[GB] High Court Orders Internet Service Providers to Block Access to File-Sharing Sites

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In its judgment of 28 February 2013, the High Court ordered six leading internet service providers (with a 94% market share of UK internet users) to block access to three peer-to-peer file-sharing websites called KAT, H33T and Fenopy. This follows earlier High Court decisions requiring blocking of other sites (see IRIS 2012-7/25 and IRIS 2011-9/21).

The case was brought by ten leading record companies on their own behalf and on that of other members of the recorded music trade associations. The three websites each operate a substantial profit-making business in file sharing, especially in music. Section 97A of the Copyright, Designs and Patents Act 1988, implementing the Information Society Directive, empowers the Court to issue an injunction against a service provider 'where that service provider has actual knowledge of another person using their service to infringe copyright'. The Court considered that users of the websites with accounts with the defendants had been engaged in sharing, and so making unlicensed copies of, recordings. This was occurring on a large scale. The material was also communicated to a new public and, although the companies were based outside the UK, the websites were targeted at the UK. The entire purpose of each website was to permit copying. Although statements were made on the sites that their teams were against piracy, these were unconvincing given the quantity of material made available that infringed copyright, their ineffective responses to requests to remove the content and steps they had taken to avoid enforcement measures. Both users and operators of the websites used the service providers' services to infringe copyright, and the providers were notified weekly of infringing activities, thereby showing actual knowledge; indeed, none of the providers denied having such knowledge.

The Court also considered that the orders would be proportionate through balancing the property rights of the claimants against the right to freedom of expression. In this case, the service providers had agreed to the orders and had not sought to resist them on the grounds that they would be unduly burdensome or costly; though they could be circumvented, they could still be justified if they only prevent access by a minority of users. Evidence suggested that such orders are reasonably effective. The orders were narrow and targeted, and were necessary and appropriate to protect intellectual property rights. This clearly outweighed the freedom of expression rights of users who can obtain the material

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from lawful sources, and of the site operators who were profiting from the infringements.

Emi Records and others v. British Sky Broadcasting Ltd and others, [2013] EWHC 379 (Ch)

http://www.bailii.org/ew/cases/EWHC/Ch/2013/379.html

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