[FI] ISP not Granted Leave to Appeal in The Pirate Bay Case

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On 29 October 2012, the Supreme Court of Finland did not grant the telecommunications and ICT service provider Elisa Corporation leave to appeal in the case concerning The Pirate Bay (TPB). In the aftermath of the Swedish TPB case, an interim injunction was sought against Elisa in May 2011. The Copyright Information and Anti-Piracy Center (CIAPC) filed the application on behalf of the Finnish National Group of International Federation of the Phonographic Industry (IFPI). The aim was to prevent the continuance of copyright infringements.

The application was based on Section 60c of the Finnish Copyright Act (404/1961): According to paragraph 1, a court may, in trying a case and upon request of a rightsholder, order an intermediary to discontinue the making available of allegedly copyright-infringing material to the public (injunction to discontinue). It is to be regarded reasonable in view of the rights of the alleged infringer, the intermediary, and the author. Paragraph 2 provides for the situation where legal action against the alleged infringer (ref. in §60b) is not yet taken. Then, a court may issue an interim injunction. It may be issued without hearing the alleged infringer if deemed necessary for the urgency of the case. The injunction remains in force until further notice. The alleged infringer shall be reserved an opportunity to be heard without delay and the court shall decide whether the injunction remains in force or is cancelled. (Para. 3) The injunction shall not prejudice the right of a third person to send and receive messages. It shall enter into force when the applicant provides the security to the execution officer. The interim injunction shall expire if a legal action has not been taken within one month from its issuing. (Para. 4)

On 26 October 2011, the Helsinki District Court ruled in favor of IFPI Finland. An interim injunction was issued and Elisa was obliged under the penalty of a fine (EUR 100,000) to remove TPB domains from its servers and to block access to IP-addresses used by TPB. The measures regarding subscriptions were taken in January 2012 following the enforcement order. Elisa appealed the ruling of the district court, but on 15 June 2012, the Helsinki Court of Appeal did not alter the decision. An interim injunction was found necessary in the view of the evidence on the effectiveness of legal measures and the accessibility of the alleged infringer. The court also stated that the interim injunction may become long term if the defendants in the main issue cannot be summoned. That however does not per se render it unlimited in duration. Elisa finally requested leave to appeal to the

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Supreme Court to obtain a judicial precedent, but it was not granted.

Helsingin käräjäoikeuden päätös, 26/10/2011, No 41552

https://aalien.kapsi.fi/elisa-ifpi/P%C3%A4%C3%A4t%C3%B6s%20H%2011_20937.pdf

Decision of the District Court of Helsinki, 26 October 2011, No 41552

Helsingin hovioikeuden päätös, 15/06/2012, No 1687

Decision of the Court of Appeal of Helsinki, 15 June 2012, No 1687

Korkeimman oikeuden päätös, 29/10/2012, No 2187

Decision of the Supreme Court, 29 October 2012, No 2187

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