

Advisory Committee on Enforcement

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SHARING EXPERIENCES AND BEST PRACTICES ON SITE BLOCKING/NO-FAULT INJUNCTIONS

Contributions prepared by the Motion Picture Association (MPA), the International Federation of the Phonographic Industry (IFPI) and Greece

1. At the sixteenth session of the Advisory Committee on Enforcement (ACE), held from January 31 to February 2, 2024, the Committee agreed to consider, at its seventeenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanisms to resolve IP disputes in a balanced, holistic and effective manner.” Within this framework, this document introduces contributions from one Member State (Greece) and two private sector entities (the Motion Picture Association - MPA and the International Federation of the Phonographic Industry - IFPI), sharing experiences and best practices on site blocking/no-fault Injunctions in combating copyright piracy
2. The contribution from MPA describes the effectiveness of no-fault "site blocking injunctions" in combating online piracy. The contribution explains how these injunctions rely on cooperation from online intermediaries to block pirate websites, without assigning liability to them. Judicial and/or administrative site blocking provisions are now part of the legal system in over 50 countries, and research indicates that they have been effective in reducing traffic to pirate websites and increasing the use of legitimate services. The contribution also highlights best practices to ensure appropriate safeguards, efficacy and proportionality of site blocking measures and greater collaboration among stakeholders.
3. The contribution from IFPI highlights the challenge of online music piracy and the crucial role intermediaries play in combating piracy. It focuses in particular on Internet Services Providers (ISPs) due to their role in implementing website blocking orders. It emphasizes that

website blocking measures are essential to prevent access to infringing sites, especially when operators remain anonymous. The contribution explains that measures such as dynamic site blocking orders can effectively reduce piracy in a fast-changing piracy landscape. It also raises concerns such as the lack of scalability of website blocking orders, time limits on the validity of injunctions and the lack of cost-efficiency in civil law systems. Additionally, it outlines the elements of fair and effective website blocking and concludes that WIPO's involvement could enhance global cooperation and knowledge-sharing, strengthening the fight against piracy

4. Greece's contribution describes the national mechanism for combating online piracy of live events, focusing on the work of the Hellenic Copyright Organization (HCO) and its administrative body, the Committee for the Notification of Copyright and Related Rights Infringements on the Internet (EDPPI). The contribution explains how EDPPI provides an administrative (out-of-court) solution for copyright holders by issuing dynamic and live-blocking injunctions against infringing content. It discusses the legal framework, procedures, and challenges surrounding live-blocking orders, highlighting safeguards to prevent over-blocking and emphasizing the importance of international cooperation.

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SITE BLOCKING BEST PRACTICES

*Contribution prepared by Ms. Karyn A. Temple, Senior Executive Vice President and Global General Counsel, Motion Picture Association, Washington, D.C., United States of America**

ABSTRACT

With this contribution, the Motion Picture Association (MPA) would like to share its views on the efficacy of no-fault injunctions addressed to online intermediaries (also called “site blocking injunctions”) to protect copyright and related rights in the digital world. This contribution emphasizes the importance for legal systems across the globe to adhere to best practices to secure strong protection of intellectual property rights (IPRs) while implementing safeguards and respecting fundamental principles such as due process, proportionality, transparency and the balancing of rights at stake.

Judicial and/or administrative site blocking provisions are now incorporated within the legal systems of more than 50 countries, and research shows their efficacy in tackling piracy. Moreover, no-fault injunctions are not based on any finding of liability on the part of online intermediaries, counting instead on their accountability and collaboration in interrupting and preventing the use of their networks for illegal activities.

I. BACKGROUND

1. MPA serves as the global voice and advocate of the international film, television and streaming industry. MPA works in every corner of the globe to advance the creative industry, protect its members’ content across all screens, defend the creative and artistic freedoms of storytellers and support innovative distribution models that bring an expansion of viewing choices to audiences around the world. Our member studios are: Netflix Studios, LLC; Paramount Pictures Corporation; Prime Video & Amazon MGM Studios; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Discovery. MPA plays a leading role in tackling the illegal dissemination of copyright-protected content that harms the thriving digital ecosystem. The goal of MPA is to reduce or mitigate piracy through effective enforcement strategies targeting the operators of illegal websites and services, and to work collaboratively with intermediaries that provide their online services to them.

2. We live in an online world: in 2024 there were 5.35 billion Internet users out of 8 billion people. The number of Internet users is expected to grow even more in the next few years.¹ Creativity and entertainment are increasingly distributed online, so it is essential that copyright and related rights existing on such works receive at least as much protection online as they do offline.

3. Yet, despite the availability of a plethora of legitimate services and strong enforcement procedures in many countries, piracy continues to cause significant harm to the creative

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ See Lexie Pelchen, Internet Usage Statistics in 2024, Forbes Home, published on 1 March 2024 at <https://www.forbes.com/home-improvement/internet/internet-statistics/>

industries.² Moreover, piracy not only affects the economic viability of the entertainment industry, but it also severely threatens users who avail themselves of pirated content.³ Studies show that there is a 57 per cent chance that an audiovisual piracy app will cause malware infection and at least one in five Europeans reported experiencing identity theft facilitated by malware between 2018 and 2019.⁴ By contrast, a consumer who is educated on online piracy can reduce the risk of infection of used devices by 31 per cent.⁵

4. Countries must therefore continue to develop strong and effective enforcement frameworks to address online piracy, including the use of no-fault injunctions to block access to illegal piracy services. No-fault injunctions are specifically designed to provide effective and timely means to stop large-scale online infringements, particularly in cases where the operators of these pirate services are anonymous, or when they are located offshore in countries with weaker IPRs protections, and therefore outside the reach of local rightsholders.

5. Injunctions to prevent or stop illegal activities have existed in legal systems for centuries, and many of them have incorporated traditional concepts that include requests for action from non-liable parties. Such requests are based not on a party's guilt, but on their control over the harmful conduct. Site blocking injunctions are one example of no-fault injunctions. Rightsholders merely seek for the infringement to stop and, without assigning blame or fault, seek relief directed at those best placed to halt the infringement, such as intermediaries that connect the pirate site to users.

6. Two main types of site blocking procedures are used around the world: judicial site blocking procedures are brought before the competent courts, while administrative site blocking procedures are filed with administrative authorities that have been granted powers to block websites. Generally, these measures are accomplished by DNS, IP address or URL blocking.

7. The evidence shows that site blocking is effective both at reducing traffic to pirate websites and increasing the use of legitimate services. A site blocking order applicable to the main Internet Service Providers ("ISPs") in a given country reduces traffic to the targeted piracy domains.

8. For example, 53 piracy websites in the United Kingdom caused up to 95% drop in visits to the blocked sites.⁶ Additionally, analysis in Australia, Portugal and the Republic of Korea found

² Piracy of filmed entertainment costs between 230,000 and 560,000 jobs annually and drains at least 29.2 billion from the economy of the United States. See, David Blackburn, *Impacts of Digital Video Piracy on the U.S. Economy*, (2019), available at https://www.uschamber.com/assets/documents/Digital_Video_Piracy_June_2019.pdf. See also Office of the United States Trade Representative, *2023 Review of Notorious Markets for Counterfeiting and Piracy*, available at https://ustr.gov/sites/default/files/2023_Review_of_Notorious_Markets_for_Counterfeiting_and_Piracy_Notorious_Markets_List_final.pdf; and Federazione per la Tutela delle Industrie dei Contenuti Audiovisivi e Multimediali, *La pirateria Audiovisiva in Italia: 2016-2023*, (2023), available at https://fapav.it/wp-content/uploads/2018/11/FAPAV_Ricerca-sulla-pirateria-audiovisiva-2023.pdf. In the latter study, the Italian Federation for the Protection of Audiovisual Content and IPSOS forecast that piracy cost the Italian economy 358 million euros in 2023.

³ See Paul A. Watters, *Audiovisual Piracy Cyber Risk for European Consumers*, published by the Audiovisual Anti-piracy Alliance on September 19, 2022, available at <https://www.aapa.eu/study-on-malware-and-audiovisual-piracy-highlights-significant-risks-to-european-consumers>. See also European Commission, *Survey on "Scams and Fraud experienced by Consumers"*, January 2020, available at https://commission.europa.eu/system/files/2020-01/survey_on_scams_and_fraud_experienced_by_consumers_-_final_report.pdf. For the Asia-Pacific region, see Paul Watters, *Time to Compromise: How Cyber Criminals use Ads to Compromise Devices through Piracy Websites and Apps*, released in December, 2021 and available at https://avia.org/wp-content/uploads/2022/08/Time-to-Compromise_.pdf.

⁴ See Watters, *Audiovisual Piracy Cyber Risk for European Consumers*, supra note 3.

⁵ See note 3.

⁶ See Brett Danaher et al., *The Effect of Piracy Website Blocking on Consumer Behavior*, MIS QUARTERLY 631, June 2020, at 637 ("We see that the November 2014 blocks [of 53 sites] were effective at reducing visits to blocked sites. Visits to blocked sites dropped by 88% from the three months before the blocks to the 3 months

[Footnote continued on next page]

that visits to blocked sites dropped by between 60 per cent and 90 per cent.⁷ Site blocking also increases traffic to legitimate content sources among former users of blocked sites, as shown by research in Australia and the United Kingdom.⁸ In addition, in the United Kingdom, along with a decrease in the usage of pirate sites, blocks caused a 7 per cent to 12 per cent increase in the use of paid legal subscription streaming sites.⁹ It also caused an increase in new paid subscriptions.¹⁰ More recently, an article published in *Harvard Business Review* in February 2024 not only reasserted the positive results in UK in legal consumption increase due to site blocking, but also reported on similar findings in follow-up studies in Brazil and India.¹¹

II. BEST PRACTICES IN SITE BLOCKING

9. From our global site blocking experiences, we can recommend several best practices to be followed in pursuing the blocking of websites. These best practices ensure not only that appropriate safeguards are put in place, but also that site blocking measures are effective and proportionate, with greater collaboration among stakeholders.

A. PRECISE TARGETING AND PROPORTIONALITY

10. Site blocking should be strictly targeted against pirate websites that are dedicated to making copyright-protected content available illegally and often do so on a commercial scale. Legislators and judicial courts around the world have addressed this issue by defining sites subject to blocking as those that are "structurally infringing" or those that have a "primary

after."); at 639 (referring to data from blocking waves in 2012 and 2013, "Visits to blocked sites drop by 80 to 95% across the various groups, indicating an effective block", available at <https://www.cmu.edu/entertainment-analytics/documents/effectiveness-of-anti-piracy-efforts/uk-blocking-misq.pdf>).

⁷ See, for example, Motion Picture Association, *Measuring the Effect of Piracy Website Blocking in Australia on Consumer Behavior*, January 2020, [hereinafter "Australia Blocking Summary"], at 4 (referring to a December 2018 block, "Average visitation to blocked sites declined sharply for the treatment group, with visitation to this group of sites was [sic] down 61% overall from the pre-period to the post-period."), available at <https://www.mpa-apac.org/wp-content/uploads/2020/02/Australia-Site-Blocking-Summary-January-2020.pdf>; INCOPRO, *Site Blocking Efficacy – Key Findings: Australia* (report prepared for Australian Screen Association, July 2018), at 2 ("Site blocking in Australia has resulted in an overall usage reduction of 68.7% to blocked sites when comparing usage recorded in April 2018 to before blocking took effect. Usage has decreased for each blocking wave implemented in the country."), available at <https://creativecontentaustralia.org.au/wp-content/uploads/2021/03/INCOPROAustralianSiteBlockingEfficacyReport-KeyFindingsJuly2018FINAL.pdf>; Nigel Cory, *A Decade After SOPA/PIPA, It's Time to Revisit Website Blocking, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION*, January 2022, at 9, Fig. 2, available at <https://www2.itif.org/2022-revisiting-website-blocking.pdf>, citing INCOPRO, *Site Blocking Efficacy in Portugal: September 2015–October 2016* (industry research report), May 2017, at 2 ("The findings in this report show that overall the blocks have had a positive impact, reducing the usage in Portugal of the websites targeted by the blocking orders in Portugal by 69.7%."), available at <https://www.incoproip.com/wp-content/uploads/2020/02/Site-Blocking-and-Piracy-Landscape-in-Portugal-May-2017.pdf>; Motion Picture Association, *MPA Study on Site Blocking Impact in South Korea: 2016*, at 11 ("The Level 1 impact was clear: visits to blocked sites had declined on average 90% as of three months after a block (97% after Wave 1, 93% after Wave 2 and 79% after Wave 3)."), available at https://www.mpa-apac.org/wp-content/uploads/2018/05/MPAA_Impact_of_Site_Blocking_in_South_Korea_2016.pdf.

⁸ See Danaher et al., *supra* note 6, at 646 ("We observe that [the 2014 blocking of 53 major piracy sites] causally increased usage of paid legal streaming sites"); Australia Blocking Summary, *supra* note 7, at 1 ("For users of sites targeted for blocking, traffic to legal content viewing sites increased by 5% in the post-period following the blocking.").

⁹ See Danaher, *supra* note 6, at 633 ("We find that the 2013 blocking of 19 major video piracy sites and the 2014 blocking of 53 major video piracy sites caused meaningful decreases in total piracy as well as a 7% to 12% increase in usage of paid legal streaming sites among users affected by the blocks.").

¹⁰ See Danaher, *supra* note 6, at 631 ("We show that blocking 53 sites in 2014...caused an increase in new paid subscriptions.").

¹¹ See Brett Danaher, Michael D. Smith, & Rahul Telang, *Pro Sports Has a Piracy Problem*, HARV. BUS. REV., Feb. 14, 2024, ("The piracy-tracking firm VFT estimates that 17 million viewers watched [the February 11] Super Bowl on illegal pirate streams."), ("What we found is that the results from website blocking in India and Brazil are consistent with what happened in the UK: The blocking caused a decrease in piracy and an increase in legal sales."), available at <https://hbr.org/2024/02/pro-sports-has-a-piracy-problem>.

purpose" or "primary effect" to infringe or facilitate infringement of copyright. The 2023 EU Commission Recommendation on combating online piracy of sports and other live events mentions the targeting of "pirate services identified by Internet locations which are mainly dedicated to providing access to unauthorized retransmissions or other types of unauthorized content."¹²

11. In order to ensure that site blocking is precisely targeted, safeguards need to be taken.

12. Especially in the fast-changing and time-sensitive context of live events, the use of automated solutions is preferred to track in real time the relevant locations (IP/DNS) employed by the infringing services. Several technological solutions are available on the market to ensure that blocking measures remain strictly targeted, including where the infringing service changes IP or DNS address frequently. Examples include automated tools that flag the hosting of multiple sites on the same IP address and check that targeted domains are still online. MPA supports the use of these kinds of technological solutions at all relevant stages of automated site blocking processes by rightsholders and authorities.

B. BALANCING FUNDAMENTAL RIGHTS

13. Site blocking orders can potentially affect several fundamental rights, such as Internet users' freedom of information and expression and online intermediaries' freedom to conduct a business. The courts therefore recognize that, when they issue such injunctions, these rights must be taken into account and a fair balance must be struck between those rights and the interests and rights of copyright holders.¹³

14. Indeed, while site-blocking injunctions are used to protect another fundamental right – the right to property, in particular intellectual property – this right should be applied in compliance with the principle of proportionality. In this regard, it is important to note that site blocking injunctions that are strictly targeted against structurally infringing services do not negatively impact freedom of information and expression, the principles of which cannot justify massive online piracy.¹⁴

15. Another fundamental right to take into account is the freedom to conduct a business. Site blocking injunctions do not impact the freedom of ISPs to conduct their business when they include appropriate provisions that grant them the flexibility to determine the specific measure to be taken in order to implement the injunctive relief, as long as the measures are sufficiently effective in blocking, preventing or at least seriously discouraging further violations.¹⁵

C. TRANSPARENCY

16. Considering the need to ensure the balancing of fundamental rights, it is of paramount importance that site blocking injunctions are rendered in the most transparent way possible.

¹² See para. 16 of Commission Recommendation C(2023) 2853 of 4.5.2023 on combating online piracy of sports and other live events, available at <https://digital-strategy.ec.europa.eu/en/library/recommendation-combating-online-piracy-sports-and-other-live-events>.

¹³ On the fair balance to be struck among fundamental rights, see CJEU judgment of 24 November 2011, C-70/10, Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM); CJEU judgment of 27 March 2014, C-314/12, UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH and Wega Filmproduktionsgesellschaft mbH; CJEU judgment of 29 July 2019, C-516/17, Spiegel Online GmbH v Volker Beck; CJEU judgment of 29 July 2019, C-476/17, Pelham GmbH and Others v Ralf Hütter and Florian Schneider-Esleben.

¹⁴ See CJEU judgment of 27 March 2014, C-314/12 supra note 13, paras. 47-51.

¹⁵ The importance of this principle was clearly stated in the CJEU judgment of 27 March 2014, C-314/12, para. 62 (Telekabel/Kino.to case).

Transparent implementation also increases public awareness of piracy. Appropriate transparency can be achieved by publishing judicial decisions and administrative resolutions and by providing information about the blocking measures on a public landing page that users see when they try to visit a blocked site. Such public landing pages should provide details of the blocking order issued by the competent authority, explaining the legal grounds on which the orders are based and indicating the procedure to follow to contest the order.

D. DYNAMIC SITE BLOCKING

17. Given how easily pirates can and do evade static site blocking orders by switching domain names and IP addresses regularly, many countries have adopted what is known as dynamic site blocking,¹⁶ with a streamlined procedure in place so that, as pirates seek to evade site blocks, the blocks can be updated without the need for the overall judicial or administrative proceedings to be reinitiated. Under such procedures, it is usually sufficient simply to notify intermediaries or to request that the competent authorities update their list of mirror or copycat websites that should be blocked.

18. Dynamic blocking injunctions include live blocking orders under specific procedures that are particularly streamlined in the case of pirate broadcasts of live sports events or newly released audiovisual works. The need for effective dynamic site blocking tools is paramount to combat online piracy, to the point that the EU Commission released two recommendations highlighting the need for member states of the European Union to adopt dynamic site blocking tools.¹⁷

19. Moreover, adding to this dynamic element, a growing number of courts have ruled that site blocking injunctions should not only be imposed on Internet access providers but on a wider range of intermediaries, such as, but not limited to, CDN service providers or DNS resolvers.¹⁸

¹⁶ See Giancarlo Frosio & Oleksandr Bulayenco, EUIPO, Study on Dynamic Blocking Injunctions in the European Union, IPR Enforcement Case-law Collection, March 2021, available at https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_Dynamic_Blocking_Injunctions/2021_Study_on_Dynamic_Blocking_Injunctions_in_the_European_Union_FullR_en.pdf.

¹⁷ European Commission Recommendation of 19 March 2024 on measures to combat counterfeiting and enhance the enforcement of intellectual property rights, available at https://single-market-economy.ec.europa.eu/publications/commission-recommendation-measures-combat-counterfeiting-and-enhance-enforcement-intellectual_en; European Commission Recommendation, (EU) 2023/2853, supra note 12.

¹⁸ Court of Milan, injunction of 11.7.2022 confirmed by orders of 22.9.2022 and of 28.3.2023, Sony/Universal/Warner Music v. Cloudflare, in which Cloudflare was ordered to prohibit the use of its public DNS for pirate sites and their aliases; Court of Milan, orders of 5.10.2020, 23.6.2020, 12.2.2021 and 19.11.2021, LNPA v. Cloudflare (IPTV The Best & Energy IPTV), in which Cloudflare was ordered to immediately cease providing its services to the pirate sites and illegal IPTV independently from the name of the domain or the IP addresses and to communicate the available information about the website administrators. In Oberlandesgericht Köln (Court of Appeal of Cologne), 3.11. 2023, 6 U 149/22, Universal Music GmbH v. Cloudflare Inc., available at https://www.justiz.nrw.de/nrwe/olgs/koeln/j2023/6_U_149_22_Urteil_20231103.html, and in OLG Dresden (Court of Appeal of Dresden), 6.12.2023, 14 U 503/23, Sony Music Entertainment Germany GmbH v. Quad9 Stiftung, available, with redactions, at https://www.quad9.net/uploads/2023_12_06_OLG_Dresden_Urteil_quad9_geschwarzt_490c67518d.pdf, the courts clearly stated that the blocking injunctions did apply to the defendants. On the blocking of alternative DNS resolvers see also Tribunal Judiciaire de Paris, judgment of October 24, 2024, 3rd Chamber, 1st Section, N° RG 24/11187, N° Portalis 352J-W-B7I-C52AR, S.A. Groupe Canal +, S.A.S. Société d'Édition de Canal Plus v. Google Ireland Limited, Google LLC and Cloudflare, Inc.; Tribunal Judiciaire de Paris, judgment of October 24, 2024, 3rd Chamber, 1st Section, N° RG 24/11188, N° Portalis 352J-W-B7I-C52AU, S.A.S. Société d'Édition de Canal Plus v. Google Ireland Limited, Google LLC and Cloudflare, Inc.; Tribunal Judiciaire de Paris, Judgment of May 30, 2024, 3rd Chamber, 1st Section, N° RG 23/14731, N° Portalis 352J-W-B7H-C3JBU, S.A. Groupe Canal +, S.A.S. Société d'Édition de Canal Plus v. Google Ireland Limited, Google LLC, Cloudflare, Inc., Cisco Systems Inc., and Cisco OpenDNS LLC.; Tribunal Judiciaire de Paris, judgment of May 16, 2024, 3rd Chamber, 1st Section, N° RG 23/14726, N° Portalis 352J-W-B7H-C3JQE, Société Groupe Canal Plus v. Google Ireland Limited, Google LLC, Cloudflare, Inc., Cisco Systems Inc., and Cisco OpenDNS LLC.; and Tribunal Judiciaire de Paris, judgement of May 16, 2024, 3rd Chamber, 1st Section, N°

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This aligns with the evolving practice in site blocking and with the fact that pirates increasingly use “other intermediaries” services to circumvent blocking orders addressed to online access providers and/or Internet access providers.

E. SAFEGUARDS AND AUTOMATED TOOLS

20. Automated tools have been created to facilitate the use of expeditious measures for the protection of live broadcasts, including sports events and newly released content, both of which have their greatest economic value when they are first released. In particular, automated communication systems have been put in place between rightsholders and ISPs that allow the first ones to swiftly communicate the updated online locations (such as new domain names and IP addresses) that should be blocked, subject to a dynamic court order or under the supervision of competent authorities.¹⁹

21. Site blocking regimes that have been successful across the globe ensure that appropriate due process provisions are included at the outset, in compliance with the fundamental rights mentioned above. Therefore, also in such automated processes safeguards must be put in place to ensure due process.

22. More precisely, automated tools should ensure the application of the above-mentioned best practices, including the strict targeting of dedicated infringing online locations, transparent site blocking orders that allow the implicated parties to address their rights, and documentation of the infringements committed at the online locations targeted by the blocking measures.

III. CONCLUSION

23. Site blocking injunctions have proven to be effective around the world. Implementing site blocking injunctions while abiding by a set of best practices developed based on years of experience is fundamental to their continued effectiveness.

24. The proportion of intellectual creations and entertainment products being developed and distributed online is increasing and will continue to increase in the future. The enforcement of IPRs therefore needs to be effectively adapted to this digital growth. Given the context, it is desirable to foster collaboration between rightsholders and information-society service providers, guided by the above-mentioned best practices and safeguards.

[End of contribution]

RG 23/14722, N° Portalis 352J-W-B7H-C3JQE, Société Groupe Canal Plus and S.A.S. Société d'Édition de Canal Plus v. Google Ireland Limited, Google LLC, Cloudflare, Inc., Cisco Systems Inc., and Cisco OpenDNS LLC.

¹⁹ Such authorities include the General Inspectorate of Cultural Activities (IGAC), in Portugal; the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI), which operates in Greece under the Hellenic Copyright Organization; and the National Telecommunications Agency (ANATEL), in Brazil, which oversees live blocking through an automated platform in the framework of the administrative blocking system applicable to pay-tv piracy.

TACKLING MUSIC PIRACY: THE ROLE OF INTERMEDIARIES

*Contribution prepared by Dr Elena Blobel, Director of Global Litigation, International Federation of the Phonographic Industry (IFPI), London, United Kingdom**

ABSTRACT

This contribution provides an overview of the challenges faced by the music industry concerning online piracy and the important role of online intermediaries in tackling the issue. A particular focus is on one type of intermediary, namely Internet service providers (ISPs), which can implement website blocks, i.e., measures preventing their users from accessing infringing websites. Website blocking measures are a crucial remedy to address online piracy, particularly where the operators of infringing websites are anonymized. Governments should continue to pay close attention to this area to protect the creative community and improve the situation for local rights holders. The role of WIPO could be game-changing, as the Organization can facilitate knowledge sharing to assist authorities in improving systems at the national level and continue to promote use cases for global cooperation mechanisms, such as WIPO ALERT.

I. ONLINE MUSIC PIRACY: A SERIOUS PROBLEM

1. Despite the various legitimate digital music services on offer, according to a recent music consumer survey²⁰ conducted by the International Federation of the Phonographic Industry (IFPI), 29 per cent of Internet users access unlicensed services for music. This landscape is dominated by stream ripping sites, which enable users to permanently download music from streaming services such as YouTube. Stream ripping is essentially a process which enables a user to make permanent copies of music that has been made available on audio or audiovisual streaming services such as YouTube and to thereby obtain unlicensed free permanent downloads of that content, which can be stored for further consumption and/or shared with others. However, right holders have not licensed the works and recordings made available on streaming services to be downloaded as permanent copies, and the streaming services do not allow their users to make such copies. Stream ripping sites are circumventing the technical protection measures that music services typically implement to prevent users from downloading permanent copies.

2. At the same time, record labels continue to license music platforms worldwide, making millions of tracks available for streaming or download on advertising-funded or subscription services. Music plays a bigger role than ever for local creative industries and can contribute significantly to a country's "soft power" to attract additional investments and funding. An example of this is the long-term strategic investment that the Government of the Republic of Korea has made in its cultural outputs. As a consequence, Korean Pop (K-pop) bands have a highly engaged and committed global fanbase, with fans also embracing other aspects of Korean culture.

3. However, licensed music platforms are facing unfair competition from illegal services, which hampers not only their growth but also that of local creators. Furthermore, bringing direct legal action is increasingly difficult because the operators of illegal services go to great lengths to hide their identity, for example by using offshore shell companies, fake identities or domain

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

²⁰ IFPI (2023). Engaging with music 2023. <https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf>.

privacy proxy services. Illegal services often operate from several jurisdictions and from countries which do not have strict copyright laws or where such laws may not be rigorously enforced.

4. The situation is aggravated by the absence of an effective Know-Your-Business-Customer obligation, particularly in relation to hosting providers, domain registrars and registries (although the situation in the European Union (EU) should improve following the implementation of the Directive on measures for a high common level of cybersecurity across the Union (NIS2 Directive). Even when operators can be identified, enforcement often remains difficult owing to operators being located in countries with challenging enforcement landscapes, such as Russia and Viet Nam.

A. THE IMPORTANT ROLE OF INTERMEDIARIES

5. There are a number of intermediaries operating in the online eco-system, ranging from Internet service providers (ISPs) or access providers, hosting providers and search engines to mobile app stores, advertisers and advertising networks, payment providers, domain registrars and registries. Many truly neutral and passive intermediaries have already taken various measures to prevent their services from being used to commit copyright infringements. For example, some platforms have implemented technologies to prevent the reuploading of already notified content and some ISPs are blocking copyright infringing sites based on voluntary agreements with right holders. However, it is clear that more needs to be done to tackle the issue of online piracy.

6. The exact measures that different intermediaries adopt will depend on the services offered, but they may be summarized as follows:

- (a) Implementing meaningful Know-Your-Business-Customer policies and providing information concerning operators of illegal sites to legitimate requesters (e.g., law enforcement, right holders).
- (b) Taking effective steps to ensure that their services are not being used to infringe copyright (e.g., complying with a notice and stay down obligation, preventing advertisements or payment provider services from being offered to copyright infringing websites and or terminating domains of bad actors engaged in online piracy).

B. WEBSITE BLOCKING MEASURES CAN BE EFFECTIVE AGAINST PIRACY, UNDER CERTAIN CONDITIONS

7. Website blocking refers to the process whereby ISPs block access to specific websites. Typically, national laws will include a legal basis allowing right holders to obtain such blocks, often on a no-fault basis, i.e., rights holders would not need to prove liability on the part of ISPs. Over 6,000 websites²¹ containing music have been blocked by ISPs for copyright infringement in at least 43 countries globally, starting in Denmark in 2006. Since then, it has proven to be, when correctly implemented and applied, a very effective remedy for right holders. Moreover, dynamic site blocking orders maximize the impact of blocks by reducing piracy. They will also potentially push users, who become increasingly frustrated at not being able to access an illegal website, to migrate towards using licensed services. Website blocking is a crucial remedy and often the only one available to stop or at least limit piracy in a territory, as direct actions against the bad actors running illegal websites are typically impossible, given that they go to great lengths to hide their identity. Often, it is not possible to tackle piracy at the source. Difficulties

²¹ Figure based on IFPI internal log of music websites that have been blocked.

with taking action against the operators of illegal services make it essential for intermediaries to cooperate with and assist right holders in addressing the illegal distribution of music and other copyrighted content.

8. However, for such injunctions to work efficiently in the fast-changing piracy landscape, orders must be dynamic. Websites can change their domains overnight and often have alternative domains registered to switch to once a previous domain has been blocked. Website blocking measures are often circumvented by multiple mirror or proxy sites. Dynamic orders avoid this “whack-a-mole” problem by addressing known and future mirror or proxy sites. Crucially, such orders also save the court’s time and right holders’ time and money. Dynamic blocking orders have so far been obtained in 15 countries,²² including after applications by IFPI members or their national groups.

C. WEBSITE BLOCKING: CURRENT CONCERNS

9. Whilst website blocking is working well in many countries,²³ there remain issues that need to be resolved, including the following:

- (a) There is no clear legal basis for third party intermediary injunctions, including website blocking, in many major economies, such as the United States of America and Japan.
- (b) In the European Union, where there is a legal basis in Article 8(3) of the EU Copyright Directive, a number of countries have either not yet implemented the Directive or not implemented it correctly, even 23 years after its adoption (specifically Bulgaria, Germany and Poland). In Germany, for example, website blocking measures are considered a subsidiary measure, with right holders being required to file actions against primary infringers and/or the hosting provider before requesting injunctions in relation to access providers. Further, unhelpfully, the German subsidiarity principle is also applied to injunctions against domain registrars.
- (c) In many countries, website blocking measures are not scalable — i.e., right holders are not able to bring a sufficient number of actions to allow for a high number of sites to be blocked — and are therefore not effective, which may be as a result of civil court procedures. Such procedures are often too slow to deal with the fast-changing nature of online piracy, whereas legal systems involving administrative authorities or voluntary website blocking schemes tend to be faster and more efficient in dealing with online piracy, as large numbers of sites can be blocked on a frequent basis.
- (d) In particular, civil law systems are also not cost efficient, as right holders often need to bear the costs of proceedings in addition to the financial harm caused by illegal services in the first place.
- (e) Injunctions are time-limited. Blocks are implemented for 18 months in France (civil procedure), one year in Portugal (under an industry agreement), Finland and Spain (civil procedure), and three years in Greece (administrative procedure) and Sweden (court procedure). Once an injunction expires, right holders need to repeat the process to block the site again. This is costly, time-consuming and an unnecessary complication for the right

²² Argentina, Australia, Brazil, Denmark, France, Greece, India, Ireland, Italy, Lithuania, the Netherlands, Singapore, Spain, Sweden and the United Kingdom.

²³ On the basis of, for example: Art. 8(3) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (“the EU Copyright Directive”); specific laws in Australia, Singapore and the United Kingdom; case law in Canada; administrative law provisions in Italy, Spain and several south-east Asian countries, such as Indonesia and Malaysia; criminal law in Thailand; and general principles of civil law, such as in Argentina and Peru.

holder. One way to overcome this challenge would be for courts to ask plaintiffs to notify the court and defendants when/if the infringement on a website has stopped (as occurs in the Netherlands, for instance) so that the service is blocked for as long as the infringement subsists.

D. ELEMENTS OF FAIR AND EFFECTIVE WEBSITE BLOCKING MEASURES

10. Governments can further support right holders in their efforts to tackle online piracy, particularly concerning website blocking measures, by:

- a) Providing a legal basis for infringing websites to be blocked, for example by adopting the approach taken by the European Union in Article 8(3) of the EU Copyright Directive. The legal basis should be “service-neutral” and apply to all types of intermediaries on a no-fault basis;
- b) Working with suitable local agencies to equip them to support administrative website blocking schemes, similar, for instance, to those operated in Italy and Spain, where website blocking measures are ordered by government agencies (AGCOM in Italy, which supervises ISPs, and the Intellectual Property Commission under the Ministry of Culture in Spain);
- c) Ensuring that right holders can obtain dynamic blocking orders that cover multiple infringing websites across all/multiple ISPs, swiftly and without having to pay the costs incurred by ISPs, which may require government guidance or even legislative adjustments; and
- d) Facilitating and encouraging discussions between local right holder communities and ISPs to agree on voluntary programs. A good start in encouraging such discussions is to convene round tables with representatives of the various sectors with a view to concluding a memorandum of understanding or reaching a voluntary agreement, an approach successfully adopted in Denmark.

II. CONCLUSION

11. The role of intermediaries remains a crucial component in tackling online piracy and continues to require attention from national authorities. WIPO could play an important role in facilitating knowledge sharing among national authorities and could provide further guidance on measures to be taken by all intermediaries, bearing in mind the transnational nature of online piracy. One important element of this endeavour could involve an assessment of how to elevate the role of WIPO-administered systems for cooperation, such as the WIPO ALERT platform, including by expanding its use to different types of intermediaries in the online ecosystem.

[End of contribution]

THE ROLE AND THE WORK OF THE GREEK ADMINISTRATIVE COMMITTEE FOR COMBATING ONLINE PIRACY OF LIVE EVENTS

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ABSTRACT

This contribution provides a comprehensive overview of the Greek administrative mechanism for combating piracy of live events on the Internet. It provides an account of the establishment and the work of the national Committee for the Notification of Copyright and Related Rights Infringements on the Internet (EDPPI). Experts at the Hellenic Copyright Organization (HCO), which is the competent authority in Greece for all copyright and related rights issues, perform the technical, legal and administrative functions of the EDPPI, with the aim of fostering a copyright-sensitive culture. The law empowers the EDPPI to deal with all types of online infringements since it is competent to issue dynamic/live blocking injunctions following the determination of unlawful conduct, providing a rapid and effective enforcement mechanism to right holders. Since recourse to EDPPI as an administrative (i.e. out-of-court) system has prevailed for the last few years, particularly in relation to live blocking orders, the focus of this contribution is on the procedure pertaining to live events. More specifically, it will analyze the prerequisites established by the law, the nature of the measures ordered, whether their character is appropriate and balanced, and the safeguards, in order to ensure legality and respect of the rule of law and other fundamental rights.

I. THE ROLE OF THE HCO AND ESTABLISHMENT OF THE EDPPI

1. The HCO is the national competent authority for all copyright and related rights issues. Since it was established in 1993, its role and responsibilities have been greatly expanded in accordance with relevant legal developments nationally and internationally, including in the European Union. One of the main objectives of the HCO since 2018 has been the enforcement of copyright in the digital environment. The relevant system to achieve this was established in the form of the EDPPI, the Greek administrative committee which is empowered to tackle online infringement of copyright-protected content, including live events. The HCO is also engaged in the WIPO ALERT initiative as the authorized contributor for Greece, thus implementing the work of the EDPPI and monitoring the effectiveness of the relevant mechanism.

II. THE MAIN ASPECTS OF THE COMPETENCE OF THE EDPPI

A. COMPOSITION, OPERATION AND RESPONSIBILITIES OF THE EDPPI

2. The EDPPI is an administrative committee that was established with the aim of providing copyright and related right holders with a prompt and effective tool against online infringement instead of time-consuming and cost-intensive court litigation. Its composition is established by the law and the committee members are comprised of officials from the HCO, the Hellenic Telecommunications and Post Commission (EETT) and the Hellenic Data Protection Authority.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

Since EDPPI cannot act *ex officio*, the applications for the removal of unlawful content or the blocking of access must be submitted by the right holders in accordance with the law. The application needs to fulfill a number of formalities which are set out by the law²⁴ before EDPPI can proceed to examining the case on merits, following the specific steps and strict deadlines provided by the law in order to ensure due process.

3. These aspects are highlighted under this section in order to identify the legal basis and the parameters of the work of EDPPI, and to specify its remit. For instance, not all procedures are applicable against the end users. On the other hand, right holders are able to seek recourse even in cases where infringement takes place in the form of an offer of products or services on the Internet, either through advertisement or promotion. This is a measure that works side by side with the goal addressed by the WIPO ALERT initiative.

4. In addition, the HCO undertakes the publicity measures provided by the law and ensures that not only the decisions of EDPPI are posted on the HCO website, but that there are also two “blacklists” containing the web links that were found to be infringing copyright and/or related rights. These measures, in force since 2018, are aligned with the WIPO ALERT initiative since HCO is an authorized contributor uploading the aforementioned infringing web links to the platform.

a) Blocking Orders and Dynamic Injunctions

5. The Greek legislation outlines the competence of EDPPI in detail, while also setting measures which are available for every case depending on various criteria. EDPPI has already issued almost 300 decisions based on four different procedures; basic procedure,²⁵ dynamic blocking,²⁶ live blocking²⁷ and a supplementary decision to a previous live blocking order,²⁸ which have been made available during the last few years to right holders. In almost all cases, EDPPI ordered the blocking of access to the infringing content. The discretionary remit of EDPPI under Article 66E of Law 2121/1993 has been further specified by Ministerial and Joint Ministerial Decisions, including important aspects such as the duration of the blocking.

6. EDPPI is now authorized to issue dynamic site blocking orders after a number of legislative amendments expanded its authority, protecting copyright and related rights on a “dynamic” basis. Accordingly, the blocking of access to the so-called “mirror sites” or “clone sites” may be ordered with the aim of preventing the circumvention of its decisions related to specific domain names, subdomains and/or IP addresses through new ones that again provide access to the same content that was available on the website for which access had been blocked. This opportunity is provided to right holders by means of a special supplementary procedure wherein the sole prerequisite is the provision by the applicant of data and documentation that prove the mirroring or the cloning of the infringing web resources. The conditions set out by the law and the steps to be followed will be analyzed, while also providing for a clear overview of the output of these procedures.

²⁴ Art. 66E(4) of Law 2121/1993.

²⁵ Article 66E(4) of Law 2121/1993.

²⁶ Article 66E(9) of Law 2121/1993.

²⁷ Article 66E(10A) of Law 2121/1993.

²⁸ Article 66E(10A)(2)(c) of Law 2121/1993.

b) Live Blocking Injunctions

7. In 2020, Law 2121/1993 introduced a new remedy to fight piracy of live events over the Internet (addition of paragraph 10A). This specific mechanism acts as a precautionary measure to prevent imminent infringement, tackling piracy of live events, provided that the prerequisites set out by the law are cumulatively fulfilled. This reform marked a new era for EDPPI. In 2023, when the European Commission adopted the Recommendation on Combating Online Piracy of Sports and Other Live Events,²⁹ Greece was ready to contribute to the goals pursued under this soft law instrument and to actively participate in the dedicated network of national authorities³⁰ which was subsequently established at the European Union Intellectual Property Office. Building upon its experience and having already dealt with numerous challenges, the HCO is able to share the keys to the successful operation of the Greek system, since it guarantees the effectiveness of the measures addressing the termination of unauthorized uses of protected content, and compliance with fundamental rights and freedoms. It is noteworthy that no decision of the EDPPI has been challenged before the competent court.

The prerequisites provided by the law

8. Since the blocking of access, which is the sole remedy administered by EDPPI, is ordered before the infringement actually takes place, the law provides for three conditions that shall be fulfilled. First, the procedure is exclusively applicable to national or international television events (sports and cultural) that will be transmitted live. Second, it must be predetermined or even speculated that a large-scale infringement will take place, but it solely concerns unauthorized subscription connection by any means. Third, it must be established that there is an immediate, serious and imminent danger or an irreparable damage to right holders, which also has a bearing on public interest.

9. Furthermore, there are certain typical requirements such as the payment of the fee for examination of the case, the use of predetermined forms, the submission of documentation concerning past infringements by the targeted Internet locations, and compliance with the time limit for submitting the respective application.

Effective, balanced and appropriate measures

10. The measures undertaken within this context have been carefully designed in order to be appropriate, balanced and effective. This section of the contribution is devoted to the presentation of the requirements of live injunctions that concern, among others, certain deadlines. For example, there is a specific time limit for the compliance of Internet Service Providers (ISPs) with the operative part of the decision of the EDPPI pertaining to blocking access. In the case of live events, the EDPPI aligns blocking with the beginning of the transmission, and orders ISPs to send statements of compliance within 6–12 hours of the notification of the order. The blocking of access to certain uniform resource locator (URL), Internet Protocol (IP) addresses or domain names according to the law lasts for at least 15 days. However, in practice, the decision foresees the duration of the blocking as lasting for a couple of months. In addition, it is a strict requirement for decisions of the EDPPI to be issued and communicated 24 hours at the latest before the (first) transmission of the event(s).

²⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2508

³⁰ <https://www.euipo.europa.eu/en/observatory/enforcement/combating-piracy>

11. Moreover, this order may also impose the blocking of access to domain names of second level, even if the access to content is allowed by domain names of third level or another level, enhancing the effectiveness of the injunction issued.

12. Also, in this case the Greek legislation provides for two procedures without burdening the applicant with the payment of a new examination fee; the procedure before the EETT, with which the HCO is in close collaboration, has prevailed over the years. This is because a special 24/7 task force was established to receive and execute further additional blocking requests in real time.

13. If alleged non-compliance of the prior decision(s) of the EDPPI or the recurrence of the infringement of the rights or of the content referred to in the said decision by any technical means is anticipated, the relevant task force of the EETT immediately sends an order to ISPs requiring them to block access to the additional URLs, IP addresses or domain names. The EDPPI is also simultaneously notified. The duration of the new blocking is also linked to the duration of the previous blocking order.

14. This order is effective until the issuance of the relevant supplementary decision of the EDPPI, which is issued within a month. The Greek law also clearly lays down that ISPs with more than fifty thousand (50,000) subscribers are obliged to block the access to the content within the time limit set out in the notification by the EETT, which cannot be longer than 30 minutes from the dispatching of the EETT's order.

Safeguards

15. Lastly, there are a number of safeguards concerning the legality of the underlying procedures and actions of the EDPPI. It is briefly stated that the EDPPI, following the respective recommendations sent by the EETT, and taking into special consideration the supplementary evidence submitted by the applicant, issues a supplementary decision that extends the scope of the prior one in order to include the new IPs or domain names that had been determined and verified as infringing copyright and/or related rights.

16. Additionally, the decisions of the EDPPI may be challenged before the Administrative Court of Athens. If substantiated, the right holder who requested the issuance of this injunction is liable to pay compensation to the parties that initiated legal proceedings and have been affected. The rich case law of EDPPI so far depicts the need for its intervention and for verification of the content of applications received, with the aim of avoiding over-blocking.

Future challenges

17. There are certain challenges currently being discussed, such as issues pertaining to cloud storage, the enhancement of cooperation between national authorities, the cross-border implementation of injunctions, and the safeguarding of protection and enforcement in the era of artificial intelligence (AI).

III. CONCLUSION

18. So far, the EDPPI has issued 300 decisions. Most of them are dynamic/live blocking injunctions granted in accordance with the specialized respective procedures established by the law. As a result, Greece has adopted and implemented an effective mechanism for tackling piracy of live events, and the EDPPI is considered a role model. The HCO monitors the

implementation of copyright law, which has been extended to the crucial field of enforcement, providing an overall protection system to copyright and related right holders. This objective is also fulfilled by the participation of the HCO in the WIPO ALERT initiative. Our aim and hope is to enhance our cooperation and to be able to foster a copyright-sensitive culture fulfilling the objectives of international, European Union and national copyright law.

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