[NL] Covenant on website blocking comes into effect

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On 25 October 2021, an agreement was reached between copyright holders, represented by the Dutch Federation of Copyright Holders (Federatie Auteursrechtbelangen) and the BREIN Foundation, along with several Internet Access Providers (hereafter: the Parties) in the Website Blocking Covenant. The Covenant came into being with active facilitating from the Dutch Minister for Legal Protection and the Minister of Economic Affairs and Climate Policy. The question was set out to the Parties if there was a possibility to come to an agreement on website blocking, to which the Parties complied.

The Covenant fast-tracks the procedure to block a website that is hosting copyright infringing content. The main goal is to lay down arrangements between the Parties on how to shape procedures regarding blocking orders, what they can expect from each other, and what the consequences for third parties are when a blocking order is granted by a judge. The Covenant is only applicable in cases in which the BREIN Foundation is seeking legal action against Internet Access Providers with at least 100,000 subscribers. The BREIN Foundation's primary objective is combating illegal websites and services. In addition to this they initiate legal action against large uploaders to these illegal websites and services. To ensure a fair distribution, the Covenant provides a rotation list of the Internet Access Providers. When the BREIN Foundation is granted a blocking order against one of the Internet Access Providers by a judge, the other Internet Access Providers, that have signed the Covenant, have to follow the blocking order within a reasonable time frame. However, the Covenant provides an opt-out provision, giving an Internet Access Provider the ability to not comply with the Blocking Order. This leaves the possibility to seek individual legal action against the provider by theBREIN Foundation unimpaired.

Internet Access Providers offer access to the internet to their end-users and crucial to this service is that they operate on the basis of network neutrality. Network neutrality entails (in principle) the equal treatment of all forms of internet traffic. The Autoriteit Consument en Markt (The Netherlands Authority for Consumers and Markets) (hereafter: ACM) has assessed the Covenant not to be in violation with the Network Neutrality Regulation. The ACM has stated that therefore they will not be actively taking enforcement actions against said blockings.

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Finally, copyright laws (together with the neighbouring rights) ensure that those entitled to copyright have the opportunity to make their protected works profitable. The Dutch government deems it necessary to uphold these rights, and according to a Letter to Parliament from the Dutch government concerning the new Covenant, online piracy undermines these rights. With the Covenant, copyright holders and Internet Access Providers are taking steps to work together to ensure the rights granted to copyright holders are guaranteed, even in the digital age.

Ministerie van Justitie en Veiligheid, Convenant Blokkeren Websites, 2021D41853

https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2021Z19516&did=2021D41852

Ministry of Justice and Security, Website Blocking Covenant, 2021D41853

Minister voor Rechtsbescherming, Kamerbrief over convenant bestrijding online piraterij

https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2021Z19516&did=20

Minister for Legal Protection, Letter to Parliament on the Covenant against online piracy

Stichting BREIN, Overeenstemming tussen internetaanbieders en auteursrechthebbenden over blokkeren van websites met illegale content na uitspraak van de rechter

https://stichtingbrein.nl/overeenstemming-tussen-internetaanbieders-en-auteursrechthebbenden-over-blokkeren-van-websites-met-illegale-content-na-uitspraak-van-de-rechter/

BREIN Foundation , Agreement between ISPs and copyright holders on blocking websites with illegal content after court ruling

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