IN THE HIGH COURT OF JUSTICE
Business and Property Courts of England and Wales
Intellectual Property List (ChD)

Claim No. IL-2021-000008

Rolls Building
Fetter Lane
London EC4A 1 NL

Date: Monday, 28 June 2021

Before:

HIS HONOUR JUDGE HODGE QC
Sitting as a Judge of the High Court

BETWEEN:

DR CRAIG STEVEN WRIGHT

Claimant

-v-

THE PERSON OR PERSONS RESPONSIBLE FOR THE OPERATION AND PUBLICATION OF THE WEBSITE WWW.BITCOIN.ORG (INCLUDING THE PERSON OR PERSONS USING THE PSUEDONYM CØBRA)

Defendant(s)

MR MICHAEL HICKS (Instructed by **Ontier LLP**) appeared on behalf of the Claimant

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APPROVED JUDGMENT

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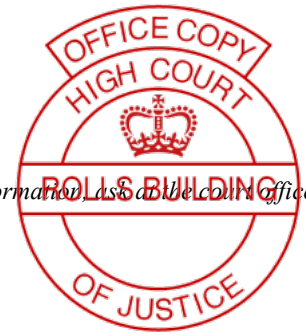

JUDGE HODGE QC:

1. This is my extemporary judgment on an application for judgment in default of acknowledgment of service and of defence brought by Dr Craig Steven Wright against the person or persons responsible for the operation and publication of the website www.bitcoin.org, including the person or persons using the pseudonym "Cobra".

2. The claim form was issued on 24 February 2021 and seeks the usual relief associated with a claim for infringement of copyright in a literary work. The claimant, Dr Wright, complains of the infringement of his literary copyright in a paper which he says he wrote entitled "Bitcoin: a peer to peer electronic cash system". This paper is said to have become widely known amongst those who are interested in blockchain technologies, bitcoin and cryptocurrencies, as "the White Paper". The claim form is supplemented by detailed particulars of claim.

3. In summary, Dr Wright's case with regard to copyright infringement is that the White Paper was published on the Bitcoin.org website. The defendant, or defendants, is or are the person or persons responsible for the operation and publication of that website. There have been varying indications in correspondence that the operator and publisher of the website may be either an individual or a limited liability company incorporated under the laws of one of the jurisdictions of the United States. It is Dr Wright's case that he does not consent to the continued publication of the White Paper on the Bitcoin.org website. That website is targeted, at least in part, towards the United Kingdom, and therefore it is said that the publication of the White Paper on that website is an infringement of Dr Wright's UK copyright. Despite repeated requests, the defendant has refused to stop publishing the White Paper on the Bitcoin.org website.

4. There are substantial grounds for thinking that although targeted in part at the United Kingdom, the website may be administered from the United States of America, and specifically the State of California. In those circumstances, and given the anonymity of the defendant or defendants, an application was made for an order for the service of these proceedings out of the jurisdiction, and by the alternative method of email. That application came on for hearing before Mann J on 21 April. Mann J made orders for the

service out of the jurisdiction and by email. An approved transcript of his judgment is available to me, although it appears to bear no neutral citation number.

5. The proceedings were duly served by email in accordance with the terms of Mann J''s order. The emails effecting service were sent on Thursday 22 April, the day after Mann J delivered his judgment, and, in accordance with the terms of his order, the proceedings were deemed served on Monday 26 April.

6. An acknowledgment of service should have been filed by 18 May 2021. No such acknowledgment of service has ever been filed. Both the solicitors acting for Dr Wright, and I myself, searched the CE-file for this case this morning, and no acknowledgment of service had been filed, nor was there any indication of any unprocessed filings. It is in those circumstances that the present application for a default judgment was issued on 25 May 2021. It is supported by the fourth witness statement of Mr Simon Cohen, a solicitor and senior associate with the claimant's solicitors, Ontier LLP. That witness statement is dated 25 May 2021.

7. The hearing has taken place remotely via the Microsoft Teams video platform. The claimant is represented by Mr Michael Hicks (of counsel). There are at present some 41 people attending the remote hearing. One of them is designated "Cobra". During the course of preparing for this hearing, I have pre-read the application bundle which extends to some 240 pages. I have had the benefit of Mr Hicks's written skeleton argument. I have read the approved transcript of Mann J's judgment. I have also had the benefit of a four-page document which accompanied an email sent on Thursday 24 June to the clerk to Marcus Smith J, the applications judge. I have pre-read that four page document, which is summarized in the accompanying email. The document is said to bring to light very questionable and concerning issues relating to the claimant in this matter which the judge ought to at least be aware of before the hearing. Especially of note are said to be scathing attacks on the claimant's credibility by judges sitting both in the US and in the UK, the fact that two US members of Congress began hosting the allegedly infringing material in question in defiance of the claimant, as well as wider, wider context around the case which it is said that the claimant's counsel did not provide. The email concludes: *"There is a very high chance this entire case is fraudulent given the history of the*

claimant, and that the processes of the court are being abused to rubber-stamp judgments that advance the claimant's interests."

8. The author of the note asks that default judgment be stayed in this matter pending the outcome of litigation in this jurisdiction known as the "COPA litigation", although the writer acknowledges that the claimant is entitled to default judgment. During the course of the hearing, I have invited "Cobra" to address the court. The initial message (at 10.50 am) was: *"I don't wish to speak. Everything I have said is within the email sent"*. Later, at 11.38 am, after Mr Hicks had addressed the four page Cobra document, I received a further chat message that read: *"I would just like to ask whether the claimant actually has any evidence he says he is the author of the work"*. That issue was addressed at paragraphs 19 and 27 of Dr Wright's witness statement in support of the application to Mann J. At the conclusion of Mr Hicks's address, I asked Cobra again whether he wished to add anything, and the response was: "*Nothing, thank you"*.

9. The procedural background to the present application is to be found in Part 12 of the Civil Procedure Rules relating to default judgments. CPR 12.3 provides that a claimant may obtain judgment in default of acknowledgment of service only if, at the date on which judgment is entered, the defendant has not filed an acknowledgment of service or a defence to the claim, or any part of the claim, and the relevant time for doing so has expired.

10. Where the claimant makes an application for a default judgment, by CPR 12.11 (1) judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case. The court does not go beyond the terms of the statement of case.

11. Paragraph 4.1 of the Practice Direction 12 supplementing CPR 12 provides that on an application for a default judgment, the court must be satisfied of four matters. First, that the particulars of claim have been served on the defendant. Second, that the defendant has not filed either an acknowledgment of service or a defence, and that in either case the relevant period of time for doing so has expired. Third, that the defendant has not satisfied the claim. And fourth, that the defendant has not returned an admission to the claimant under rule 14.4, or filed an admission with the court under rule 14.6.

12. I am satisfied that all four of those matters have been made out on the evidence. The defendant is in default of acknowledgment of service. The claimant is therefore entitled to such judgment as it appears to the court that he is entitled to on his particulars of claim. The court does not investigate the merits of the claim beyond satisfying itself that the claim is made out on the basis of the facts pleaded in the particulars of claim.

13. Mr Hicks submits that it is not open to a defendant to seek to have the advantages of filing a defence when that person has made a conscious decision not to proceed in that way or to defend the claim in accordance with the requirements of the Civil Procedure Rules. Having elected not to acknowledge service or to file a defence, the defendant has to take the consequences of that course of action. The points raised in the four-page document produced by Cobra are not open to the defendant because the defendant has chosen not to acknowledge service or to file any defence. I am satisfied that the claimant is entitled to a default judgment.

14. I have been taken through the terms of the order sought by Mr Hicks by reference to his skeleton argument, which addresses the various paragraphs. Paragraphs 1 and 2 contain the usual form of injunction in any claim for infringement of literary copyright. The defendant must not infringe the copyright which subsists in the White Paper in the United Kingdom, whether by making it available for download from the Bitcoin.org website or in any other way.

15. The claim form and particulars of claim sought, at Dr Wright's election, either an enquiry as to damages or an account of profits. Dr Wright has elected for an enquiry as to damages. Dr Wright is entitled to that relief on the basis of his particulars of claim. He will have an order in the terms of paragraphs 3 through to 5 of the draft.

16. Paragraphs 6 to 8 seek an order for the dissemination and publication of this order. The claimant asks that the defendant should cause a notice to be published on the Bitcoin.org website making it clear that today the High Court has made an order between Dr Wright and the person or persons responsible for the publication of the website whereby such person or persons were restrained from infringing Dr Wright's copyright in the Bitcoin White Paper. The defendant should make it clear that the claim was not defended and that judgment was entered in default. It should contain a link to a copy of the order. The

defendant must cause a copy of the order to be made available for download from the website at the link identified in the notice whilst the notice remains published on the website. Paragraph 8 sets out details of the form of publication of the notice, and provides that it should be published forthwith, and in any event no later than 21 days from the date of this order, and should remain published for a period of no less than six months from the date of first publication.

17. Mr Hicks supports that order by referring me to paragraph 26.2 of the Practice Direction supplementing CPR 63. Paragraph 26.2 provides that where the court finds that an intellectual property right has been infringed, the court may, at the request of the applicant, order appropriate measures for the dissemination and publication of the judgment to be taken at the expense of the infringer. Mr Hicks points out that that provision was introduced in order to implement article 15 of the Intellectual Property Enforcement Directive of April 2004, relating to the publication of judicial decisions. Recital 27 to that directive provides that to act as a supplementary deterrent to future infringers, and to contribute to the awareness of the public at large, it is useful to publicize decisions in intellectual property infringement cases.

18. Mr Hicks has drawn my attention to the judgment of the Court of Appeal, delivered by Sir Robin Jacob, in *Samsung Electronics UK Limited v Apple Incorporated* [2012] EWCA Civ 1339, reported at [2013] FSR 9, where, at paragraph 69, it was indicated, albeit obiter, that publicity orders should normally be made only where they serve one of the two purposes indicated in recital 27.

19. I am satisfied, on the evidence, that both of the purposes identified in recital 27 are engaged in the present case. It would be appropriate to require publication as a deterrent to future infringers, and also to contribute to the awareness of the public at large. As I have said, the form of notice will make it clear that this was a default judgment.

20. Mr Hicks has addressed me on the appropriate length of publication. He has taken me to one authority where a notice was directed to remain on the defendant's website for 12 months; to two other cases where a six-month period was adopted; and to the fact that in the *Samsung* case itself, publication of a ruling was directed for one month, although that

was a no-infringement case. I am satisfied in the present case that six months is an appropriate period.

21. The order then falls to address the costs of the proceedings, and of the two applications, the first to Mann J and the second to me. Mr Hicks sought a summary assessment of the costs of those two applications and a detailed assessment of the remainder of the costs of this litigation. The costs of the application for service out and by alternative means amount to some £75,000 (including VAT) and the costs of this application for judgment in default total some £28,000 (inclusive of VAT).

22. I find those sums staggering. Since there has to be a detailed assessment in any event, I am not prepared to undertake a summary assessment of any element of the costs. Since the claimant has been the successful party he is entitled to recover his costs, including the costs that were reserved by the order of Mann J; but those costs should, in the exercise of my discretion, all be the subject of a detailed assessment. On that basis, Mr Hicks invites the court to order an interim payment on account of costs. CPR 44.2 (8) provides that where the court orders a party to pay costs subject to a detailed assessment, it will order that party to pay a reasonable sum on account of costs unless there is good reason not to do so. I can identify no good reason in the present case. I will therefore order an interim payment on account. As I have said, I find the level of costs staggering. In part, no doubt, it is contributed to by the number of fee-earners involved in this case on behalf of the claimant. I note that a number of them are attending this hearing and also attended the hearing before Mann J.

23. When making an order for a payment on account of costs, I should not order more than the minimum that I consider is likely to be recovered on a detailed assessment. On that basis, I propose to order interim payments on account, inclusive of VAT, in the sums of £25,000 for the hearing before Mann J and of £10,000 for this hearing, making £35,000 (inclusive of VAT) in total. That, I think, addresses all the matters I need to address, and therefore concludes this extemporary judgment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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