



To Seize or Not to Seize - Intellectual Property Seizure to Satisfy Judgment Debts

November 5, 2010 by [Bob Tarantino](#)

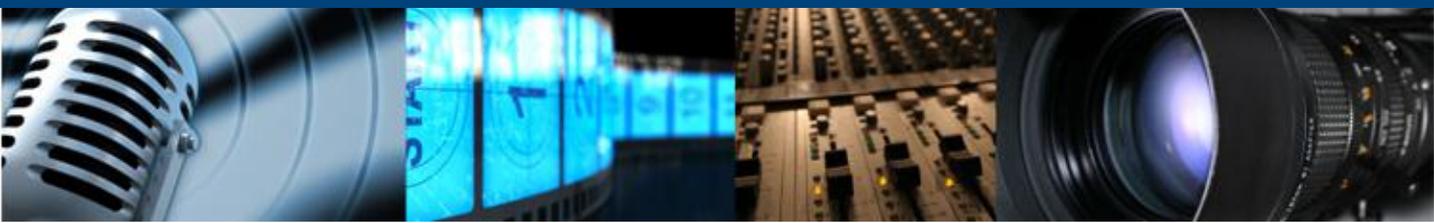
[The following post was written by Heenan Blaikie articling student Michael Shedletsky - I'd like to thank him for contributing to the Signal.]

Over twenty years ago, the Supreme Court of Ontario held in *Planet Earth Productions Inc. v. Rowlands* 73 O.R. (2d) 505 that photographic negatives and the copyright therein could be seized from the owner to satisfy a judgment debt. The Court stated that the negatives were worthless without the accompanying copyright to them. The decision relied on copyright falling under the definition of 'choses in action' used in section 19(2) of Ontario's *Execution Act (RSO 1980, c. 146)*, and under the ambit of rights to chattels in section 18. Rights to chattels included, "any interest in or in respect of any goods, chattels or personal property... of the execution debtor". At the time, the *Execution Act*, under section 17, only explicitly permitted the seizure of *patents* as personal property.

Shortly after the decision in *Planet Earth*, Professor David Vaver wrote a lengthy paper on the decision "Can Intellectual Property be Taken to Satisfy a Judgment Debt?" ((1991) 6 *Banking & Finance Law Review* 255). His view was that intellectual property should not be subject to sheriff's seizure in Canada unless express statutory language permitted such seizure. Although it took over twenty years, the Saskatchewan Court of Queen's Bench in *Wira v. Jubilee Enterprises Ltd* (2010 SKQB 320) recently held that both trademarks and copyrights were not available for seizure by a judgment creditor. In the case, the Sheriff seized copyrights and trademarks registered in the name of the judgment debtor in regards to a board game named "Dare to Dream" as a result of a writ of execution in favour of the judgment creditor. The judge held that the copyrights and trademarks could not be seized because they were not choses in action and the Sheriff was ordered to return the intellectual property associated with the board game. However, even the judge in the *Wira* decision was of the view that his decision will be short-lived.

The Saskatchewan *Enforcement of Money Judgments Act, S.S. 2010, c. E-9.22* received royal assent on May 20, 2010, but has not been proclaimed into force as of October 29, 2010. The EMJA permits the sheriff to seize intellectual property to satisfy judgment debts. According to section 2(1)(z) of the EMJA, "intellectual property" includes any property right or interest in: a copyright; letters patent for an invention; a trade mark; an industrial design; integrated circuit topography; plant breeder's rights; and a transferable licence, interest or right derived from or associated with any of the intellectual property mentioned in subclause (i) to (vi); whether the property right or interest arise or was recognized under the law of Canada or the law of any other country.

In Ontario, the *Execution Act* still does not cover the seizure of intellectual property other than patents. However, the *Planet Earth* decision is precedent for the seizure of copyrights. Perhaps Ontario and other provinces will amend their execution statutes to follow the *Planet Earth* decision and Saskatchewan's EMJA by permitting all forms of intellectual property to be seized to satisfy judgment debts.



It is only a matter of time before the sheriff attempts to seize copyrights or trademarks in Ontario again. Maybe then the legislators will revisit this issue, and give it further consideration. For additional background, please see this [IPilogue post on the topic](#).

The articles and comments contained in this publication provide general information only. They should not be regarded or relied upon as legal advice or opinions. © Heenan Blaikie LLP.