

Federal Court trusts technology to prove infringement

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Introduction

The Federal Court of Canada has recently signalled its willingness to accept technology as a stand-in for human analysis in a copyright infringement claim. *Trimble Solutions v Quantum Dynamics*, 2021 FC 63, demonstrates the value in using sophisticated technology to advance and defend claims that would typically require expensive and time-consuming manual efforts.

Facts

Trimble Solutions Corporation (Trimble) is the registered copyright owner of Tekla Structures, a software program used for 3D modelling and design in the construction industry. BuildingPoint Canada Inc. (BuildingPoint) is Trimble's authorized reseller in Canada.

Trimble embedded anti-piracy software in Tekla Structures to detect suspicious activity, such as the use or reproduction of the program by unauthorized users. When triggered, the software automatically collects certain data and generates an infringement report, **which includes the nature and time of the incident and the user's IP address and device information.**

Trimble received several infringement reports in February 2018 originating from 6 devices. Trimble claimed that the information from the infringement reports, combined with other data points including Google Maps screenshots and a LinkedIn profile page, identified Quantum Dynamics Inc. (Quantum Dynamics) and Mr. Tannus as the source of the infringements. Mr. Tannus is a director and officer of Quantum Dynamics.

After failing to resolve the dispute out of court, Trimble commenced an action against Quantum Dynamics and Mr. Tannus and eventually moved for default judgement.

Decision

In considering whether the anti-piracy software was sufficiently reliable to establish the defendants' liability, the Court noted that it was "impossible to know who was using the devices at the precise times indicated in each incident report." However, the Court was prepared to accept the data points assembled by Trimble as sufficient evidence that the defendants controlled the devices responsible for infringing Trimble's copyrights.

As a result, the Court granted Trimble and BuildingPoint an injunction and awarded them \$262,931 in general and punitive damages.

Comment

The Federal Court's decision in *Trimble Solutions v Quantum Dynamics* is consistent with global jurisprudence and the Competition Tribunal's decision in *The Commissioner of Competition v Live Nation Entertainment, Inc et al*, 2018 CACT 17, which accepted technology assisted review as a valid and proportionate strategy for document-intensive cases.

This trend highlights the potential utility and efficacy of technology in litigation. As legal technology grows in popularity and complexity, both courts and lawyers must (in the words of the Competition Tribunal) "encourage the use of modern tools" and remain open to change in order to ensure the efficient and just determination of modern-day disputes.

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