[NL] Amsterdam District Court Orders The Pirate Bay to Remove Torrents

IRIS 2010-1:1/32

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On 22 October 2009, the Amsterdam District Court ordered The Pirate Bay to remove a list of torrents that link to copyright-protected works in the Netherlands and to make these torrents on its websites inaccessible for Internet users in the Netherlands, on penalty of EUR 5,000 per day, the maximum possible fine being EUR 3,000,000.

The court annulled the default judgment it had issued on 30 July 2009 in the summary proceedings brought against The Pirate Bay by the Bescherming Rechten Entertainment Industrie Nederland (Protection Rights Entertainment Industry Netherlands - BREIN), the Dutch rightsholders' representative. In that case, the court had ruled that The Pirate Bay had to block access to all Dutch users, because The Pirate Bay infringed the intellectual property rights of the Dutch rightsholders, represented by BREIN (see IRIS 2009-9: 14). The Pirate Bay decided to appeal this judgment.

The court opined that it could not be determined that The Pirate Bay infringed the intellectual property rights of the Dutch rightsholders. The fact that The Pirate Bay enabled third parties to infringe intellectual property rights did not mean that The Pirate Bay made copyright-protected works available to the public in the sense of the 'Agreed statement' on Article 8 of the WIPO Copyright Treaty, that states: "It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention." According to the court, BREIN had not demonstrated that The Pirate Bay played any role in the exchange of files in a torrent, after a torrent had been downloaded, either by offering tracker facilities - in order to establish the connection between the computer of the uploader and the computer of the downloader - or by showing other activities that could be considered to be 'making available to the public'.

The court concluded that The Pirate Bay did act in an unlawful manner towards BREIN in the sense of Article 6:162 Dutch Civil Code. It relied on the findings of the Utrecht District Court in a previous case of BREIN against Mininova B.V. of 26 August 2009 (see IRIS 2009-9: 15) and concluded that, by offering torrents that enable the exchange of copyright-protected works, The Pirate Bay facilitates the structural linking to copyright-protected works, encourages infringements of

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intellectual property rights and exploits the popularity of the website and those infringements through advertisements and commercial activities on its website. According to the court, the activities of The Pirate Bay constitute more than mere 'caching' services of an Internet Service Provider in the sense of Article 6:196c of the Dutch Civil Code.

The court rejected the defense of The Pirate Bay according to which the website is owned by the Seychelles-based company Reservella. The court found that the defendants could neither name the current owners nor provide evidence that the website had been sold and held the defendants responsible for the website.

The court equally rejected the defense of The Pirate Bay that its activities were covered by Article 10 ECHR, which protects freedom of expression. According to the court, the prohibition on enabling the structural and continuous infringement of intellectual property rights on a large scale was a proportionate measure, despite interference with Article 10. The Pirate Bay was ordered to pay the costs.

LJN: BK1067, Rechtbank Amsterdam, 436360 / KG ZA 09-1809

http://www.rechtspraak.nl/ljn.asp?ljn=bk1067

Summary judgment of Decision of the Amsterdam District Court, 22 October 2009, LJN: BK1067, 436360 / KG ZA 09-1809

LJN: BJ4298, Rechtbank Amsterdam, 428212 / KG ZA 09-1092

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

LJN: BJ6008, Rechtbank Utrecht, 250077 / HA ZA 08-1124

http://www.rechtspraak.nl/ljn.asp?ljn=bj6008

Decision of the Utrecht District Court, 26 August 2009, LJN BJ6008, 250077 / HA ZA 08-1124

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