[NL] Court Orders ISPs to Block End-User Access to The Pirate Bay

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On 11 January 2012 the District Court of The Hague ordered two Dutch internet access providers to block access to The Pirate Bay. Furthermore, Stichting BREIN, a foundation protecting the interests of the Dutch copyright industry, has been granted a right to directly request the providers to block future IP-addresses and (sub) domain names that may refer to The Pirate Bay. The providers in question, Ziggo and XS4ALL, have already announced they will appeal the ruling. BREIN, on the other hand, has announced it will request similar measures from other providers.

The District Court found the legal basis for these orders in the Dutch implementations of Art. 11 of Directive 2004/48/EC (Enforcement Directive), Art. 8 (3) of Directive 2001/29/EC (Copyright Directive) and the recent European Court of Justice L'Oreal/eBay ruling (C-324-09), in which the ECJ held that injunctions against internet intermediaries may be aimed at preventing future copyright infringements. Earlier court proceedings in the Netherlands had been targeted at The Pirate Bay and ordered it to stop making infringing material available to the Dutch market. Since The Pirate Bay continued anyway, the Court found the BREIN injunctions legitimately aimed at the intermediaries in this particular case.

The District Court noted that it should exercise judicial restraint, as website blocking raises freedom of expression concerns as protected by Art. 10 ECHR. In assessing the proportionality and subsidiarity of website blocking by the two access providers, the District Court ruled that in this particular case the measure was justified. Along with the limited effect of earlier rulings, it based its proportionality test on evidence provided by BREIN. The Court held that a sufficient proportion of customers had been using The Pirate Bay to download several Dutch movies. Furthermore, the legal material provided by The Pirate Bay would be available through other websites, which limits the effect of blocking on free speech in this instance. Lastly, the Court found that DNS- and IP-blocking of one particular website does not entail active surveillance of the contents of all end-user internet traffic with the help of Deep Packet Inspection technologies, which the ECJ had ruled illegal in its recent Scarlet/Sabam ruling (C-70/10).

Just on 20 December 2011, a Parliamentary majority spoke out against blocking for copyright enforcement purposes in a resolution. The judges considered the initiatives by the Dutch legislature, but found it too early to let their decision be

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influenced by it. Therefore, it will be noteworthy to follow whether the legislature follows up on its initiative any time soon and to see whether it may impact upon the appeal by the providers.

Rechtbank 's-Gravenhage, 11 januari 2012, LJN: BV0549, Stichting BREIN tegen Ziggo B.V. & XS4All Internet B.V.

http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BV0549

District Court of the Hague, 11 January 2012, LJN: BV0549, Stichting BREIN v Ziggo B.V. & XS4All Internet B.V.

Tweede Kamer, 29 838 Auteursrechtbeleid, Nr. 35 Motie van het Lid Verhoeven

https://zoek.officielebekendmakingen.nl/kst-29838-35.html?zoekcriteria=%3fzkt%3dEenvoudig%26pst%3d%26vrt%3d29838%26zkd%3dInDeGeheleText%26dpr%3dAfgelopenDag%26sdt%3dDatumBrief%26ap%3d%26pnr%3d1%26rpp%3d10&resultIndex=8&sorttype=1&sortorder=4

Second Chamber, 29838, Copyright policy, Nr. 35, Motion by MP Verhoeven

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