

THE NETHERLANDS

Court rejects PI actions on website blocking

Patrinos & Kilimiris

Athens



Maria Kilimiris

A number of Greek collecting societies managing copyrights and related rights filed preliminary injunction actions against internet service providers (ISPs) in 2014 before the Civil Court of Athens. These requested the defendants to take the appropriate technological or other measures, the implementation of which will make it unfeasible – impossible for their subscribers – to visit specific named websites, the content of which infringes the creators' copyrights.

The Court, in its judgment 13478/2014, rejected these actions as substantially invalid. The main points of the Court's reasoning were the following:

The Court based its opinion on the principle of proportionality, balanced between the copyright of the creators on the one hand and the constitutionally safeguarded rights for freedom of information, participation in the information society, as well as the right for protection from the collection, processing and use of personal data and the confidentiality of the freedom of response and communication on the other hand.

The Court balanced the possibility of the ISPs to provide information and personal data of their subscribers – users, who visit the above websites through the ISPs, in view of Protection of Copyright [Law 2121/1993, E-commerce Directive 2000/31] on the one hand, and the provisions for the protection of personal data. Pursuant to this legislation, ISPs are obliged to reveal the identities of the persons behind the IP addresses and give information about internet traffic only in regard to certain specific major offences, and copyright infringement is not considered to be one of these. Therefore, copyright and related rights holders are practically deprived of that legal instrument.

Furthermore, it has been considered that linking during browsing does not constitute copyright infringement.

It was also considered that the transfer of information through the specific protocol of peer-to-peer (p2p) communication forms a part of the information society, the use of which is legal in most cases.

Furthermore it has been taken into account that the regulatory intervention for monitoring by the ISPs of the websites where their subscribers have access, through them, is partially unfeasible, as well as the fact that for the ISPs the cost associated with the installation and functioning of such a system is disproportionately high. Besides, a general filtering of information is opposed to the E-Commerce Directive.

In addition, the Court concluded that the defendants are exempted from any responsibility for the content of the said websites where their subscribers gain access, due to lack of actual awareness of the illegal activity or information stored therein. It was considered that those protected plays are not stored in the contested websites, but rather in forums, or p2p procedures, and that the requested regulatory interventions cannot be limited to only this specific content but will also be extended to blocking absolutely legal activities.