

Kluwer Copyright Blog

Website blocking injunctions: an Australian Update

Rita Matulionyte (Macquarie Law School) · Thursday, June 14th, 2018

Website blocking injunctions have been available in European countries for some years now. In the UK, the first case was brought in 2010 by a group of US movie studios against BT to block access to the [Newzbin](#) website. Since then, blocking injunctions have become popular in a number of EU countries, especially after their compatibility with EU law was [confirmed](#) by the CJEU. Australia introduced legislation on blocking injunctions in 2015 and is currently reviewing its efficacy.

The Copyright Amendment (Online Infringement) Act 2015 (Cth)

In Australia, it took some time for legislation on blocking injunctions to be adopted. Critics suggested that such legislation would be ineffective or may lead to over-blocking, i.e. blocking content that is legal.

Eventually, blocking injunctions were introduced under [the Copyright Amendment \(Online Infringement\) Act 2015 \(Cth\)](#) and came into effect on 27 June 2015. Section 115A(1) of the Copyright Act 1968 provides that a copyright owner can apply to the Federal Court for an injunction requiring an ISP to take reasonable steps to disable access to an online location if the Court is satisfied that:

- a) The ISP provides access to an online location outside Australia;
- b) The online location infringes, or facilitates an infringement of, the copyright; and
- c) The primary purpose of the online location is to infringe, or to facilitate the infringement of, copyright (whether or not in Australia).

First successful cases

Australia saw the first blocking injunctions granted in late 2016. In [Roadshow Films Pty Ltd v Telstra Corporation Ltd \[2016\] FCA 1503](#), owners of copyright in various films and television programs successfully applied to the Federal Court of Australia for orders requiring a number of Australian internet service providers, including those within the Telstra, Optus and TPG groups, to take steps to block access to five overseas copyright-infringing sites.

This was followed by a number of further successful suits. In 2017, two cases ([here](#) and [here](#)) in the Federal Court, brought by Roadshow Films and Foxtel, ordered internet service providers to block access to 59 websites and 127 web domains delivering access to copyright-infringing material.

Recent developments: Blocking Illegal TV subscription services

Last month, the Federal Court of Australia used s 115A(1) to grant an injunction to block illegal internet-based TV subscription services (see [Roadshow Films Pty Limited v Telstra Corporation Limited \[2018\] FCA 582](#)). Unlike previous cases, these online locations do not host a website containing illegal content, rather they are specific online locations accessible via three apps installed and operated through the Android operating system on a TV smart box.

In essence, a TV smart box is a miniature computer containing a browser and apps which connect to the internet. By connecting a smart box to a TV or computer screen, a user can use the apps as a portal to access online content. In this case, the apps in question required a user to purchase a subscription and register a user account. Once registered, a user could use the apps to stream a large selection of movies and TV shows, and access various TV channels, including BBC1, BBC2, Disney, Disney Junior, EPL Extra 1, 2 and 3, Fox HD, and Nat Geo Wild. All media streamed through the apps to the user's screen was enabled via the domain names targeted in the application, and without the authorisation of the relevant copyright owners[1].

In the case, the Federal Court was satisfied that the requirements of s 115A(1) were met and granted the blocking injunctions against the illegal TV subscription services. According to [Financial Review](#), the decision has struck a blow for TV networks in a global battle against pirate pay TV operators, who have been undercutting them with internet-based subscription services.

Next: review of site blocking legislation

The Australian government is currently reviewing the regime under s 115A of the Copyright Act 1968. Earlier this year, it announced a consultation asking whether the regime is effective and whether improvements are needed. Stakeholders' [submissions](#), unsurprisingly, provide different opinions. Right holders are satisfied with the scheme and its efficacy. They refer to recent studies (e.g. this recent [study](#) for the Australian Society of Authors) concluding that site blocking in Australia has had a positive impact upon the usage of blocked piracy sites, reducing the usage in Australia of the websites targeted by the blocking orders by 53.4% since December 2016, when the blocking regime began. They are [asking](#) to expand the regime to cover more sites and intermediaries (e.g. Google). Critics of the legislation, such as [Digital Rights Watch](#), argue that it is difficult to measure the effectiveness of blocking and request the repeal of the legislation. They suggest that the existing reports are not reliable since they do not show how many Australians access blocked websites by using VPN addresses or how traffic to other illegal websites has increased as a result of site blocking. They repeat the potential risk of over-blocking or a possible disruption of Internet traffic.

Despite claims by critics, there seems to be a general agreement that the blocking scheme provides positive results and it is unlikely that the government will repeal the legislation. It is to be seen whether the government liaises with right holders and proposes any substantial changes to extend the scheme even further.

[1]

https://www.copyright.org.au/ACC_Prod/ACC/News_items/2018/Section_115A_and_TV_smart_box_apps__Federal_Court_clicks_yes.aspx

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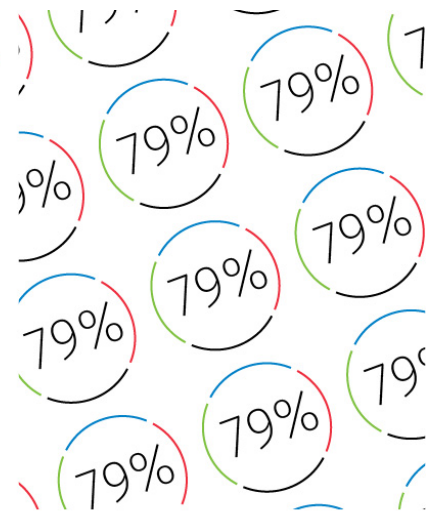
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