[GB] Sky secures new High Court order to block illegal streams

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On 31 July 2023, UK pay-television operator Sky was granted a High Court order requiring internet service providers (ISPs) to block access to illegal streams across a range of the broadcaster's linear channels.

Background

Against the backdrop of escalating piracy concerns (including, e.g., the use of internet TV boxes pre-loaded with software facilitating illegal streaming), Sky has found in recent years its ISP division named as a respondent in injunction applications filed at the High Court in London. To mitigate the prevalence of illicitly duplicated content, film production studios, music record labels, publishing enterprises, and interactive entertainment corporations have identified Sky, alongside competing ISPs such as Virgin Media, BT, TalkTalk, and EE, in injunction applications as enablers of their respective clienteles' unauthorised practices like piracy.

In its capacity as a content producer and proprietor, Sky has often endorsed ISP blocking. For instance, when the Motion Picture Association (MPA) secured in early 2022 a High Court injunction to impede the operations of the cyberlocker platform Mixdrop, Sky aligned itself with the MPA as a co-applicant for the injunction (of note, in this case Sky assumed dual responsibilities, functioning both as an ISP and as a representative of the rightsholders; in the latter role, Sky expressed its approval of the injunction).

A new High Court order

In July 2023, Sky procured a new High Court injunction, this time with the intention of safeguarding its own broadcast interests. The injunction pertains to ISP enforcement, inclusive of the provider under Sky's operational purview, and will allow the broadcaster to enforce a real-time blocking of domains, sites and servers.

The legal basis for such orders in the UK is found in Section 97A(1) of the Copyright, Designs and Patents Act 1988, which provides that "the High Court […] shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to

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infringe copyright." Under this provision, which implements Article 8(3) of the Information Society Directive, copyright holders can seek court injunctions against ISPs to prevent users from accessing certain websites where ISPs know that their services are being used to infringe copyright. Such orders have previously been used to block access to websites that hosted or provided links to infringing copies of films and TV shows, with famous examples including The Pirate Bay and Newzbin.

The July 2023 order granted to Sky bears similarities to the orders conferred upon the Premier League during each of the preceding four seasons. However, a novel aspect of the injunction is that it grants Sky the ability to protect a more extensive range of content, for which viewers must tune in to watch, by blocking certain piracy services at certain times. This will be achieved by engaging an external consortium specialised in identifying the origins of unauthorised content dissemination via IP addresses or designated server systems. Subsequently, this information will be relayed to ISPs to effectuate the targeted obstruction of entry to these illicit destinations across their networks.

The order has the potential to prevent unauthorised access to high-profile sports events like *The Ashes* on Sky Sports Cricket, but also specific HBO shows screened as part of its output deal with US studios, like the popular TV show *House of the Dragon* on Sky Atlantic during its initial airing garnering its most extensive viewership.

The implementation of blocking mechanisms has proved an effective tool in addressing content piracy within the entertainment industry. It constitutes, however, a single facet within a spectrum of measures employed to safeguard broadcasting content and fortify the integrity of business operations. Law enforcement agencies have also endeavoured to suppress activities via unlawful streaming networks. In May 2023, following a rare private prosecution by the Premier League, five British men who facilitated the operation of an illicit streaming network broadcasting Premier League games, were imprisoned, with the TV fraudsters' mastermind receiving an 11-year sentence.

Sky wins court order to block illegal streaming of hit shows and football (Financial Times, 31 July 2023)

https://www.ft.com/content/ed022ce0-521a-465f-86b8-b7ea2c403407

English High Court issues blocking order targeting movie-hosting cyberlocker (Kluwer Copyright Blog, 2 March 2022)

https://copyrightblog.kluweriplaw.com/2022/03/02/english-high-court-issues-blocking-order-targeting-movie-hosting-cyberlocker/

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TV fraud gang jailed for illegally streaming Premier League games (BBC News, 30 May 2023)

https://www.bbc.co.uk/news/uk-65697595

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