[FR] Access Providers Obliged for the First Time to Filter Access to a Racist Site

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On 13 June, the senior assistant presiding judge of the regional court in Paris delivered a particularly high-profile order in an urgent matter which, for the first time, required Internet access providers (IAPs) to prevent access from France to a site with anti-Semitic and revisionist content. In previous cases involving similar disputes as urgent matters, the courts had refused to order filtering of this kind, invoking the principle of neutrality incumbent on the IAPs.

On 8 March, eight anti-racist associations had embarked on an urgent procedure before the courts against the providers hosting the disputed site, all of them American; the providers neither appeared at the hearing nor revealed the name of the site's editor (orders in urgent matters delivered on 25 March and 20 April 2005). The applicant associations then decided to turn to the access providers, a possibility provided by Article 6-I-8 of the Act of 21 June 2004 on confidence in the digital economy. This authorises the courts to issue an order under an urgent procedure requiring access providers to put a stop to damage if applicants are not able to obtain this from the host providers.

Before making his decision, the judge was careful to consider specifically if there were an objective possibility of taking effective action against the site's hosts. On this point he noted that the applicant associations had from the start of proceedings emphasised that there was a risk of not being able to implement the measure requested as the other parties carry out their activity in the United States. The defendant access providers claimed no injunction could be made against them as they believed the means of action directed against the host providers had not been exhausted, an argument that the judge qualified as "unreasonable and out of proportion". The access providers also claimed that the measure ordered by the judge dealing with the case as an urgent matter (namely, filtering access to the site) should abide by the principle of proportionality and be stated in detail, whereas there was only a limited number of possible methods for preventing access to the site. Some even asserted that there were no techniques available for achieving this. The court, however, felt that technology had moved on since the Act of 21 June 2004 had been adopted; although a study pointed out the disadvantages inherent in any particular method that might be adopted, these could not be held to be insuperable. Nor did the court agree with the defendants that there was a risk of the site's successive removals to "digital havens". In the end, noting the "exhaustion" of the possible means of redress against the host

providers and/or the authors of the disputed site, the judge in the urgent proceedings therefore ordered the access providers to implement "every measure" capable of interrupting access to the content of the site in question from France, without any obligation regarding result or monetary penalty for failure to perform. Each of them will have to provide justification to the applicant parties, within a period of ten days of the decision being announced, of the arrangements actually implemented. Although a number of the access providers denounced the decision, claiming that filtering measures could easily be circumvented, other commentators feel that the judge has been careful to not remove responsibility from content authors by respecting "a principle of subsidiarity according to which each service provider could be held responsible to some degree".