

From bytes to bank: Can your IP address secure a loan?

By **Nic Le Breuille**, senior associate at Viberts



A RECENT judgment of the High Court of England and Wales considered how security might be taken over internet protocol addresses.

An IP address is a device's online passport, allowing the device to send and receive data. We thought it would be interesting to consider what the situation would have been if the case had come before the Jersey courts.

English case summary

UKCloud Ltd had granted security to one of its creditors by way of a debenture over the company's assets (including IP addresses worth £700,000). When UKCloud became insolvent and defaulted on its loan, the secured creditor sought to enforce its rights under the debenture.

In England, debentures can create either a fixed charge or a floating charge over an asset. A typical debenture will create a fixed charge over specific assets (eg company machinery) and a floating charge over pools of changing assets (eg company inventory). When

enforced, floating charges crystallise and become a fixed charge over the pool of assets as at the default date.

The question was what type of charge applied to the IP addresses?

The judge considered two key points:

1. Whether the characteristics of the IP addresses were such that they were probably subject to a floating charge. The judge found this point to be inconclusive.
2. Whether the lender exercised control over the IP addresses, since the ability of a secured party to take control of an asset is a feature of fixed charges. Since the lender did not utilise control, the judge found that the charge was a floating charge rather than a fixed charge.

Application to Jersey law

As Jersey does not have the concept of floating charges, how could IP addresses be secured here?

In Jersey, IP addresses are deemed movable property (eg bank accounts, cars, jewellery) as opposed to immovable property (eg a house). There are two ways in which you can secure movable property dependent on whether it is tangible or intangible.

Tangible movable property (like a car) can have security taken over it by way of pledge under customary law. This is when the lender takes physical possession of the asset until the loan is repaid.

An intangible movable asset (like an IP address) can, instead, be secured under the Security Interests (Jersey) Law 2012. The SJL allows for security to be taken over a pool of future intangible assets, thus allowing security to be taken in a way which mimics elements of an English floating charge.

The analysis shows that even though Jersey and England are separate and distinct jurisdictions with very different laws, both are decently equipped to deal with complex security matters.



We make it our business to know your business

We understand the opportunities and challenges for Jersey businesses in today's fast-moving world.

Our corporate team are locally focussed, commercially aware and provide clear, pragmatic and top quality legal advice in a friendly and cost-effective manner.

If you have any questions on how we can support your business, please get in touch.

VIBERTS

Corporate Law

Contact our experts: 01534 632255
corporate@viberts.com | www.viberts.com