



Neutral Citation Number: [2025] EWHC 387 (Ch)

Case No: IL-2024-000203

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTERIM APPLICATIONS LIST

The Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: 23 January 2025

Before:

MR JUSTICE RICHARD SMITH

Between:

**UNITED KING FILMS DISTRIBUTION LTD
& OTHERS**

Applicants

- and -

**BRITISH TELECOMMUNICATIONS PLC
& OTHERS**

Respondents

**MR MARTIN HOWE KC (instructed by Penningtons Manches Cooper LLP) for the
Applicants**

THE RESPONDENTS did not appear and were not represented

Approved Judgment

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE RICHARD SMITH:

Introduction/ background

1. This morning, I heard an application for a website-blocking injunction pursuant to section 97A of the Copyright, Designs and Patents Act 1988 and/ or section 37 of the Senior Courts Act 1981.
2. The applicants are four major Israeli Hebrew broadcasters, members of the ZIRA Copyright on the Internet Limited, the copyright enforcement body of the main television and film producers and broadcasters in Israel. The intended target of the blocking injunction sought is an entity calling itself “Israel TV” which operates a series of similar or identical websites under a large number of different domain names, usually consisting of the word “israeltv” followed by a country code or other top-level domain, although there is also one in Chinese script. The applicants seek an injunction to require the internet service provider respondents (**ISPs**) to block access to those websites (**Target Websites**).
3. The Israel TV websites are said to do two things: (i) produce live-streaming access to a number of Israeli TV channels and (ii) contain a large collection of previously broadcast programmes which are available to be watched by subscribers to the Israel TV service on demand. The applicants are not aware of the precise means by which Israel TV obtains access to the live feeds of the broadcast which it is restreaming, nor of how it has obtained and built up the collection of past programmes which it makes available for downloading, but those activities are unlicensed and are said to amount to infringements of the applicants’ copyrights, including those subsisting under UK law.
4. The applicants say that there are significant markets outside Israel for Hebrew language television, of which the UK is one of the largest, Israel TV having apparently recruited a substantial number of subscribers in the UK to whom it is streaming or allowing broadcasts to be downloaded by way of recorded content. This activity is said to undercut the legitimate activities of the applicants or their licensees in making content available to the UK market for remuneration.
5. The applicants say that they have previously sought to take action against Israel TV, or the persons behind it, in Israel and in the USA but those persons are said to have proved elusive and are not willing to come forward to engage in litigation. To ensure effective action can be taken to curtail the activities of Israel TV in relation to the UK market, the injunction is therefore sought against the ISPs of the UK consumers who might consume the Israel TV content.
6. The application today is not opposed by the relevant ISPs to which the proposed order has been circulated in advance, with minor adjustments requested by them. The terms of the draft order, as now updated, are materially equivalent to those that have been previously made by Arnold J (as he then was), he being in the vanguard of such orders, and other judges of the Chancery Division.
7. The applicants rely on four witnesses, each of whom served a statement. A further statement has been served today from the applicants’ solicitors explaining the up-to-date position. Mr Matalon explains the activities of Israel TV, including in the UK,

and the damage which these are said to cause to the ability of the applicants to licence their content. Mr Presenti is an Israeli intellectual property lawyer and a non-practising English solicitor. He explains the various legal actions sought to have been taken against Israel TV and how he has checked to ensure that copyright in the relevant film and television content vests in the applicants. He has set that out in some detail in the exhibit to his statement. Ms Allan is an associate solicitor with the applicants' solicitors, Penningtons Manches Cooper LLP. She explains how Israel TV services can be accessed in the UK, having done that herself and reported on it in her evidence. Mr Curley is a partner in the same firm and he explains the unsuccessful efforts previously taken in this jurisdiction to curtail these activities before resorting to the present proceedings.

Legal principles

8. Turning to the legal principles, these are very helpfully articulated in Mr Howe's skeleton argument, developed in argument today in response to certain questions from the bench, for which I am grateful. As to the legal principles engaged by this application, these are helpfully and recently summarised by Bacon J in *Columbia Pictures Industries v British Telecommunications Plc* [2024] EWHC 1789 (Ch) (at [9]) as follows:-

“The legal principles relied on the application are well established and have been traversed in various cases in which similar orders have been made. Four matters need to be established for the court to make an order under section 97A: (i) that the ISPs are service providers; (ii) that users and/ or operators of the target services infringe copyright; (iii) that users and/ or operators of the target services use the services of the ISPs to do so; and (iv) that the ISPs have actual knowledge of this.”

9. In his skeleton argument, Mr Howe again helpfully took me through how it is said each of those individual legal requirements are met. The ISPs are self-evidently providers of internet services whose services are used by most consumers in the UK, including by those who access the Israel TV websites.
10. As Mr Curley explains in his evidence, the ISPs were sent the applicants' draft evidence in support of this application and the draft order, such that they clearly have the requisite knowledge.
11. As for the question of copyright infringement, the applicants rely on the film copyright subsisting in the tv and film content which they broadcast. As to this, the applicants point out that films are not required to be original but must not be a copy taken from a previous film, a standard easily met here.
12. As to the ownership of the copyright, Mr Presenti explains how this came to vest in the applicants.
13. As to communications to the public, relying on Case C-607/11 *ITV Broadcasting v TVCatchup Ltd* [2023] FSR 36, the applicant says that Israel TV's live streaming amounts to an act of communication to the public in the UK by way of broadcasting, contrary to section 20(2)(a) of the 1988 Act. There was some discussion with Mr Howe in submission about that today.

14. As for the on-demand content which consumers can download, the applicants say it is well-established that the act of communication to the public by “making available” under section 20(2)(b) of the 1988 Act is committed as soon as the copyright material is on the server and available for download, whether or not it is actually accessed and used. It is also clear, on the basis of the authorities, that the person making the material available is using the services of the ISPs of those accessing the material (see Case C-314/12 UPC *Telekabel Wien v Constantin Film* [2014] E.C.D.R. 12).
15. There is also evidence that the Israel TV sites are infringing the rights of other content providers, such as Disney Channel, Netflix and other well-known content providers, but it is said that the suppression of other unlawful activity is not a reason against making an order. The evidence shows there is no evidence of legitimate activity by Israel TV.
16. As to the question of proportionality, the exercise is said to be one of weighing the benefit of the proposed order against the burden to the ISPs and third parties and the risk of interfering in legitimate content and trading activities.

Discussion

17. On the basis of the evidence that has been presented and the submissions made, I am satisfied that the legal requirements for the grant of the injunction sought in this case have been met, that the exercise of that power would be proportionate and that I should exercise my discretion to do so in this case.
18. I accept that such blocking as the injunction envisages would be an effective means of reducing infringement, not least in light of the alternative steps taken previously with the same objective. Those standing behind Israel TV have proved to be elusive and persistent, as shown by them, for example, switching to cryptocurrency subscription once credit card payment services had been blocked.
19. Overblocking is not a risk. The evidence shows that there is no legitimate material on the Target Websites.
20. The order contains conventional safeguards such as notification requirements, permission to apply by those who may be affected by it and a sunset clause, as well as a cross-undertaking in damages.
21. Finally, the order has been agreed between the parties and it is readily capable of being put into effect by the ISPs.
22. In all the circumstances I have described, I am satisfied that the order should be made. I will now turn to discuss the terms of the latest draft order.

(This Judgment has been approved by the Judge)

Telephone No: 020 7067 2900. DX 410 LDE

Email: info@martenwalshcherer.com

Web: www.martenwalshcherer.com