[GB] Court Requires ISP to Block Access to Site Providing Links to Pirated Movies

IRIS 2011-9:1/21

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On 28 July 2011, the English High Court ordered BT, the UK's largest internet service provider, to block access to a site which aggregates a large amount of illegally copied material found on Usenet discussion forums. BT has decided not to appeal the decision, which is likely to provide the basis for a number of other claims in the future. It also supplements the provisions in the Digital Economy Act 2010, which survived a recent legal challenge (see IRIS 2011-6/20).

The case was brought by six major film studios and production companies, all members of the Motion Picture Association of America ("the Studios") in order to block access to the "Newzbin2" website. It followed the earlier granting of an injunction against its predecessor site, "Newzbin1", to prevent it from continuing to breach the Studios's copyright. Newzbin then relocated outside the jurisdiction of the court and continued to offer the same website. Newzbin includes a facility for its members to reassemble files on Usenet forums into complete films in breach of copyright. The Studios argued that the only relief available to them was thus an order under s. 97A of the Copyright, Designs and Patents Act 1988 (which implemented the 2001 Information Society Directive) to require the site to be blocked. Blocking was to be effected through BT's "Cleanfeed" technology previously used to block access to websites featuring child sex abuse.

BT claimed that the court had no jurisdiction to issue the order for a number of reasons. First, it claimed that neither the users nor the operators of the website were using BT's service to infringe copyright. The court disagreed, as BT's services were being actively used for downloading by users. Secondly, BT claimed that it had no actual knowledge of the copyright infringement, as the Act required so that an order to be made. According to the court, actual knowledge of a particular transaction infringing copyright was not required; it was enough that BT knew in general terms of the large scale copyright infringement by Newzbin2. Thirdly, BT claimed that to grant the order would infringe Art. 12(1) of the E-Commerce Directive, as it was a "mere conduit" and so protected from liability. However, the court considered that the order could still be made under Art. 12(3) to terminate the infringement. BT also claimed to be protected by Art. 15(1) of the Directive, which prohibits the imposition of a general monitoring requirement on providers, but according to the court the order would not require such general monitoring. Finally, BT claimed that the order would infringe Art. 10 of the European Convention on Human Rights as it was not "prescribed by law". The

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Court considered that the order fell well within those grounds foreseeable on the basis of the statute and the Directive, and did not infringe Art. 10; nor was it disproportionate. The court thus granted the order in the form applied for by the Studios.

Twentieth Century Fox Film Corporation et al v British Telecommunications plc [2011] EWHC 1981 (Ch), 28 July 2011

http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/28_07_11_bt_newzbin_ruling.pdf

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