Many people ignore  
16 the warnings from their ISPs that they're engaged in  
17 illegal downloading. But now (you say) they may  
18 receive litigation letters about possible court  
19 action". Is that a statement you made?

20 MR. ZIBARRAS: Don't answer, it's completely  
21 irrelevant.

22 --- REFUSAL NO. 22

23 BY MR. FEWER:

24 217. Q. All right Mr. Logan, again in Ms. Shaw's  
25 article she quotes you as saying what -- with respect

1 to what I understand to be the Guardaley forensic  
2 software, "That you have a significant evidence  
3 collection program that's been in place in Canada for a  
4 number of months. It doesn't discriminate between  
5 ISPs". You stated that? That is in fact accurate?

6 MR. ZIBARRAS: Whether he stated it is  
7 irrelevant, move on.

8 MR. FEWER: And that is in fact accurate. Is  
9 it not?

10 MR. ZIBARRAS: What's accurate?

11 MR. FEWER: The statement.

12 BY MR. FEWER:

13 218. Q. Mr. Logan?

14 MR. ZIBARRAS: You can answer that.

15 THE DEPONENT: The question is specifically?

16 BY MR. FEWER:

17 219. Q. It is accurate in fact that you have  
18 quite a significant evidence collection program that's  
19 been in place in Canada for a number of months. This  
20 being published in November of 2012.

21 A. Can you ask that as a question?

22 220. Q. It's true that that is an accurate  
23 statement of your evidence collection program?

24 MR. PHILPOTT: I thought the question was  
25 whether it discriminates between ISPs?

1 MR. FEWER: No, the question is that it's an  
2 accurate description of what Canipre is doing. That  
3 they have quite a significant evidence collection  
4 program that's been in place in Canada for a number of  
5 months. It doesn't discriminate between ISPs.

6 MR. ZIBARRAS: You can answer whether it  
7 discriminates between ISPs.

8 THE DEPONENT: No, it does not.

9 BY MR. FEWER:

10 221. Q. And further, in the final paragraph of  
11 this article Ms. Shaw quotes you again as saying that,  
12 "His clients (plural) in the industry are turning to  
13 the courts for rulings on the implementation of Bill C-  
14 11, the *Copyright Modernization Act* which was passed in  
15 June and took effect earlier this month". You in fact  
16 made that statement?

17 MR. ZIBARRAS: Whether he made it is  
18 irrelevant.

19 --- REFUSAL NO. 23

20 BY MR. FEWER:

21 222. Q. And is the content of that statement  
22 accurate?

23 MR. ZIBARRAS: It's irrelevant.

24 BY MR. FEWER:

25 223. Q. You do in fact have clients in the

1 industry who are turning to the courts?

2 MR. ZIBARRAS: His clients are irrelevant.

3 --- REFUSAL NO. 24

4 BY MR. FEWER:

5 224. Q. And Voltage, I would expect, would be  
6 one of those clients?

7 MR. ZIBARRAS: You can answer that.

8 THE DEPONENT: Obviously Voltage is one of  
9 our clients.

10 BY MR. FEWER:

11 225. Q. Indeed, Voltage is an older client.

12 This is not the first Statement of Claim that Voltage  
13 has filed in respect of John Does and Jane Does.

14 Correct?

15 MR. ZIBARRAS: He told you when he was  
16 retained by Voltage. How old Voltage is is irrelevant.

17 MR. FEWER: But he has knowledge of that  
18 litigation?

19 MR. ZIBARRAS: It's irrelevant.

20 MR. FEWER: The circumstances of the prior  
21 litigation? My understanding is that it didn't go  
22 forward. I would be curious as to why that litigation  
23 didn't go forward.

24 MR. ZIBARRAS: Irrelevant.

25 --- REFUSAL NO. 25

1 BY MR. FEWER:

2 226. Q. Did it not go forward for any kind of  
3 evidentiary reason?

4 MR. ZIBARRAS: Irrelevant.

5 --- REFUSAL NO. 26

6 BY MR. FEWER:

7 227. Q. That pertains to the forensic software  
8 used in this litigation?

9 MR. ZIBARRAS: Don't answer that. I'm not  
10 going to sit here and have you just ask irrelevant  
11 questions, Mr. Fewer. If you have anything more you  
12 want to ask him about his affidavit please do,  
13 otherwise we are going to have to end this cross-  
14 examination.

15 MR. FEWER: Well, I'm continuing in Exhibit  
16 2.

17 MR. ZIBARRAS: Is this more articles?

18 MR. FEWER: This is the same bunch of  
19 articles.

20 MR. ZIBARRAS: Well, you know my position but  
21 go ahead.

22 BY MR. FEWER:

23 228. Q. In this article, the second article,  
24 published in Canadian Business in May of this year, I  
25 believe. The author interviewed you and stated that,

1 Canipre wants to help Mr. Carmody, who I believe is a  
2 producer of the film "Goon", to address peer-2-peer  
3 file sharing. This article states that, "Logan aims to  
4 import to Canada a controversial litigation strategy  
5 known as speculative invoicing, already implemented  
6 with varying degrees of success in the US and Europe.

7 The idea is that Canipre use its monitoring  
8 service to track IP addresses used to download movies  
9 illegally. Copyright owners then sue the users of  
10 those IP addresses as John Does. Courts can compel  
11 Internet service providers to identify their customers  
12 who then receive letters demanding thousands of dollars  
13 to settle infringement claims".

14 Mr. Logan, my question to you is that, except  
15 for the final part of that sentence about the letters,  
16 is that an accurate description of this action to date?  
17 Canipre is monitoring networks to track IP addresses  
18 used to download movies, which Canipre says are  
19 illegally downloaded. Correct?

20 MR. ZIBARRAS: So, what's the question?

21 MR. FEWER: The larger question was that this  
22 paragraph is a largely accurate description of  
23 Canipre's participation in this action to date, with  
24 the exception of the last part of this sentence, which  
25 talks about letters demanding thousands of dollars to

1 settle infringement claims. We've not reached that  
2 point in this particular matter, if we ever do reach  
3 that point, but the balance of it I understand is  
4 correct?

5 MR. ZIBARRAS: Hold on, let me read it. That  
6 the information that Canipre collects will be used to  
7 sue other users?

8 MR. FEWER: The idea is that Canipre uses its  
9 monitor network to track IP addresses.

10 MR. ZIBARRAS: That's correct.

11 BY MR. FEWER:

12 229. Q. So, Mr. Logan, you're the one being  
13 examined here.

14 MR. ZIBARRAS: You can answer.

15 BY MR. FEWER:

16 230. Q. Is that an accurate description of this  
17 action to date?

18 A. I've not studied that. I've not read  
19 that and I did not state that.

20 231. Q. No, I've asked whether this is an  
21 accurate description of the matter to date.

22 A. I have no idea for this.

23 MR. ZIBARRAS: As litigation counsel I can  
24 tell you it's correct. You're asking completely  
25 irrelevant questions of this witness. Just ask him

1 about the litigation.

2 MR. PHILPOTT: He's reading a lot in.

3 MR. ZIBARRAS: What's correct about this is  
4 Canipre gathers the information which is then used to  
5 sue users. I don't know what speculative invoicing  
6 means.

7 MR. FEWER: Speculative invoicing.

8 MR. ZIBARRAS: I don't know what that means.

9 DEPONENT: There was once a lawyer here on  
10 Bay Street who hired me about 10 years ago and said  
11 Barry, I need you to go collect the garbage down there,  
12 but when you write it in the report please call it  
13 parameter review. I think what speculative invoicing  
14 is is a Bay Street lawyer or a lawyer somewhere else in  
15 the world, in an \$800 an hour office, hourly rates, not  
16 wanting to read certain words and terminology. That's  
17 what I believe that originates from.

18 BY MR. FEWER:

19 232. Q. It's a polite term, I would agree. So,  
20 I've got an answer that it's an accurate description of  
21 the litigation to date and then there was some  
22 discussion -- have you altered your position, or?

23 MR. ZIBARRAS: No.

24 MR. FEWER: It's accurate to date?

25 MR. ZIBARRAS: The discussion was other than

1 -- I don't know what speculative invoicing is -- but  
2 the information -- Mr. Logan collected information,  
3 that information was used to bring a lawsuit. But  
4 we're not at the point of sending demand letters or  
5 having any communication with any of the identified  
6 customers because we don't know their identities yet,  
7 but they are the subject of a Statement of Claim that  
8 has been issued for some time now and the litigation is  
9 on hold until the identities are released through a  
10 court order.

11 BY MR. FEWER:

12 233. Q. Mr. Logan, this author goes on to state  
13 that you are attempting, she names you by name, that  
14 you are now attempting to recruit other copyright  
15 holders. "So far he's had few takers. He thinks many  
16 await the Voltage action's outcome". Is this true?  
17 Are you in fact attempting to recruit other copyright  
18 holders?

19 MR. ZIBARRAS: Don't answer that.

20 --- REFUSAL NO. 27

21 BY MR. FEWER:

22 234. Q. And is it true that you have in fact  
23 approached Mr. Carmody?

24 MR. ZIBARRAS: Don't answer that.

25 --- REFUSAL NO. 28

1 BY MR. FEWER:

2 235. Q. The next article I'd like to go over  
3 very briefly is called "Anti-piracy firm wants to bring  
4 U.S.-style copyright lawsuits to Canada". This is an  
5 article from the National Post and I believe you and I  
6 were both interviewed for this article, Mr. Logan.

7 This article starts out rather sensationally,  
8 I acknowledge, with the statement that, "Massive  
9 lawsuits targeting people who illegally downloaded  
10 copyrighted content are common in the US, where people  
11 have been stuck with hefty fines and out-of-court  
12 settlements and now there's an attempt to bring that to  
13 Canada".

14 And that's a reference to your organization.  
15 The author states that according to you, your firm has  
16 been monitoring Canadian users downloading of pirated  
17 content for several months and it's gathered again,  
18 here's that figure, more than one million different  
19 evidence files. Is this true?

20 MR. ZIBARRAS: It's irrelevant, don't answer  
21 that.

22 --- REFUSAL NO. 29

23 BY MR. FEWER:

24 236. Q. Can you at least answer whether these  
25 one million evidence files include the evidence files

1 tendered in this particular action in support of the  
2 motion?

3 MR. ZIBARRAS: It's really irrelevant whether  
4 he includes it or not. The subject matter of this  
5 motion is the files that are before the court, right?  
6 So, trying to spill out into anything else is  
7 irrelevant and improper.

8 BY MR. FEWER:

9 237. Q. And again, you state that, "You have a  
10 long list of clients waiting to go to court, said  
11 Canipre's Logan, who estimates about 100 different  
12 companies are paying close attention to the case".  
13 Again I would ask, is this true? Do you have a long  
14 list of clients waiting to go to court?

15 MR. ZIBARRAS: Don't answer that.

16 --- REFUSAL NO. 30

17 BY MR. FEWER:

18 238. Q. And then under the subheading, "We have  
19 a long list of clients waiting to go to court, and  
20 particularly with respect to again the speculative  
21 invoicing model". You're quoted as saying, "We're  
22 bringing that model up here as a means to change social  
23 attitude towards downloading. Many people know it's  
24 illegal but they continue to do it".

25 That's a statement about this particular

1 lawsuit, I would take it. Correct?

2 MR. ZIBARRAS: Don't answer that.

3 --- REFUSAL NO. 31

4 BY MR. FEWER:

5 239. Q. And then the last quote I put to you.

6 You are quoted in this article as saying, "Litigation

7 is not the only tool that will change piracy, it's

8 simply a tool". Is that an accurate quote?

9 MR. ZIBARRAS: Don't answer that.

10 --- REFUSAL NO. 32

11 BY MR. FEWER:

12 240. Q. And Mr. Logan is that in fact how you

13 regard the litigation process, a tool?

14 MR. ZIBARRAS: Highly regarded as irrelevant.

15 --- REFUSAL NO. 33

16 BY MR. FEWER:

17 241. Q. Mr. Logan, do you have personal

18 knowledge of the prior Voltage litigation that was

19 withdrawn?

20 MR. ZIBARRAS: Don't answer that. We're now

21 so irrelevant we're dealing with other litigation.

22 We're not even in this litigation; we're dealing with

23 other litigation. That's how far the net of

24 relevancy's been cast, Mr. Fewer. If that's it, we'll

25 call it a day.

1 --- REFUSAL NO. 34

2 MR. FEWER: Same subject matter, same  
3 parties.

4 MR. ZIBARRAS: Okay. Are there any other  
5 questions?

6 MR. FEWER: It plainly goes to the question  
7 of bona fides, but that's something we can ask someone  
8 else to address. I believe I'm finished with my  
9 questions, Mr. Logan. You've been very patient, thank  
10 you.

--- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 12:05 P.M.

I hereby certify that this is the  
examination of BARRY LOGAN, taken  
before me to the best of my skill  
and ability on the 5th day of June,  
2013.

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LAILA A. HARVEY - Certified Court Reporter

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