THE ADMINISTRATIVE AND JUDICIAL PROCEDURE CONCERNING INTERNET INFRINGEMENTS: MUCH MORE THAN A SIMPLE NOTICE AND TAKEDOWN PROCEDURE

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Overview

• (I) Description of the procedure
• (II) Added value of the procedure
• (III) Milestones so far and obstacles identified
• (IV) Next steps and latest developments
Description of the procedure
(1) Main elements

- Object. Any infringement of copyright and related rights committed through an information society service
- Purpose of the Procedure. To re-establish a situation of legality = the simple termination of the infringing behavior
- Active subject. Any owner of copyright and related rights that have been deemed to have been infringed, or his/her representatives
- Passive subject. The provider of the information society service through which the infringement is committed
- Competent body. The Procedure is carried out by the Second Section of the CPI
Description of the procedure
(2) Procedure

- Complaint by interested party
- Preliminary investigations (identifications and verification of infringement)
- Formal opening of procedure – request to take down
- If removal: procedure is closed
- If infringement persists: procedure continues with draft final resolution, final arguments and final decision
- If final decision is not abided by: execution of suspension through intermediary services, prior judicial authorisation
Added value of the procedure

No “silver bullet” exists, but...

• Identification of infringers and other third parties
• Intervention of a public authority and due process
• Detailed, reasoned and justified ruling
• Obligation to abstain from making the same content available in the future (“stay down”)
• Interruption or suspension measures by intermediary services if lack of compliance
• Effective knowledge for third-party intermediary services v-à-v infringing behavior of their clients
Milestones so far and obstacles identified

(1) Milestones

- More than 84% of more than 400 complaints duly processed and finalised
- More than 150 websites involved
- All websites involved have taken down identified infringing content
- Distinction between passive, neutral and technical intermediary services and services responsible for the content
- Linking sites with deep-links or P2P links which systematically, actively and knowingly localize illegally-offered content, deemed to infringe
Milestones so far and obstacles identified

(2) Obstacles

- Lack of accuracy of registration data for generic Internet domain names (such as “.com”)
- Massive use of privacy protection services concerning generic Internet domains
- Cooperation measures limited to technical Internet intermediary services (no online payment or advertising)
- Procedure being focused overly on individual works
- Lack of adequate prior requirements for sufficient self-protection efforts
Next steps and latest developments

• Better identification of the owners of generic domain names exercising an economic activity (ICANN)
• Reforms concerning the regulatory framework currently in force:
  – clarification that sophisticated linked web sites are involved in an economic exploitation of works
  – Empowerment of the CPI to broaden the range of works or subject matters to be protected in each case file
  – Inclusion of advertising and electronic payment services
  – Administrative sanctions for repeat infringers
  – Self-regulation for intermediaries
  – Civil procedure to allow identification of large-scale infringers
  – New Criminal Code to ensure criminal prosecution of egregious infringing linking sites
Thank you for your attention!

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