

Media & Entertainment - France

Paris Civil Court orders blocking of illegal downloading sites

Contributed by **Nomos**

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Decision Comment

The Paris Civil Court has issued a high-profile judgment in respect of the action taken by film producers' and distributors' unions against the main internet service providers (ISPs) and search engines active in France. The claimants deliberately chose to bring a claim not against the illegal download and streaming sites, but rather against the intermediaries.

Decision

The court made use of its power, in the event of infringement of a copyright or related right, to order summarily any liable person to contribute to remedying it taking appropriate measures to prevent or stop the infringement.

Given the innovative nature of the process, the judgment – which could have been issued by a single judge – was handed down by a panel comprising three vice presidents of the court, lending it greater weight.

Findings

First, the court found that the trade unions had standing to commence this action to defend the interests of the profession that they represent without requiring the intervention of those who had suffered infringement.

Second, the court found that the claimants had sufficiently established, by statements made under oath, that the specified sites allowed films to be viewed without the rights holders' permission. This was not challenged by the defendants.

The ISPs chiefly pleaded:

- breach of the principles of proportionality;
- the limited effectiveness of the proposed measure, which they considered likely to be bypassed; and
- breach of the principles of freedom of expression and freedom of enterprise.

The search engines further submitted that they were not internet intermediaries and that, in light of the EU E-commerce Directive, French law should be interpreted as limiting the claim to those services used to facilitate the infringement, which excluded the search engines.

The court found that search engines played a part in accessing the infringing sites and had the quality of an 'intermediary', as defined in the directive. It ordered the ISPs to block access to certain websites and ordered the search engines to take all measures with a view to preventing the inclusion of responses and results directing to a page on any of the specified sites.

The court considered these measures to be most appropriate, most effective and least likely to cause undesired and harmful side effects to others' interests. It thus concluded that they would constitute an effective way to combat the provision of films by the sites. The court spelled out the requisite outcomes, but left it to the ISPs and search engines to select appropriate measures.

Therefore, the court allowed the screening measures sought by the producers.

Rejected claims

Some parts of the producers' claim were rejected.

First, they sought an order that the search engines and ISPs take the same measures

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against mirror sites or future developments of the disputed sites. The court found that no legal tool permitted the ordering of such a measure, but it invited the parties to monitor the implementation of the measures ordered and to cooperate on an updating system. Affirming that the measures ordered remain provisional, the court also invited the parties to refer back to it in case of difficulty or further developments in the dispute.

Finally, while the claimants sought an order that the intermediaries pay the costs of implementing the measures, the court considered there to be no specific legal provision for this and held that the costs of the measures could not "be charged to the defendants which are required to implement them". The court instead invited the ISPs and search engines to seek the payment of costs "if they wish", given the measures actually taken and the specific expenditures incurred.

Comment

To date, none of the 20 parties to the case has expressed an intention to appeal. It can be assumed that they are exploring ways to implement the measures without jeopardising their opposition to a general filter.

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