[ES] Telegram's future in Spain in doubt after lawsuit filed by dominant Spanish audiovisual groups

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In a decision dated 22 March 2024, the judge of the Spanish National Court, Santiago Pedraz, ordered the blocking of Telegram in Spain. This decision followed a lawsuit filed a few months previously by various dominant Spanish audiovisual groups, such as Atresmedia, Mediaset and Movistar Plus. The latter claim that the instant messaging service hosts and enables the distribution of pirated audiovisual content via the platform.

The decision was made after Telegram failed to respond to several requests for information from the judge. In the order, the judge argued that it was a necessary, appropriate and proportionate measure to which there was no alternative. Judge Pedraz explained that last July, the Spanish National Court had asked the authorities of the Virgin Islands – where Telegram is based – for help in obtaining technical data to identify the users who had committed the infringements. However, there was no cooperation and this information never arrived, so the investigation could not proceed while the acts of piracy continued.

In this context, Judge Pedraz decided to order the Spanish telecom providers to block Telegram in the country as part of proceedings for continued infringement of intellectual property rights. Pedraz explained that the measure has legal support in the Spanish Criminal Procedure Law which establishes that in the investigation of criminal offences committed via a communication technology, the court may, as a first step, decide to provisionally suspend the services offering the content. However, the order did not mention the possible harm that this decision could cause to the users of the platform, estimated at 8.5 million, which corresponds to around 18% of the Spanish population.

Without any legal requirement being imposed on the telecommunications companies, social reactions in the country were not long in coming and the measure was widely criticised as disproportionate for failing to differentiate between those who make legitimate use of the platform and those who promote illegal downloading. FACUA, one of the main consumer associations in Spain, pointed out the potential damage that the court decision will cause to users, as well as to the companies, organisations and entities that legally distribute content through Telegram. The President of the General Council of Professional Associations of Computer Engineering of Spain (*Consejo General de Colegios Profesionales de Ingeniería Informática de España*) also warned of the

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unprecedented nature of the event. Even some political representatives commented on the matter. For example, the lawyer of the Pirates of Catalonia party (*Pirates de Cataluña*) announced that they would take the suspension to the Court of Justice of the European Union.

Following the uproar, Judge Pedraz decided on 25 March 2024 not to proceed with the suspension. In his own words, after the publication of the suspension agreement, a well-known fact has come to light that this judge cannot ignore, namely its possible impact on multiple users. It was then that he asked the General Information Office of the National Police (*Comisaría General de Información de la Policía Nacional*) for a report on the nature of Telegram and the possible effects of the suspension imposed in order to assess whether the measure was proportionate or not.

After receiving the report, the judge concluded that blocking Telegram would clearly harm the users of the platform, recognising that the vast majority of them have no connection to illegal activities. He also recognised that the suspension would prevent some of them from carrying out their professional work. In this sense, Judge Pedraz states that the police report emphasises the negative economic impact on Spanish companies. In addition, the judge recognises that the measure is not ideal, as users can use proxies and VPNs that allow them to hide the real location of their devices and pretend that the request to access the service comes from outside Spain. In this way they can "access Telegram and continue to consume or publish such content".

All in all, the future of Telegram in Spain is up in the air while the investigation is still ongoing. This is not the first case in which Telegram has been identified as a platform through which new avenues for copyright infringement can be created. For example, there were complaints in Italy, it was removed from the App Store in 2018 due to a case of child pornography (IRIS 2020-6:1/15), and it was blocked in Brazil for not cooperating in an investigation against neo-Nazi groups.

El juez Pedraz ordena bloquear Telegram de forma cautelar a raíz de una denuncia de Mediaset, Atresmedia y Movistar Plus

https://elpais.com/tecnologia/2024-03-22/el-juez-pedraz-ordena-bloquear-telegram-de-forma-cautelar-a-raiz-de-una-denuncia-de-mediaset-atresmedia-y-movistar-plus.html

Judge Pedraz orders Telegram to be blocked as a precautionary measure following a complaint by Mediaset, Atresmedia and Movistar Plus

FACUA considera desproporcionado el bloqueo cautelar de Telegram por alojar sin permiso contenidos protegidos por derechos de autor

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https://facua.org/noticias/audiencia-nacional-ordena-bloqueo-telegram/

FACUA considers the precautionary blocking of Telegram for hosting copyrighted content without permission disproportionate

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