[FR] Streaming Sites to Be Blocked and Dereferenced

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On 28 November 2013, the regional court in Paris ordered the five main Internet access providers (IAPs) in France to block access to sixteen streaming sites “in the Allostreaming galaxy” and four search engines to dereference them. The decision is the result of a wide-ranging legal offensive launched in 2011 by the main syndicates and associations of rightsholders in the audiovisual, cinema and video fields, acting on the basis of Article L. 336-2 of the Intellectual Property Code, instituted by the “HADOPI” Act of 12 June 2009, according to which “in the presence of an infringement of copyright or a related right caused by the content of an on-line service of communication to the public, the regional court, deliberating if necessary under the urgent procedure, may, at the request of the rightsholders (..) or professional defence bodies, order any measures aimed at preventing or halting such infringement of copyright or a related right in respect of any person who might contribute to remedying the situation”.

The judge began by noting that these sites operating in the Allostreaming network were breaking the law since they offered content that was exclusively, or very nearly so, dedicated to showing films or television series in the form of streaming without the authorisation of the rightsholders. The applicant organisations had also established the impact of illegal downloading and streaming on their professional activity in terms of the decreased volume of their turnover. The judgment also noted that the five IAPs at issue, representing more than 92% of French subscribers, made it possible for their subscribers to access the disputed sites, and that, in their capacity as intermediary within the meaning of Article 8.3 of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, they were in a position to contribute to remedying the infringements of copyright and related rights, since they had the possibility of preventing their subscribers accessing the content proposed on the sites at issue.

With regard to ways of implementing the blocking measures being requested, the court found that these “should only respond to what appeared to be necessary in order to preserve the rights at issue”. In this respect, the limit imposed on the freedom of speech of the operators of the sites at issue was justified by the need to implement effective means of combating the infringement of creators’ rights being committed by these sites. The rights of Internet users, for their part, were not being limited disproportionately since they were able to access the films and

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series at issue in a lawful manner. Nor could the principle of the IAPs' freedom to conduct a business be held up to oppose instituting the measures being called for. The judgment therefore ordered the IAPs to implement every suitable and effective measure in order to prevent access to the sites at issue from anywhere in France, including blocking the sites.

The court then examined the application for the dereferencing of the sites, directed at the four browsers at issue (Google, Microsoft, Yahoo! and Orange). It noted that they did indeed act in the capacity of intermediary within the meaning of the Directive, and that Article L. 336-2 of the Intellectual Property Code applied to them. Thus, by using algorithms to collect and index pages and domain names, they contributed to providing access to unlawful content - which technology was used to effect the unlawful access (downloading or streaming) was irrelevant. It was also noted that for their part the operators of the sites at issue had agreed to their sites being indexed, and had the possibility of removing themselves from the process, and could promote it. The court therefore allowed the applications to have the said sites dereferenced, leaving the browsers at liberty to decide which measures they considered suitable. These measures, and the blocking by the IAPs, must be applied within fifteen days of the date of notification of the decision, for a twelve-month period.

The applicant rightsholders, concerned that the sites at issue might circumvent the provisions of the judgment, for example by changing their domain names or by creating mirror sites, called on the judge to allow the main features of the judgment to evolve, using a tool to update the court's injunctions. The court found, however, that given the current state of the legislation, there was no way of checking the judgment was being complied with, either directly or through the intermediary of a public agent. Should the circumstances of the dispute evolve, the judge invited the applicant parties to refer the matter to the courts again, under the urgent procedure, to update the measures that had been ordered.

The judgment was welcomed by the professional organisations in the cinema industry, which stressed that the judgment "acknowledged that the proceedings to oblige the IAPs and the browsers to cooperate with the rightsholders were founded".

TGI de Paris, 28 novembre 2013 - Association des producteurs de cinéma, Syndicat de l'édition vidéo numérique et a. c. Yahoo, Bouygues Telecom, Free, Google et autres

Regional court in Paris, 28 November 2013 - Association of cinema producers, syndicate of digital video editors, and others v. Yahoo, Bouygues Telecom, Free, Google, and others

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