

Kluwer Copyright Blog

“Super Injunctions” and “Fast Injunctions”: enforcement against the illicit distribution of sport events

Gianluca Campus (University of Milan) · Monday, December 30th, 2019

1. Italian Case Law on Fast Injunctions

The impact of the illegal distribution of audiovisual content is growing (see, for Italy, the [report](#) issued in 2019 by FAPAV Federation for the protection of audiovisual and multimedia content). IP enforcement is an important part of the reaction against this illegal phenomenon. In 2019, some important improvements in the fight against piracy were made, especially with regards to sport events, through orders against Internet Service Providers issued by the Court of Milan on the basis of complaints filed by the Lega Calcio. This has resulted in a new wave of court orders in Italy that can, on the basis of their structure and content, be termed “fast injunctions”. These can be compared with similar orders issued with regards to sport events in the UK, known as “super injunctions”, both being considered to be variants of dynamic injunctions. According to the [Communication of the European Commission COM\(2017\) 708](#), dynamic injunctions are injunctions which can be issued for instance in cases in which materially the same website becomes available immediately after issuing the injunction with a different IP address or URL and which is drafted in a way that allows it to also cover the new IP address or URL without the need for a new judicial procedure to obtain a new injunction.

Two
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orders
(order
dated
30.1.19
RG n.
3874/201
9 and
order
dated
4.3.19 RG
n.
8692/201



9) related to complaints filed by Lega Calcio against the main Italian telco operators (TIM, Vodafone, Fastweb, Wind, Tiscali) in their capacity as *carriers* (i.e. mere conduit ISPs or ISPs) of the streaming services NoFreeze IPTV and Enigma IPTV. **The Court of Milan ruled that the ISPs must block access to the IP addresses used to access the domain name of the illicit IPTV services** and the URL associated with the domain name. The orders also covered **any other IP address univocally used to access the domain name** of the illicit IPTV services and any other *top level domain name* (i.e. .org, .it, .com., .net, etc.) associated with the *second level domain name* of the illicit IPTV services (i.e. nofreezeiptv and enigmaiptv). The Court allowed the ISPs 4 days to comply with the orders and any other automatic update of the orders resulting from a notice by the rights holders of a new univocal IP address associated with the illicit IPTV services. The orders apply to the IPTV service itself, with no need for the rights holders to file a complaint for every violation, since the IPTV service has been recognized as exclusively dedicated to the illicit distribution of sport events of the Italian Football Championship.

The orders were issued on the basis of Article 156 of the Italian Copyright Law (unofficial English version issued by WIPO and updated 2004 available [here](#)), implementing Article 8(3) of [Directive 29/2001/CE](#), which requires Member States to introduce injunctions against intermediaries whose services are used by third parties to infringe copyright or related rights. The case law of the CJEU (in particular, the Telekabel case, [C-314/12](#)) must also be taken into account.

The Court also found that the illicit IPTV services could pose a threat of infringing activities for the entire duration of the Italian Football Championship. As a result of this peculiar risk, the orders were given effect for all the football matches planned during the Championship 2018/2019. The need for such extensive reach is confirmed by the fact that the sport events are unique, with their value concentrated in the *live* performance, so that any illicit retransmission causes a serious and irreparable damage to the rights holders.

Due to the nature of the rights involved, the need to prevent imminent damage and because the IP addresses to be blocked are univocally dedicated to the illicit activity (so that there is no risk that any lawful activity associated with the same IP addresses will be blocked), the orders have been issued *inaudita altera parte* (i.e. issued without the introduction of the respondent so as to deal with situations in which the passage of time could cause damage to the right for which protection is sought).

The Court decided on the deadline of 4 days in light of the balance of interests between the fast track procedure requested by the rights holders and the compliance costs for the ISPs. The ISPs are free to determine how to implement the orders from a technical standpoint.

Following these two orders, the Court of Milan issued another two orders (order dated 26.4.19 RG n. 19582/2019 *Lega Calcio and others vs Soft IPTV and others* and order dated 3.5.2019 RG n. 20475/2019 *Lega Calcio and others vs Darkside IPTV and others*) requested by the Lega Calcio against the main Italian telco operators (this time including the ISP Aruba) in relation to a number of other illicit IPTV services. In the new orders, the Court (taking into consideration the fact that the ISPs had already

adopted technical measures in similar cases) adopted an even stronger approach, so that **the orders have immediate effect**. Fines for delays of over 48 hours from the notification were imposed. This is the reason why this new case law can be classified as concerning **“fast injunctions”**.

The scope of the “fast injunctions” has been also widened, so as to include **variants of the second level domain name**, where these are communicated by the illicit IPTV services to their clients as new means for accessing the same illicit service responsible for the initial violations. The extension of the effects of the orders to any other *alias* domain name is excluded, where it is not proven that such a domain name is linked with the illicit activity that is already the object of the order.

2. A brief comparison with “super injunctions” in the UK

It is worth noting that the “fast injunctions” of the Court of Milan arrive a few years after the so-called “super injunctions” issued in the UK in cases involving the Football Association Premier League (FAPL) and UEFA against the main UK telco operators (British Telecommunications Plc, EE Limited, Plusnet Plc, Sky Uk Limited, Talk Talk Telecom Limited, Virgin Media Limited) (see *FAPL vs BT and others I - [2017] EWHC 480 (Ch)*; *FAPL vs BT and others II - [2018] EWHC 1828 (Ch)*; *UEFA vs BT and others - [2017] EWHC 3414 (Ch)*).

Yet Italy’s “fast injunctions” differ in a number of ways from the UK’s “super injunctions”. First of all, the UK case law is based on **the collective preliminary detection of a number of IP addresses** used for the distribution of illicit IPTV services. A contractor engaged by FAPL monitored infringing streams for a number of weeks in the Premier League season, using proprietary video fingerprinting technology. The list of IP addresses they compiled was then reviewed by FAPL on the basis of two criteria: **(1)** whether the server’s sole or predominant purpose was to enable or facilitate access to infringing streams; **(2)** whether the FAPL knew or had reason to believe that the server was being used for any other substantial purpose. This is a first difference from Italy’s “fast injunctions”, since in the Italian case law, the Lega Calcio was not required to conduct such a complex preliminary and comprehensive analysis, but just to demonstrate, on a case by case basis, that the alleged infringing IP address has been used unequivocally for distributing illicit content.

In addition, **the “super injunction” is a “live” blocking order**, which only has effect at the times when live Premier League match footage is being broadcast, while the “fast injunction” also has effect when the sport events are not being broadcast.

The “super injunction” provides for the list of Target Servers to be “reset” for each match week during the Premier League season. This allows for new servers to be identified by FAPL and notified to the Defendants for blocking each week and ensures that old servers are not blocked after the end of a week, unless they continue to be observed as sources of infringing footage. By contrast, the “fast injunction” only involves a *case-by-case* mechanism for including new IP addresses which are exclusively used to distribute infringing content, while nothing is said about IP addresses which are no longer used for infringing activity.

Moreover, **the “super injunction” is only granted for a short period**, even if with effect for all the football matches of the Premier League (at least, this was the case for the first order of the FAPL case). The short duration of the order is intended to enable an assessment of its effectiveness and of any issues encountered, with a view to the FAPL applying for a similar order to cover other seasons. The “fast injunction” does not specify a particular timing for assessing its effectiveness.

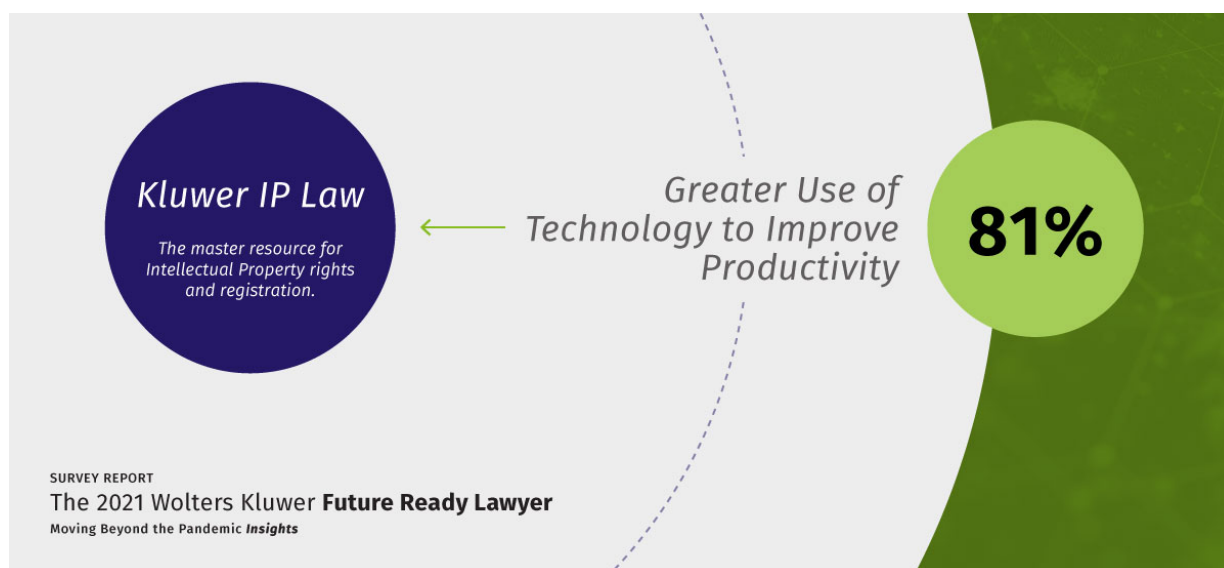
Finally, **the hosting providers and the operator of any website or streaming service claiming to be affected by a “super injunction” are given permission to apply to set aside or vary the injunction.** The same right is given to the operators of the servers targeted by the injunction and any customer of the defendants who claims to be adversely affected by the injunction. By contrast, the “fast injunction” seems to require new notifications to the IPS only where the rights holder is seeking to extend the scope of the order.

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