



JUDICIARY OF
ENGLAND AND WALES

In the Newcastle upon Tyne Crown Court

Indictment No. T2009 7188

14 August 2012

Sentencing Remarks of His Honour Judge John Evans

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-v-

Anton Benjamin Vickerman

Anton Vickerman you are 38 years of age. I now have to sentence you for the two offences of conspiracy to defraud of which you were convicted by a jury at the conclusion of the trial held earlier this year and which lasted over 7 weeks. The conspiracies spanned the periods February 2007 to November 2009

You were the creator of a web site Surf the Channel (STC) which you set up and operated from your home in Gateshead. In brief your web site was designed to make available to the general public films, television programmes and popular music which they could stream or if they chose to, download to their computers. The vast majority of the material made available through that web site, infringed copyright. The trial was not concerned with the music made available in this way rather it concentrated on copyright infringement of television programmes and films. Much of the evidence in the case centred on the way in which the website enabled the public, entirely free of charge to watch mainstream films, in some relatively few cases before the film had received its theatrical release in this country and in many cases within hours or days after that release. By way of example only Indiana Jones and the Kingdom of the Crystal Skull received its theatrical release in the UK on the 22nd May 2008. Within 24 hrs, as many members of the public were filing into the cinemas in their thousands, paying at the box office, people accessing STC could stream the film to their own computers enabling them to watch it or to download it for free. A month later, on the 26th June 2008 the Chronicles of Narnia, Prince Caspian, another

highly popular film particularly with children was given its theatrical release. Those who chose to go the STC web site in this country could watch the film for free, four weeks earlier on the 23rd May, when it was possible to download or stream the film to their computers through STC.

Your employment history included acting as a DJ, first here in England and then in Tenerife. When you returned to this country in 2001 with your wife Kelly, you worked with BT first as an engineer and then as a trainer. The development of problems in your back, which has left you with a degree of disability and the time which you found on your hands as a result, seems to have encouraged your growing interest in the internet, internet forums and the possibilities which those communities presented. It became as you yourself described it during the trial, a passion. Over the years that followed and up till 2007, you were involved with a number of web sites the technology behind which I am perfectly satisfied was later used to effect in the creation promotion and operation of STC. Supernova, SFD Hostings , Snarf It, Torrent Rat and Newzmonster were all sites with which you were linked all of which in one way or another using the technology available were operating in a way which infringed copyright. Having said that I make it clear that your involvement with those organisations does not in any way impact upon my approach to what is the appropriate sentence, it is merely part of the history which led to the creation of STC. Much of the trial concentrated on the variety of ways in which it was possible to obtain copyright material, also upon the variety of sources. In some case this was achieved by gaining access to screeners, copies of films put out in advance of theatrical release by the industry and made available to limited members of the industry but which unhappily would find their way into the public domain and illegally so. Torrent sites, NBZ files and peer to peer networks were the stuff on which STC was largely based.

STC you said was your answer to the absence of a search engine providing users of the world wide web with a convenient and easy means of searching for particular videos of films or TV programmes. Apart from Google and You Tube there was little else. Another company, TV Links had already engaged in a similar operation but you believed you could do better. You pressed on knowing that TV Links had been taken down following the intervention of FACT on the basis that what it had been doing was unlawful. The demise of that enterprise you say prompted an acceleration through 2007 of STC and the posting on STC of a first link to a movie on Christmas Day 2007. The site grew rapidly with the assistance of the various volunteers that you recruited to help with the operation of the site; the link hunters that you relied on to locate the film files on 3rd party sites often Chinese sites and then posting links to those sites on STC and in some cases locating the film files themselves and upload those files to the Chinese sites or

third party sites beyond the jurisdiction and then posting links to those same films on STC. In conducting the web site in this manner you believed you could do so with impunity believing that you could make the films available to the users of your own site but remain immune from prosecution; the moderators whose task it was to check the links to verify that the links would enable users to access the films in a version that was comprehensible in an English form. You engaged a whole raft of assistants whose task was to provide the means by which within months of its launch the site became one of the most popular sites on the worldwide web. You maintained at the trial that your primary focus was never films but rather it was TV material. That protestation I totally reject. It was evident to me that your primary concern was mainstream films. That it was your main concern was evidenced by Brendan de Beasi and Pascal Hertscholtz at the meeting you had with him in July 2008. When cross examined about why it was that you thought so many people were watching the films that were being posted through the STC site, you said that it never crossed your mind that it might be because they were recently released films. That answer suggested a naivety on your part that I completely discount.

The chat logs, the emails, the forum messages passing between yourself and the various people that worked for you establish in my judgement quite clearly that contrary to your assertion that you believed what you were doing was lawful, you knew fine well that it was not. You were plainly aware that the way in which you operated the site was one in which you were going to attract the attention of FACT and the MPAA and although you chose to cast their interest as that of jealous competitors, the reality was that they could see that you were deliberately acting in a way which was contrary to the interests of their membership, making available films in a manner that compromised their absolute entitlement to exploit their products to the full and in the way that they as the owners of the material chose. You question that entitlement. Given that you were not contributing a penny to their investment merely exploiting it for your own personal gain, it's difficult to comprehend how you believed you were entitled to act as you did.

By April 2008 you had 40,000 links on STC of which 2000 links were to movies. By August the following year the links had grown to 2m of which in March 2009 there were in excess of 5500+ links created to movies where copyright was being infringed.

When it was suggested in cross examination that it was obvious that the films that you were posting links to were to links to recent films and that you were helping people to link to copyright infringing films, you insisted that you couldn't know if it was infringing copyright, that the studios might have granted right holder licences to the films of which you had no

knowledge. That was certainly true and bound to be true if you didn't bother to check with the copyright owners and check you most certainly didn't.

Why did STC become so popular. Why of the millions of web sites out there on the worldwide web did STC rise to become the 514th most popular site out of hundreds of millions of websites which exist. The answer is obvious because it was enabling access to material that millions of users wanted, that for the most part they could not access elsewhere or at least could not access as easily as they could at STC in an area where competition was limited, because it was unlawful. By this means you were able to present STC as a very attractive proposition for advertisers who were unquestionably more than willing to enter contracts for the deployment of their advertisements on STC knowing that the adverts would reach huge audiences logging on to the site.

In all of this you were anxious as far as possible to keep both your location and your own personal identity secret. You figured that by doing so the task of tracking you down and policing your operation would be the more difficult. You hoped that by registering the domain name remotely and setting up servers outside the UK that you would be both difficult to trace and be able thereby to escape the legislative regime that you knew you were offending. That you knew that what you were doing was unlawful was all too evident from the e mails that you exchanged with de Beasi, in which you communicated to him albeit in short form, the advice that you were receiving from the various lawyers that you sought advice from. It may be that some of the advice you received was inconsistent but you were plainly being warned about the fact that STC was operating contrary to law and of the consequences of continuing that operation. Your response was to try with the help of de Beasi and your work force to present STC in a manner which while still providing the main service that users of the site wanted, namely access to newly released films, the site took on the appearance of trying to operate within the law; flooding the site with "legals" links to material that came from rights holder sites. proclaiming that STC had a policy of compliance with take down notices, when in fact what you were doing was engaging in a game of cat and mouse with the industry, posting links to films that you knew fine well infringed copyright and then putting barriers in the way of the copyright holders in their efforts to get you to take down the material, and in any event only after much of the damage had been done. As we saw in the trial some of the most popular films like "Harold and Kumar go to Guantanamo Bay" were watched by hundreds of thousands of people within hours of its posting on STC.

When FACT eventually tracked you down in July 2008 and then descended on your home in August they seized your computers. Your arrest and the interviews that followed did not act as any kind of warning about the criminal activity in which you were engaged or as any sort of barrier to the continued operation of STC. With an arrogance of a kind that you displayed repeatedly during your evidence at the trial you carried on as before and indeed only shut down STC, days before this trial began in May. It was as if by maintaining the site you were able to persuade yourself that you were doing nothing wrong. You refused then and continue to refuse to recognise and by your demeanour in the dock now it is obvious that you refuse to accept that you were doing anything improper. The investigation was unquestionably hampered by your inability or as I believe it to be, your unwillingness to disclose the password to your computer which would have allowed for a much swifter and doubtless very much easier interrogation of it. You claimed that you were unable to recall the password without access to a key board. That I do not accept. You demonstrated in the trial that you are an intelligent man whose power of recall of minute details of the investigation and the operation of the site, illustrated the absurdity of the suggestion that you needed access to a keyboard in order to recall the password. In my judgement you were deliberately obstructing the investigation. It was some time before the investigation team and doubtless at considerable expense were able to unlock the encryption. Released on bail within hours you had secured a new computer and carried on exactly as before even as these proceedings commenced, right up to the very eve of the trial. .

This case has a very unhappy history of delay. Applications to dismiss, applications for additional disclosure, applications to the DPP inviting the DPP to take over the prosecution for want of bona fides on the part of the prosecutors, applications to stay the indictment as an abuse of the process meant that the case instead of being tried in October 2010 was put back again and again, and for over a year. When the case was listed for the third time in November last year, once more it had to be vacated on account of the fact that you had travelled to Majorca, from where on account of your medical condition, you were unable to return for trial. Thus it was in May of this year nearly 4 years after you had been arrested, that the case came to be tried. I do not add to your sentence for the various delays that have occurred in this case, because you were entitled to make the various applications that have been made that have occasioned this delay, but neither do I discount the sentence to reflect the fact that the court is now passing sentence such a long time after the commission of many of the events which gave rise to your prosecution. If you have experienced additional stress during that time, much of it is entirely of your own making.

In determining the appropriate sentence I have to make an assessment of the loss to the film industry resulting from your conduct. That is an all but impossible task. The Prosecution estimate the loss at running into hundreds of millions of pounds. That estimate is based on the loss of revenue from STC's provision of the means to access the top 50 films during the period covered by the indictment. It is put at between £52 and £198 million. Those figures are based on their research suggesting that 55% of those who accessed the films for free would, had they been unable to watch them for free, have paid either through the box office to watch the film or rented a DVD. Others would have purchased the film on the High Street and others would have viewed it on pay TV or downloaded it from an official site. In reality it is somewhat speculative very difficult to calculate the loss to the industry but that pirating films in the way that you did, does expose the industry to the likelihood of huge losses. I accept that any assessment of the loss to the industry is highly speculative and while I do not deal with you on the basis of the figures advanced by the prosecution, there is no doubt in my judgement but that the industry has suffered a loss running into millions. That is one of the reasons why these cases attract indeed demand deterrent sentences as the various authorities that I have been provided with amply demonstrate.

Leaving aside the loss to the industry I am bound to take account of the gain which you personally made from running STC. I have not seen statements from the bank account that you had in Latvia but I have seen certified accounts and draft accounts for the business which provide some insight into how much the business generated from advertising. In the two years 2009 though to 2011 it produced a profit of £250,000 from a turnover of just under £1m, although it is said to have dropped rapidly thereafter, doubtless as the efforts of FACT and the MPAA to thwart the operation of STC began to take effect. In July 2008 the income from advertising was averaging between £10k and £15k and in mid 2009 between £50k and £60k albeit that was said to be a freak month. Your expenditure was limited because most of those with whom you conspired, worked for nothing or in the case of Brendan de Beasi comparatively little. These figures however demonstrate the potential for personal exploitation of a product in respect of which you made no contribution whatsoever.

Pirating of films in this way plainly has a huge impact upon the film industry.

If the producers are unable to exploit the product in which they have invested, then almost certainly the film will not make a profit. Whether made by the major film studios or the smaller production companies, if films fail to make a profit or at the very least break even, then the incentive to produce films diminishes and with it goes what has been a major source of

entertainment to millions world wide for over a century. In the course of the trial we heard from at least one Vice President of the major film studios who said that as a result of piracy she already senses that there are many less block buster movies being produced as their studios, as the studio looks to avoid losses which undermine the industry. There may be those who commiserate with you, those who have accessed films for free and wish they were still able to. The reality is that fraud of this kind impacts upon everyone. It's not just the directors, the producers, the script writers, special effects, musicians, stuntmen, who may be well remunerated, who are affected by piracy but also everyone of those persons whose titles come up on the closing credits of most films like the key grip or the main gaffer or the best boy. It's not just the film makers whose interests are represented here but all of those other interests that are encompassed within the film industry, the cinemas and all the service industries, high street shops, film rental companies and the like, the livelihood of whose employees depend on the industry surviving. Also affected are the end users, the general public. If films are unable to make a profit the producers won't bother and the industry which we all to a greater or lesser extent reap the benefit of in terms of the entertainment it provides, will first increase the box office prices as they endeavour to counter the lost revenue from piracy and ultimately may choose to stop making films altogether. So we are talking about millions of people here whose lives are prejudiced by this unlawful activity.

A further consideration is the loss occasioned by this unlawful activity to HM Customs and Revenue. The industry contributes significant corporation tax to the Treasury and all those individuals whose incomes derive from and are dependent on the industry prospering, also contribute substantially in tax.

You demonstrate a complete absence of remorse. In the trial you levelled criticism of virtually everyone involved in this investigation. You would not countenance and it's evident from your demeanour now, that you still do not countenance the idea that you were doing anything wrong. I'm bound to say that in all the years I've worked in this court I have never encountered arrogance of the kind that you displayed during the trial. Once again while I do not add to the sentence I impose for these offences to reflect your absence of remorse, neither does it not allow me to reduce the sentence. At the end of the day the only mitigation that you have is the fact that you were until your involvement in these offences a man of good character. Given your intellect you could have employed it in a lawful way and doubtless to considerable effect. You chose to deploy it illegally and for that you must now pay the penalty. You say that you have lost much already; your marriage which may not have been enhanced by these proceedings but which you

by your conduct brought about. Your wife gave evidence in the trial and the jury may well have accepted this, that had you told her what you were doing shared it with her, she would have done her best to stop you because she realised even with her limited understanding of the nature of STC that what you were doing was wrong. It was an obsession with the popularity of your web site and the money it generated that seems to have been the major factor in the breakdown and that ultimately caused the break up of your marriage as more and more you were pre-occupied with STC and neglected her. As for your financial difficulties well once again you are the author of your own misfortune and that attracts little sympathy.

I accept that in terms of culpability, this may not be the worst form of conspiracy to defraud, there are much worse forms that one can contemplate but that you engaged in deliberate dishonesty is what the jury found and I cannot regard your conduct as attracting only the minimal condemnation that Mr Wallbank invites. I have to have regard to the various authorities that have been put before me albeit none of them are on all fours with this case. Comparisons with the music industry I find unhelpful. Music is a very different commodity to film.

I have to strike a balance here recognising as I do that a very long sentence is no more likely to impact upon you than a shorter one. On the other hand those who are inclined to conduct themselves as you have need to understand that in doing so they put themselves at risk of serving a lengthy prison sentence. The sentence is one of four years imprisonment on each count to be served concurrently.

In addition and having regard to the way in which you conducted yourself as a director of the company Scopelight Ltd, which you utilised to give effect to this business, I'm satisfied that it is appropriate to disqualify you from holding the office of a director or from acting as the receiver of a company's property or in any way either directly or indirectly being concerned or taking part in the promotion formation or management of a company without leave of this court or having regard to your expressed intention to become a lawyer from acting as an insolvency practitioner for a period of 5 years.