

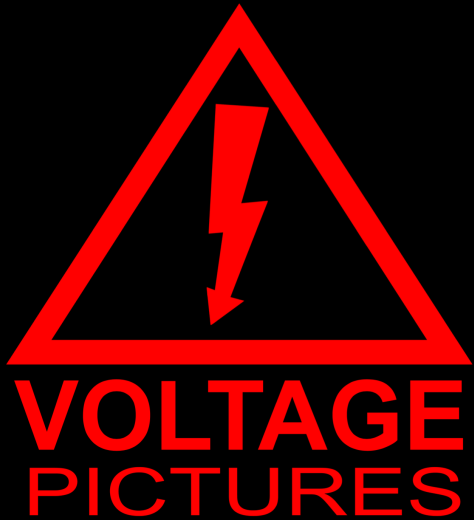
Voltage Pictures LLC v. John Doe

Alexandre Abi Habib & Alan Bibar



Voltage Pictures LLC v. John Doe

- Film production & distribution company
- They filed 22 file-sharing lawsuits in American Federal Court
 - Sus?

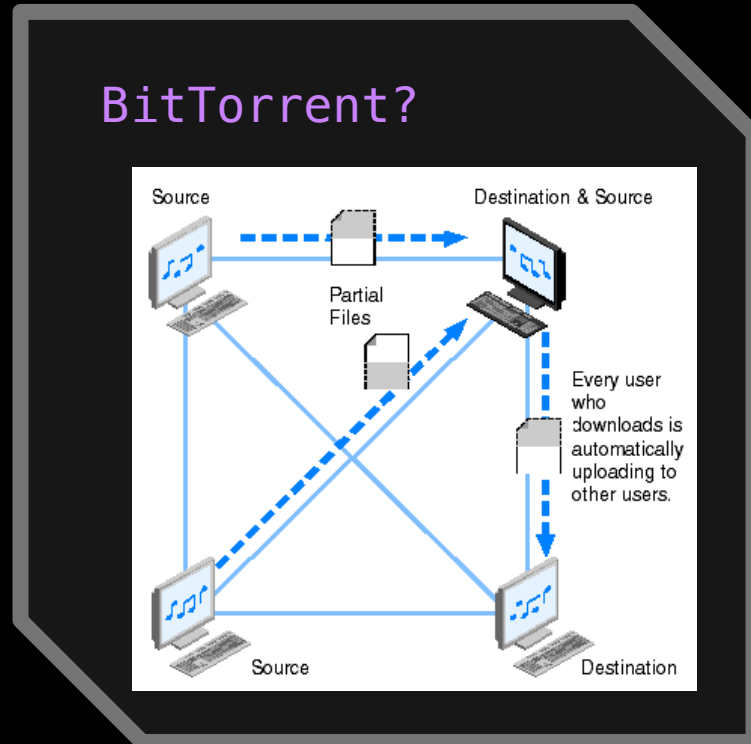


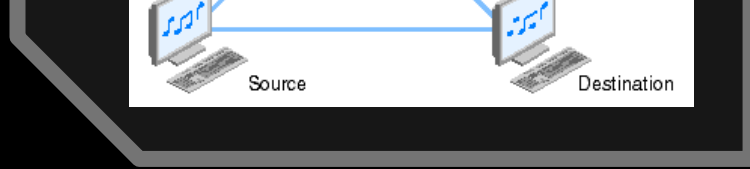


Voltage Pictures LLC v. **John Doe**

Facts

- ❑ 2012: Voltage hired Canipre, a Montreal IP rights firm, to determine if their movies were illegally distributed in Canada.
- ❑ The firm found IP addresses involved in distribution over BitTorrent.
 - ❑ Addresses using the services of TekSavvy, an ISP & innocent 3rd party





- ❑ Canipre also found:
 - ❑ "the date and time the file was distributed;
 - ❑ the P2P network used; and,
 - ❑ the file's metadata including the name of the file and its size (collectively the File Data)."

- ❑ But despite IP addresses...

They still had no idea who was behind the distribution.

[Hence John & Jane Doe]

Why not just ask the ISP?

□ It's illegal.

Personal Information Protection and Electronic Documents Act (SC 2000, c 5)

Disclosure without knowledge or consent

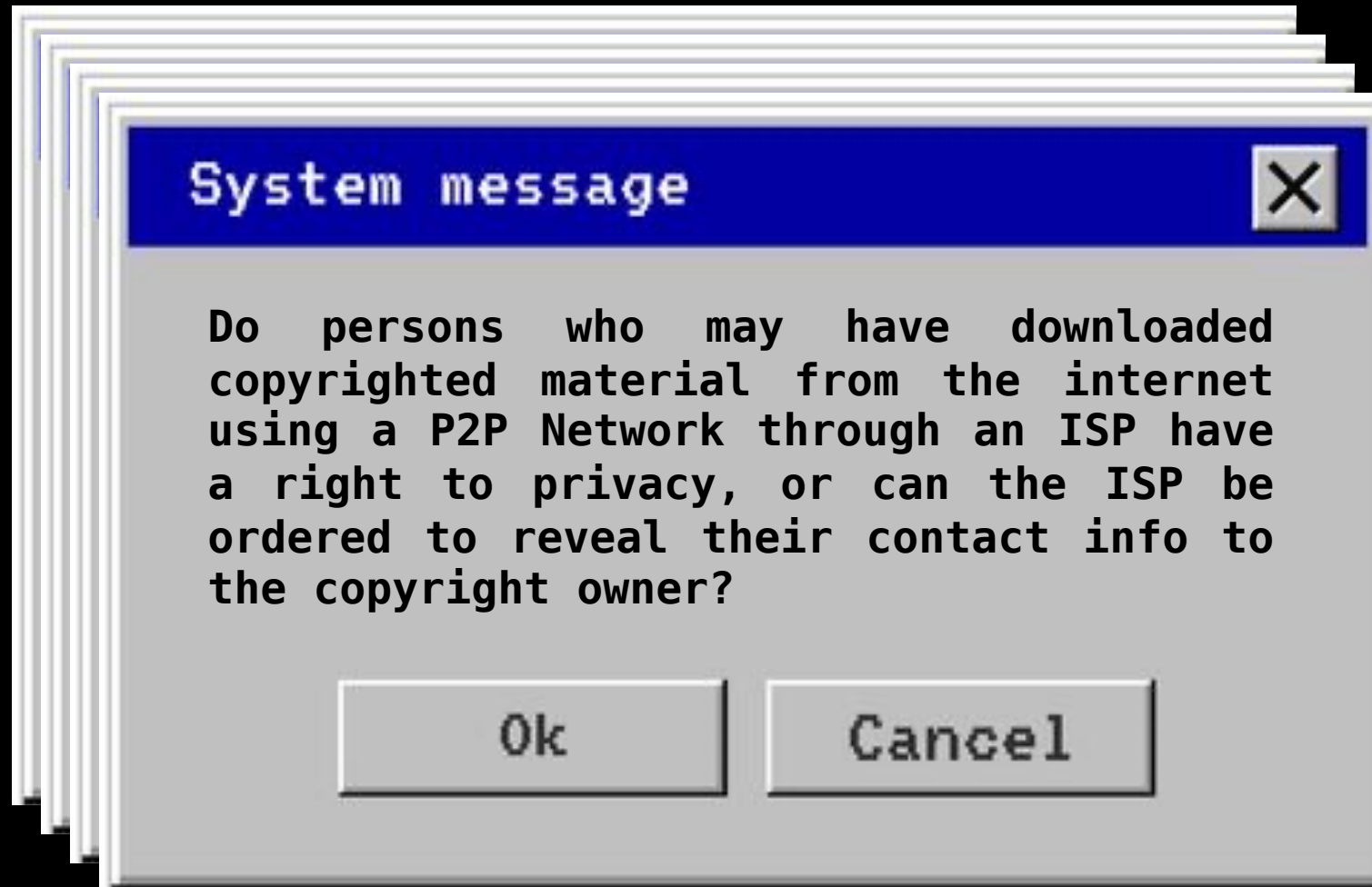
7.(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization **may disclose personal information** without the knowledge or consent of the individual **only if** the disclosure is:

· · ·
(c) **required to comply** with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

· · ·
(i) required by law.

Copyright Act: copyright holders receive damages, within limits (ex/ schools).
Statutory damages: courts consider defendants' good (bad?) faith & deterrence.

Issue



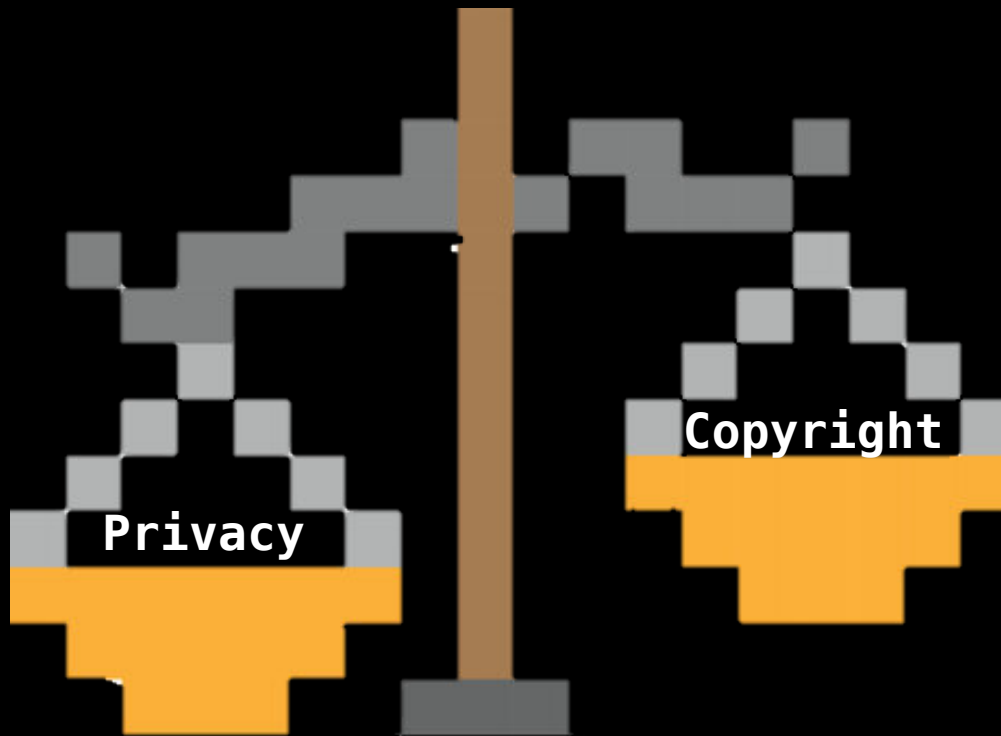
Issue



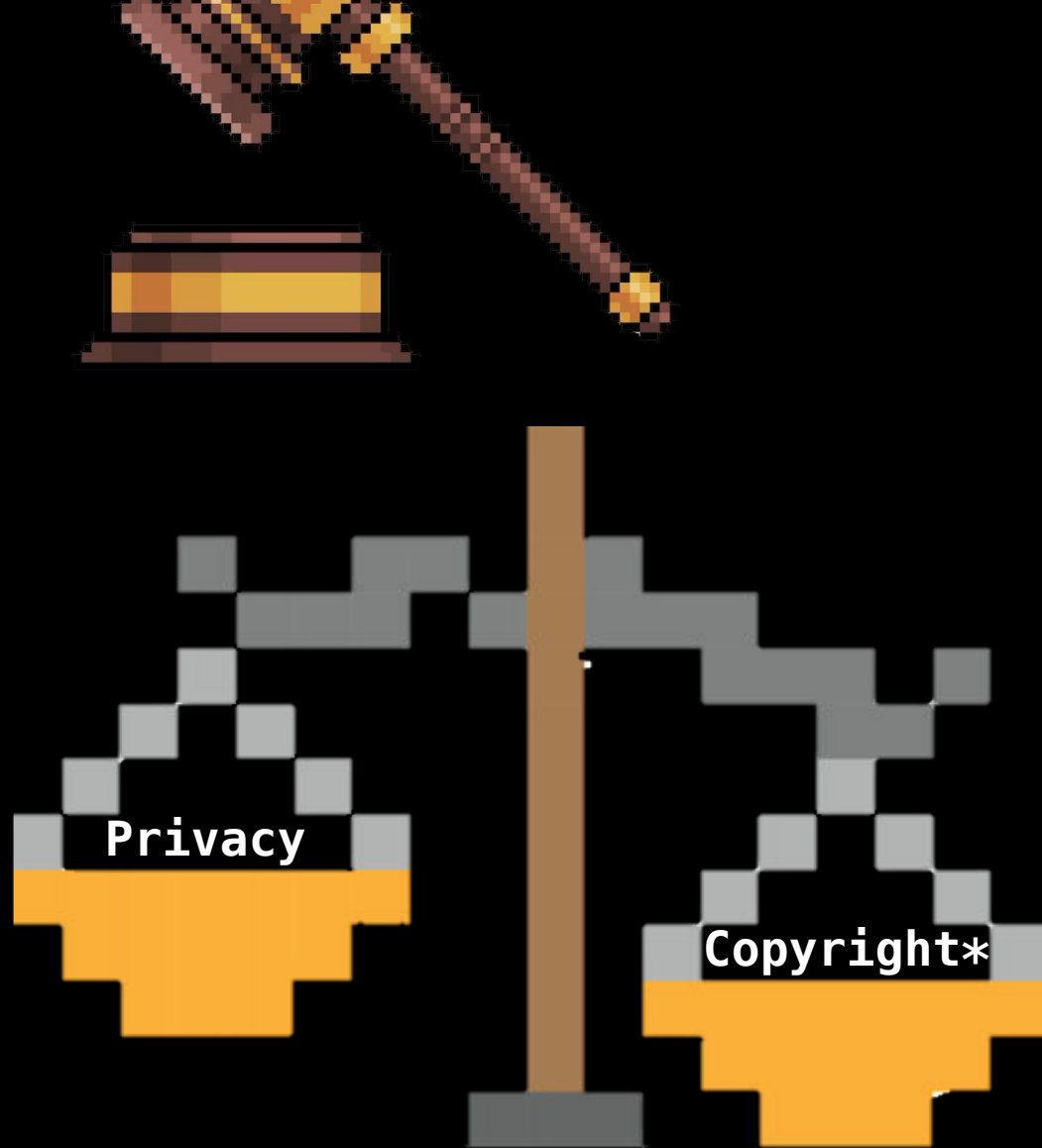
Simply put



Simply put



Held.



Why? *BMG* principles

To **breach the privacy** of an alleged copyright infringer:

- ❑ A plaintiff must have a *bone fide* case
- ❑ A non-party must have **info** on an issue in the proceeding
- ❑ A court order is the **only reasonable means** of obtaining it
- ❑ Fairness requires the info be provided **prior to trial**
- ❑ Any order made **will not cause undue delay, inconvenience or expense** to the 3rd party or others

The Court may then make a *Norwich* Order [but stay tuned]

Applied to the case at hand

❑ A plaintiff must have a **bone fide** case

Not *prima facie* case (unlike in USA  though this was argued)

Consider case's strength: frivolous action? mere fishing?

V has forensic evidence for IP addresses, and it does hold the copyright.

❑ A non-party must have **info** on an issue in the proceeding

Only TekSavvy knows the identities.

❑ A court order is the **only reasonable means** of obtaining it

TekSavvy won't, and *can't* non-consensually reveal the info - *PIPEDA*

❑ Fairness requires the info be provided **prior to trial**

V *can* protect its rights, and persons who infringe copyright should not be shielded from liability by the anonymity of the internet.

❑ Any order made **will not cause undue delay, inconvenience or expense to the 3rd party or others**

V will reimburse TekSavvy "for its reasonable costs in providing the information" [46]

Privacy must count for *something*, right?

Voltage POV:

“there is no reasonable expectation of privacy risk in using P2P networks as to do so puts private information about the individual into the **public domain**, and when individuals use these types of networks **they reveal publicly their IP address** and the files being copied.” [59]

Court POV:

You're not wrong, but...

- ❑ copyright trolls exist
- ❑ compelling ISPs to release private customer info is... iffy
- ❑ potential flood of cases, including parties with good defences
- ❑ even generous damages may be < \$, time & effort of pursuing a claim

Privacy must count for *something*, right?

Let's limit the *Norwich* Order. We'll hear CIPPIC out.
(*Canadian Internet Policy and Public Interest Clinic*)

Why and How? CIPPIC relies on U.K. & U.S. judgements

Norwich Order relief (equitable remedy) comes from a 1974 House of Lords suspected patent infringement case, *Norwich Pharmacal*. [62]

Then they were abused. *Media CAT Ltd v Adams & Ors* [2011]: M, after a broad Order, sent letters misrepresenting itself as a copyright protection society

– recipients thought they'd already been examined & caught by courts.

Recipients were asked for a fixed \$ amount. Most paid to avoid embarrassment.

– Copyright in question? Pornographic films.

Recipients were asked for a fixed \$ amount. Most **paid to avoid embarrassment.**

– Copyright in question? Pornographic films.

In the US, experienced Courts are concerned with **orders being used “to ‘troll’ for quick and easy settlements.”** [103]

– Trolls may never actually intend to litigate

– They “hold a proverbial guillotine” (*Patrick Collins, Inc. v. Doe*, EDNY 2013)



Common themes emerge when taming a *Norwich* Order

Non-exhaustive boring list...

- a) Moving party must demonstrate a *bona fide* case
- b) Putting safeguards in place so that alleged infringers don't get intimidated into payment without understanding
- c) Courts may ensure that Norwich Orders are not abused by parties
- d) Party enforcing Norwich should pay legal costs and disbursement of innocent 3rd party
- e) Legal warnings should be provided to people identified through the Norwich Order
- f) Limiting the information provided by 3rd party
- g) Ensuring Norwich Order is monitored

- e) Legal warnings should be provided to people identified through the Norwich Order
- f) Limiting the information provided by 3rd party
- g) Ensuring Norwich Order is monitored
- h) Ensuring that the information remains confidential
- i) Requiring party obtaining the order to provide a copy of any "demand" letter before sending it
- j) Court may be able to require changes
- k) Letters must make it clear that they do not mean that the recipient is liable
- l) Letters should also state that the recipient may not be the responsible one
- m) A copy of the court order should be sent with the letter
- n) Courts must verify that the remedies are proportional

Does this matter elsewhere?





"Voltage v Doe" This .ppt is no longer available due to a copyright claim by Nintendo.

