
Jordana Sanft
416-596-1083
jsanft@litigate.com


Paul-Erik Veel
416-865-2842
pveel@litigate.com


Martin Brandsma
416-238-7397
mbrandsma@litigate.com

July 24, 2025

Class Dismissed: Copyright Reverse Class Action Fails to Get Passing Grade

On July 16, 2025, a long-running effort by several film studios to have claims of copyright infringement decided by way of reverse class action reached a further impasse. In *Voltage Pictures v Robert Salna* (*Voltage FCA #2*), the Federal Court of Appeal (FCA) dismissed – for a second time – the studios' appeal for certification of a proposed class of unknown individual defendants.

The series of appeals and cross-appeals dates back to a 2016 application brought by the studios for copyright infringement relating to five films allegedly downloaded by hundreds of users over the BitTorrent peer-to-peer file-sharing platform. The studios asked to certify a class against approximately 874 unknown class members whose internet protocol (IP) addresses (identified by the studios' forensic software) were allegedly used to upload and download the films without authorization.

In the decision under appeal (*Voltage Pictures, LLC v Salna*), the Federal Court dismissed the studios' motion to certify the reverse class proceeding because – among other reasons – the studios' proposal to use Canada's notice-and-notice regime was contrary to subsection 41.25(3) of the *Copyright Act* (which prohibits certain content from being included in a notice such as demands for payment), though the Court left it open for the studios to reapply for certification.

While *Voltage FCA #2* addresses several aspects relating to copyright infringement and class actions, below we focus on two main aspects: the notice-and-notice regime and the FCA's findings relating to preferable procedure.

Canada's Notice-and-Notice Regime

Adopted in 2012, Canada's *Copyright Act* includes a "notice-and-notice" regime (sections 41.25 to 41.27), whereby copyright owners who believe their works have been infringed over the internet can require internet service providers (ISPs) to forward notices of claimed infringement to subscribers associated with an IP address. Subsection 41.25(2) of the *Copyright Act* lists the information to be included in a notice. However, subsection 41.25(3) of the *Copyright Act* prohibits notices from containing

certain information like settlement offers, demands for payment or personal information, or references to such offers/demands.

Subscriber contact information associated with an IP address is typically known only to the subscriber's ISP – not the copyright owner. To obtain information necessary to advance their claims, claimants often seek a *Norwich* order from the Court, which requires an ISP to disclose the relevant subscriber information.

Proposed Notice Under the Litigation Plan

In the certification motion under appeal, the studios presented the Court with a litigation plan that allowed them to bypass the need to obtain a *Norwich* order to gain relevant defendant contact information. Instead, the studios proposed that the notice under section 41.25 of the *Copyright Act* would contain a hyperlink allowing the alleged infringer to contact class counsel if they chose to opt out of the class proceeding, as well as the opportunity for the subscriber to provide counsel with evidence the alleged infringement had stopped and details about the steps the subscriber had taken to mitigate damages.

The lower Court found the studios' proposed use of the notice-and-notice regime was contrary to the *Copyright Act*. The FCA agreed that subsection 41.25(2) of the *Copyright Act*, which sets out the information to be included in a notice of alleged infringement, must be interpreted narrowly and would not include the information as proposed by the studios. The studios' proposed notice amounted in part to a request or demand for personal information and for payment, contrary to subsection 41.25(3) of the *Copyright Act*.

Despite this, the FCA found it was improper for the lower Court to have refused certification based on the studios' proposed use of the notice-and-notice regime, as the Court ought to have certified the proceeding or adjourned the certification motion to allow the parties to negotiate the notice and, thereafter, allow the studios to present an amended plan. Only if the studios were unwilling or unable to amend the plan would it have been open for the Court to have dismissed the certification motion.

Not the Preferable Procedure

Under part 5.1 of the *Federal Courts Rules*, five criteria must be shown to certify a class proceeding, including that there is some basis in fact to conclude the proposed class raises common questions of fact or law.

By way of cross-appeal, the only known respondent, Mr. Salna, sought to vary the order under appeal to provide that the studios' motion for certification be dismissed without leave to reapply. Mr. Salna argued there was no basis to show a class

proceeding was the preferable procedure for resolving the common questions proposed by the studios.

In undertaking its analysis of whether the proposed procedure was preferable, the FCA noted the lower Court did not have the benefit of the earlier FCA decision in *Voltage Holdings, LLC v Doe #1* (*Voltage FCA #1*). In *Voltage FCA #1*, the FCA held that to establish copyright infringement in the context of downloading/uploading a work using the BitTorrent protocol, proof is required that the defendant was the individual who undertook the act of downloading/uploading or had some degree of control over the person who committed the wrongdoing. It is not enough that an individual is merely a subscriber of an account over which infringement is alleged to have taken place. Therefore, the mere fact that a proposed class member was an internet subscriber whose IP address was associated with downloading/uploading a work via BitTorrent is not enough to establish infringement.

In *Voltage FCA #2*, the FCA found that none of the common questions proposed by the studios would advance the proceeding in any meaningful way because for each respondent, it would still be necessary to determine exactly what each subscriber did with respect to each work before liability could be established. Therefore, the class procedure "would do little to promote judicial economy or access to justice." On that basis, the FCA allowed the cross-appeal and dismissed the studios' certification motion without leave to reapply.

Key Takeaways

The *Voltage FCA #2* decision and its related cases illustrate the challenges of addressing copyright infringement at scale. With the FCA's guidance that simply showing an IP address associated with downloading/uploading a protected work is not enough to establish infringement, certification of a class of unknown defendants in future cases remains doubtful. Indeed, to date, no class of unknown defendants has ever been certified in an action for copyright infringement in Canada. While the Court has not completely closed the door on the applicability of a reverse class to address claims of copyright infringement, claimants – at least for the time being – remain limited to enforcement through individual suits.