

Publisher's Note

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Gahtan Electronic Commerce: A Practitioner's Guide

Written with the practitioner in mind, this work is organized in an accessible format and offers a comprehensive guide to all aspects of Electronic Commerce.

This release features updates to the Quantum Table — Copyright Infringement. This release also features updates to Appendix 8A — Sentencing and Resolutions Table — Offences under the *Competition Act* in Chapter 8 (Advertising in Cyberspace). This release also features the addition of the General Data Protection Regulation of the European Parliament and of the Council of the European Union, effective May 28, 2018 as Appendix C.26 to Appendix C (Private Sector Privacy Legislation).

Highlights

- **Quantum Table — Copyright Infringement — Statutory Damages** — The dispute related to the rights to distribute Greek language programming in Canada. The Plaintiffs were the exclusive legal distributors. The Plaintiffs motion for default judgment was granted and the plaintiffs were awarded statutory damages of \$5,000,000. The Plaintiffs alleged that since November 2014, the Defendants had installed, configured, sold, offered, exhibited, disseminated, distributed, and broadcast the Alpha, Mega, and Antenna

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programming in Canada through online subscription service and broadcasting equipment such as set-top boxes. Since November 2014, the Plaintiffs alleged that the Defendants broadcast 39,435 individual works consisting of news, movies, series, and other programming. The Defendants were alleged to have been continuously unlawfully decoding the encrypted programming signals during this time, providing it to visitors to the Infringing Sites and their subscribers. The Infringing Sites offer some limited free content, but provide unlimited access to the programming for paying subscribers. The Defendants ignored demands by the Plaintiffs and the Greek owners of that programming to cease and desist. The Defendants did not file a Statement of Defence despite the Plaintiffs' repeated requests. No Statement of Defence was filed until October 23, 2017 in response to the Plaintiffs' motion for default judgment. The Plaintiffs' Statement of Claim had been filed December 22, 2015. The Plaintiffs subscribers and resulting revenue has significantly declined since 2014, when they discovered that the Defendants were operating in the market. The Plaintiffs established the test on default judgment of establishing the basis of their claim and they have established their entitlement to the relief sought. Even if there had been a reasonable explanation for delay, the Ellas Defendants had not established a *prima facie* defence. The \$5 million in statutory damages, while a large amount, was conservatively measured at the lower end of the \$500-\$20,000 per work scale. Based on the calculation pursuant to *Telewizja Polsat S.A. v. Radiopol Inc.*, 2006 FC 584, [2007] 1 F.C.R. 444 (F.C.), the amount was proper. Based on the factors in s 38.1(5) of the *Copyright Act*, including bad faith which is established through the Ellas Defendants' delaying tactics, the need to deter others, particularly those infringers who benefit by delay, and the lack of response by Greek World Music, the calculation was reasonable: *Odyssey Television Network Inc. v. Ellas TV Broadcasting Inc.*, 2018 CarswellNat 1434, 2018 CarswellNat 1772, 2018 FC 337, 2018 CF 337 (F.C.).

- **Sentencing and Resolutions Table — Offences under the *Competition Act* — False and Misleading Representations** — The Affected Vehicles appeared to pass applicable emissions tests because software installed in Affected Vehicles recognized when the vehicle was being tested, and altered the operation of the vehicle during testing which had the effect of reducing the Emissions during testing. Volkswagen Canada shall pay an administrative monetary penalty in the amount of \$1.25 million with respect to the Affected Vehicles. Audi Canada shall pay an administrative monetary penalty in the amount of \$1.25 million with respect to the Affected Vehicles. The Commissioner took into account the amounts to be paid to affected Canadian consumers of the Affected Vehicles in the form of buyback payments, damages payments and repair payments: *Canada (Commissioner of Competition) v. Volkswagen Group Canada Inc. and Audi Canada Inc. and Porsche Cars Canada, Ltd.* (CT-2018-003, January 12, 2018) (Comp. Trib. Consent Agreement).

- **General Data Protection Regulation of the European Parliament and of the Council of the European Union** — The Regulation aims to protect people's information when it is shared with businesses. Although a European regulation, it affects businesses that operate out of a European signatory state marketing to a foreign country such as Canada or a foreign business marketing to and operating within a European signatory state. Any company that seeks to advertise internationally must comply with the requirements set out in the GDPR. The failure to comply with the GDPR can lead to severe consequences. The GDPR establishes a standard of care that business must meet. Failure to satisfy this standard, will expose business to not only fines but legal actions.

