[GB] High Court blocks access to “Popcorn Time” application providers

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Six major US studios, holding rights to a large number of films and television programmes, applied to the UK High Court for an order requiring the five major UK internet service providers to block access to nine different websites. This was to prevent very large scale copyright infringement and can be granted under section 97A of the Copyright Designs and Patents Act 1988. The service providers did not oppose the granting of the orders.

The websites fell into three different types. The first two were streaming sites and BitTorrent sites; previous decisions of the courts had granted blocking orders for such sites where there was copyright infringement. The third type of website, termed “Popcorn Time”-type sites, raised new issues. “Popcorn Time” refers to an open source application, which can be downloaded by users and used to obtain film and TV content using the BitTorrent protocol, with the addition of media player software, an index and catalogue of titles and images and descriptions of titles. Once the application is downloaded, it can be used to download content sequentially from existing websites, including blocked sites through a proxy server or by encryption. The purpose of the sites is clearly to watch pirated content.

The court rejected an argument by the rights holders that this involved communication to the public of copyright works by the “Popcorn Times” websites. The site does not transmit or retransmit copyright work, but merely makes a tool, in the form of the application, available. Nor does the use of “Popcorn Time” amount to the authorisation of infringement of copyright by the host websites, as no evidence had been provided to suggest such authorisation.

However, the court upheld the claim that the operators of the “Popcorn Times” websites were infringing copyright as joint tortfeasors with the operators of the host websites and those who place illegal content on them. This will be the case where there is a common design to secure the doing of an illegal act. In this case, the suppliers of “Popcorn Time” knew and intended that it cause the infringement of copyright and had a common design to do so with the operators of the host websites.

The court thus granted an order requiring the service providers to block the websites in order both to prevent users from obtaining the “Popcorn Time”

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application and to interfere with the operation of applications already downloaded.

Twentieth Century Fox Film Corporation and others v Sky UK Limited and others, (2015) EWHC 1082 (Ch), 28 April 2015

http://www.bailii.org/ew/cases/EWHC/Ch/2015/1082.html

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