[NL] Court orders Google to provide contact details of e-book pirate

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On 5 October 2015, the Hague District Court ruled in Stichting BREIN v Google that Google has to provide the contact details of a user that illegally traded in e-books on Google Play. According to the Dutch court, the protection of intellectual property rights of the publishers outweighs the user's right to freedom of speech and Google's right to conduct a business.

The user offered e-books far below the regular price under the name of Flamenca Hollanda on Google Play Books. On behalf of the Dutch publishers, Stichting BREIN - an anti-piracy foundation - requested Google to take down the illegal account and hand over contact details of the user. Google removed the unlawful account, but refused to provide the contact details. BREIN argued that the refusal was a violation of the Dutch Copyright Act and the dispute was brought to court. Google argued that it did not infringe any copyrights and therefore could not be ordered to hand over personal data of its users. Furthermore, Google argued that it was merely a neutral provider of an online platform and could not be regarded as an infringer.

The Hague District Court ruled that even if the actual infringer is not a party to the proceedings, a request to hand over information can be ordered. The Court also rejected Google's 'neutral provider' defence and held that the fact that Google can be qualified as a neutral provider of an online platform does not preclude that it can be ordered to provide information on its unlawful users.

The Court also explained the conflicting fundamental rights at stake, which are, on the one hand, the right to protection of intellectual property of BREIN (and the publishers), and on the other hand, Google's right to conduct a business and Flamenca Hollanda's right to freedom of speech, which includes the right to remain anonymous and the right to privacy. According to the Court, BREIN had a genuine interest in requesting the information, namely the protection of intellectual property rights, and it sufficiently demonstrated why this interest outweighs the other fundamental rights in question. The Court held that BREIN adequately argued that there are no other remedies available to obtain the contact details of the infringer. Furthermore, the breach of Google's right to free entrepreneurship was limited, because it only has to provide information which it currently has (which Google admitted itself).

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In light of this, the Court held that Google should hand over the contact details of the user. However, the court did set one condition, namely that the user is able to (anonymously) submit objections to the transfer of his personal data to BREIN. In a later judgment of the Hague District Court, the user submitted a defence. Nevertheless, the Court stated that this defence is very confusing and not seriously substantiated. According to the Court, it is not clear whether the user opposes the processing of his personal data. Thus, the Court held that Google has to handover the contact details of Flamenca Hollanda. Google confirmed that it will provide this information to BREIN.

Rechtbank Den Haag, 5 oktober 2015, ECLI:NL:RBDHA:2015:11408

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2015:11408

District Court of The Hague, 5 October 2015, ECLI:NL:RBDHA:2015:11408

Rechtbank Den Haag, 6 november 2015, ECLI:NL:RBDHA:2015:12706

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2015:12706

District Court of The Hague, 6 November 2015, ECLI:NL:RBDHA:2015:12706

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