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Several Spanish telecommunication companies are ordered to block Internet access to certain links websites

Patricia Mariscal (Elzaburu) · Wednesday, March 14th, 2018

The Spanish court has recently given judgment in proceedings brought by various audiovisual producers belonging to the Motion Picture Association of America (MPAA), against a number of telecommunication



s companies who provide Internet access. The proceedings were aimed at having the latter take measures to block Internet access to certain websites that were making protected audiovisual content available to the public without the rightholders' mandatory consent.

Numerous cinematographic works and television series that have been uploaded to the Internet without the rightholders' consent can be streamed via the websites HDFULL.TV and REPELIS.TV. Both websites contain video content from third companies and use the services of a company called Cloudflare to conceal the specific location of the sites that they use. Both websites order, classify and advertise the content that they offer via an interface that not only enables users to search for the content that they wish to view but also provides them with recommendations and content suggestions. Both websites feed off third-party advertising.

In its judgment, the court concluded that making content available to the public via links on the HDFULL and REPELIS websites infringes the claimants' copyright. It held that the websites constitute databases of links to illegal content which, moreover, do not merely "store or list" links but prompt users to view the content by classifying it and presenting it in an attractive way, making specific viewing recommendations. The fact that this activity is carried out for financial gain (the websites in question feed off advertising) and that the owners of the domain names have

voluntarily opted to conceal their identity are significant circumstances which point to the unlawful nature of the conduct.

The interesting aspect of this judgment is that the action was not directed against the owner of the links platform or website but against the telecommunications companies who provide Internet access. This type of action is possible thanks to the reform brought about by Act 21/2014, of 4 November, aimed, *inter alia*, at “*strengthening the tools for reacting against rights infringements*”.

In reaching the conclusion that the claimants were entitled to bring injunctive action against companies which merely grant Internet access to the owners of websites that provide links to protected content in a systematic and ordered manner, the court considered that: (i) the defendants are information society intermediaries, as defined in Act 34/2002; (ii) Articles 138 and 139.1.h) of the Spanish Copyright Act expressly state that such intermediaries have standing to be sued; (iii) CJEU case-law (Scarlet Extended) and some recent decisions from the Spanish courts recognise Internet access providers’ standing to be sued in injunctive actions for copyright infringement; and (iv) such injunctions may be requested not just against the access provider of the owner of the websites containing the infringing content, but also against “intermediaries who transmit” the infringement online.

Lastly, the Court concluded that such an injunction was proportional, on the basis that any less forceful measure (for instance, partial blocking) would not be effective or sufficient in order to achieve the end pursued, which is to block access to the infringing websites, the owners of which cannot be identified or located.

A [full summary](#) of this case has been published on [Kluwer IP Law](#).

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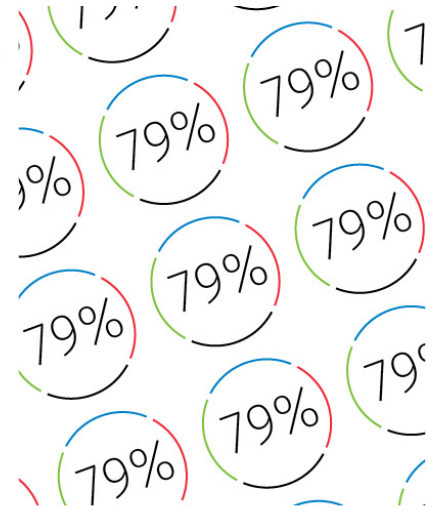
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