[NL] Court Orders The Pirate Bay to Make its Website Inaccessible to Dutch Internet Users

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On 30 July 2009, the Amsterdam District Court sentenced The Pirate Bay by means of a default judgment to make its websites inaccessible to Internet users in the Netherlands, because The Pirate Bay was found to infringe the intellectual property rights of Dutch rightsholders, represented by the *Bescherming Rechten Entertainment Industrie Nederland* ((Protection Rights Entertainment Industry Netherlands - BREIN).

The Pirate Bay is a website registered in Sweden on which BitTorrents are provided. These torrents enable the exchange of files between computers that are connected to the Internet and which are in direct contact with each other (the peer-to-peer protocol). According to the BREIN, The Pirate Bay enables users to download copyright-protected materials from the computers of other users and, as such, makes copyright-protected material available to the public within the meaning of Art. 1 para. j 12 of the Dutch Copyright Act and Article 2.1 para. d-j, Art. 6.1 para. c and Art. 7a.1 para. c of the Dutch Neighbouring Rights Act. The Pirate Bay thus offers services in the capacity of an intermediary within the meaning of Article 26d of the Dutch Copyright Act and Article 15e of the Dutch Neighbouring Rights Act. By doing so, The Pirate Bay infringes the intellectual property rights of the rightsholders represented by BREIN.

As The Pirate Bay is not a legal entity, but a group practice of the three defendants who live in Sweden, BREIN served a summons to all three of them in person. The defendants did not appear before the Dutch judge. Subsequently, they notified the judge in writing that they were not informed about the meeting and submitted a written plea.

Although it was not firmly established that the services of the website meet the requirements of Article 7 of Council Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, the judge entered a judgment of default liability against the defendants, because BREIN had sufficiently guaranteed that the summons would reach its destination, which left the defendants sufficient time to prepare their defence.

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BREIN sent the summons by email to the defendants, by registered post to the lawyers who had represented the defendants in prior proceedings and to the address where the defendants lived, according to the Swedish register of birth. In addition, BREIN sent a link to the publication of the summons on the Internet via both Twitter and Facebook. This publication was visited by an Internet user with an IP address that is hosted by "Piratebyran". Finally, BREIN issued an international press release. The judge held the proposition of The Pirate Bay to be unlikely and thus did not take it into consideration.

The judge considered the demands of BREIN to be neither unlawful nor unfounded, sustained them and ordered The Pirate Bay to pay the costs. The judge ordered The Pirate Bay to desist and refrain from infringement in the Netherlands of the copyrights and neighbouring rights of the rightsholders represented by BREIN, including from the offering of services in the capacity of an intermediary within the meaning of Article 26d of the Dutch Copyright Act and Article 15e of the Dutch Neighbouring Rights Act, by making their websites and corresponding trackerservers and databases inaccessible for Internet users in the Netherlands, under a penalty of EUR 30,000 per day up to a maximum of EUR 3,000,000.

The Amsterdam District Court joined the case with another one involving BREIN against the Global Gaming Factory X AB (GGF), which did appear before the judge. GGF is an enterprise that had announced on 30 June 2009 its plan to buy out The Pirate Bay in August 2009 and turn it into a legal website. According to BREIN there is a chance that GGF will continue the infringements made by The Pirate Bay, because GGF has not entered into negotiations with BREIN on the question of how the website can be legalised. The claims of BREIN against GGF are identical to its claims against The Pirate Bay. According to GGF, BREIN has no interest in its claims, because GGF does not yet either own or operate the website and intends to legalise it. The judge rejected GGF's defence and accepted the claims of BREIN, but only starting from the moment at which GGF will have taken over The Pirate Bay. Each party was ordered to pay its own costs.

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http://www.rechtspraak.nl/ljn.asp?ljn=bj4298

Summary judgment of Decision of the Amsterdam District Court, 30 July 2009, LJN BJ4298, 428212 / KG ZA 09-1092

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