[FR] French IAPs ordered to block access to Pirate Bay sites

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After Allostreaming in November 2013 (see IRIS 2014-1/23), it is the turn of the Pirate Bay constellation to be blocked by order of the regional court in Paris.

SCPP, the company which collects and redistributes royalties for a catalogue covering more than 80% of the recognised rights held by the producers of phonograms, had produced proof that the Pirate Bay site was offering links to download phonograms in its repertoire. The phonograms at issue were both old and new and by artists of both French and other nationalities. Having had no success in asking the said site to delete the links at issue, SCPP had most of the French Internet access providers (IAPs) (Orange, Free and Bouygues, which together represent 90% of Internet users) summoned to appear in court under the urgent procedure on the basis of Article L. 336-2 of the Code de la Propriété Intellectuelle (Intellectual Property Code - CPI), calling on them to implement every possible means of preventing access from anywhere in France to the disputed site and to redirected websites, mirror sites (copies of the original site) and proxies (intermediary servers collecting content downloaded from the original site) which make it possible to access the site.

The court began by noting that the dispute involved sites of the Pirate Bay network, whose activity is unlawful since they offer content devoted almost exclusively to the reproduction/communication to the public of phonograms, in the form of downloads or streaming, without the authorisation of the rightholders. The network at issue even goes as far as to claim the absence of rights to use the works, which has earned the founders of the site criminal convictions elsewhere in Europe. It was also pointed out that, while it was true that any blocking measure, as requested, could be circumvented by some Internet users, the measures requested were aimed at the majority of users, who did not necessarily have the time or the specialist skills to look for ways of circumventing the measures. Thus, the impossibility of ensuring complete blanket effectiveness of the decisions, which was the defence put forward by the IAPs, was deemed to not constitute an obstacle to the decision to authorise the measures preventing access to the sites contributing to the circulation of illegal copies on the Internet. In the case at issue, SCPP's request to block access to the sites was deemed to be the only effective means available to the rightsholders to combat the infringement of copyright on the Internet. Regarding the choice of the measures the IAPs should take, the court found in favour of the SCPP's application, in that it left each party the possibility of

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deciding on the nature of the measures to be implemented, depending on their corporate structure, the effects of measures adopted and the further stages in the dispute and that it used a measure accepted by all the IAPs summoned in the case. The court therefore ordered the IAPs, without delay and within no more than fifteen days, to set up all appropriate measures to prevent access from anywhere in France to the disputed sites, whether the original sites, or redirected, mirror or proxy sites, for a period of twelve months. This is to be achieved by any effective means and, more particularly, by blocking domain names. Should the dispute develop further, for instance if the disputed content is deleted, the sites at issue cease to exist or domain names or access routes are altered, SCPP will be able to refer back to the same court for an updated judgment on the measures. Recalling the decision of the Constitutional Council on 28 December 2000 and the CJEU's judgments in the SABAM and Telekabel cases, the court stated that the IAPs should not be burdened with the cost of implementing the measures being ordered and could therefore claim repayment from SCPP of the expense incurred with regard to the measures they already introduced and those undertaken specifically in order to comply with the court's order.

TGI de Paris (3e ch. 1Re sect. En la forme des référés), 4 décembre 2014 - Société civile des producteurs phonographiques (SCPP) c. Orange, Free et a.

Regional Court of Paris (3rd chamber, 1st section, under the urgent procedure), 4 December 2014 - Société Civile des Producteurs Phonographiques (SCPP) v. Orange, Free, and others

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