

Publisher's Note

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This release features updates to Chapter 8 (Privacy and Data Protection). This release also features updates to Appendix 23.7.3 – Quantum Table – Copyright Infringement. This release also includes the addition of the Privacy Commissioner of Canada's Guidelines for Obtaining Meaningful Consent – May 2018 (effective January 1, 2019) and Guidance on inappropriate data practices: Interpretation and application of subsection 5(3), May 2018 (in effect as of July 1, 2018) to the appendices. This release also features the addition of the European Union General Data Protection Regulation to the appendices.

Highlights

- **Quantum Table — Copyright Infringement — Statutory Damages — Privacy and Data Protection — General Data Protection Regulation of the European Parliament and of the Council of the European Union —** The General Data Protection Regulation (“GDPR”) came into effect

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on May 25, 2018. 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 to a European population must comply with the requirements set out in the GDPR. Directive 95/46/EC was repealed with effect from May 25, 2018. The General Data Protection Regulation (“GDPR”) sets out rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data. The GDPR protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data. The GDPR applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. The GDPR does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity or by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. The GDPR applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not. The GDPR applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to: the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or the monitoring of their behaviour as far as their behaviour takes place within the Union. The GDPR applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law. 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.

- **Quantum Table — Copyright Infringement – Statutory Damages —**
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 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.).

