

## **Advisory Committee on Enforcement**

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### **DYNAMIC BLOCKING INJUNCTIONS IN BELGIUM**

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#### **ABSTRACT**

On June 1, 2024, Belgium adopted a hybrid (judicial/administrative) system to block pirate sites. Under that system, a court issues a warrant to the administrative authority to implement the blocking order. The first set of decisions resulted in the dynamic blocking of many sites, the list of which is being published. They include content delivery networks (CDN), domain name systems (DNS) and host blocking, as well as de-indexing implemented by Internet service providers (ISPs), alternative DNS providers, Internet search engines and advertisers. Belgium has also joined WIPO ALERT as an authorized contributor.

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\* 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.

## I. OBTAINING A BLOCKING INJUNCTION IN BELGIUM

### A. HYBRID PROCEDURE

1. On June 19, 2022, the Belgian legislature introduced a new hybrid procedure, combining judicial and administrative elements. It allows holders of copyright, related rights and database rights, and license holders who obtained a license from the Belgian Gaming Commission to provide online gambling services in Belgium, to obtain a dynamic injunction to block illegal digital content or prevent the illegal provision of online gambling services.<sup>1</sup>

2. Under Article XVII.34/1 of the Belgian Code of Economic Law (CEL), a right holder must submit a claim to the President of the Business Court of Brussels, who shall issue a ruling within eight working days unless exceptional circumstances arise. To obtain a blocking order, three conditions must be fulfilled. First, the plaintiff must prove that he or she is the actual right holder (appearance of rights). Second, the infringement must be clear and significant, from a quantitative (volume of illegal content) and/or qualitative perspective (substantial economic harm), which the judge can assess *prima facie*. Third, there must be a justified balance between the rights and interests of the right holder, the interests of intermediaries whose services are being used and who must implement the blocking measures, and the public interest (e.g., freedom of expression and the right to privacy).

3. The right holder, sometimes represented by a collective management organization (CMO) or a professional association, can launch the summary proceedings *inter partes* or on a unilateral basis (*ex parte*). Should the right holder choose the unilateral procedure, there is a legal presumption of urgency or necessity. Nevertheless, the judge may always invite the alleged infringers and/or intermediaries whose services are used, whom the right holder has identified, to a hearing.

4. Applicants are not obliged to prove that they are unable to identify the infringers or to contact the content provider. This was a deliberate choice by the legislature, as having to identify the infringers was deemed a major obstacle to starting proceedings for the applicants. For similar reasons, the law does not specify what type of intermediaries may be targeted when applicants seek an order to block illegal content or services. The law thus gives applicants freedom to target several intermediaries that they can identify.

### B. ROLE OF THE ADMINISTRATIVE AUTHORITY

5. The Belgian Service for Combating Online Piracy and Illegal Online Gambling (the Authority) was established on June 1, 2024, in the Federal Public Service Economy (Directorate-General for Economic Inspection) as an independent department.<sup>2</sup> Its powers are threefold.

6. First, based on claims submitted by applicants, the judge can mandate the Authority to define how blocking measures are to be implemented by the infringer and/or intermediaries whose services are being used to reproduce and communicate the illegal content. The Authority must deliver its decision within three working days and may not limit, expand or modify the judge's ruling. The Authority carefully weighs the interests of the parties involved

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<sup>1</sup> Act of June 19, 2022, transposing 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, Belgian State Gazette 01/08/2022, 60173.

<sup>2</sup> Royal Decree of April 18, 2024, establishing the authority to combat infringements of copyright and related rights on the Internet and the exploitation of illegal online games of chance, Belgian State Gazette, 06/05/2024, 49668.

and may invite the parties to be heard before reaching a decision. Such hearing must take place within nine working days from the date of receipt of the order by the Authority.

7. To preserve procedure's dynamic character, the Belgian legislature granted the Authority the power to identify mirror sites of infringing websites or new addresses providing access to the infringing website. Rights holders, therefore, no longer need to apply for a new injunction when new sites emerge carrying the same illegal content. To ensure that the provisional blocking measures are effective, the Authority also monitors whether they have been implemented and assess their impact.

8. For reasons of transparency, the Authority has a legal obligation to publish its blacklist and keep it up to date. Given the international relevance of sharing this data, the Authority has joined WIPO ALERT as an authorized contributor to share its blacklist with advertising entities that participate as authorized users.

9. The blocking measures imposed by a ruling and the Authority's decision setting the modalities for their implementation have a provisional character. A procedure on the merits is required either within the timeframe set by the legislature (20 working days or 31 calendar days, whichever is longer) or within the timeframe set by the judge in accordance with Article 9(5) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

10. Second, the Authority has an advisory role. The judge, parties and any interested third parties may request recommendations from the Authority when an interlocutory injunction is challenged, such as in cases where fundamental rights and freedoms of Internet users are at stake. For instance, in a case concerning the use of virtual private network (VPN) connections in the context of geo-blocking and the suspension of domain names related to illegal gambling, the judge requested such a recommendation of the Authority.

11. Third, the Authority can encourage stakeholders to conclude an agreement or establish a code of conduct or action plan as a part of efforts to combat digital piracy. The agreement could be enforced by Royal Decree, making it legally binding for third parties of the same category.

## **II. OUTCOME OF THE INJUNCTIONS**

### **A. FIFTEEN RULINGS, 852 DOMAIN NAMES BLOCKED**

12. Since March 2025, the Authority has received 15 rulings from the Business Court of Brussels. In eight cases, the judge mandated the Authority to set the modalities of the blocking measures. Three of these rulings concerned holders of copyright or related rights. In the first ruling, sports rights owners obtained an order to block sites offering illegal streaming and downloads of audiovisual (sports) content. The second concerned a coalition of authors and publishers, represented by their respective CMOs, who sought to block illegal digital libraries giving access to numerous digital books. The third and fourth case were filed by stakeholders active in the audiovisual sector. The nine other rulings dealt with by the Authority targeted websites or services offering illegal gambling services.

13. At the time of writing, 852 domain names had been blocked under the new procedure. However, that number changes every week as new mirror sites appear and domain names that are no longer active are unblocked. In most cases, the Authority has been mandated to monitor mirror sites.

## B. TARGETED INTERMEDIARIES

14. Applicants have pursued various intermediaries, including content delivery networks (CDN), Internet search engines, payment service providers, hosting providers, registrars and alternative domain name system (DNS) providers. Following the injunctions, most intermediaries have implemented the blocking measures ordered within the time frame set by the Authority. For example, all Belgian Internet access providers (ISPs) have executed the rulings by applying a DNS block. Further, a landing page has been created that redirects users to the Authority's website, where the decision and the blacklist are published to ensure full transparency, pursuant to the CEL.

15. The level of information required for intermediaries to take action differs significantly depending on the category. In some cases, a domain name or URL will suffice, but sometimes intermediaries demand more information. Clearly, that affects the speed with which the block is imposed. Delisting from search engine results, for example, can be obtained in a day, whereas the blocking of bank transfers or accounts requires in-depth analysis of the payment process.

16. Identifying the correct intermediaries and/or assessing what kind of blocking measures they will be required to implement requires a degree of technical knowledge. Several applicants have indicated that this has restrained them from initiating the procedure. The Authority is therefore preparing objective guidance on legal and technical aspects for applicants to consider when they seek interlocutory injunctions.

17. The technological measures that can be required of intermediaries to implement an order sometimes lead to complex discussions between technical and legal experts. Although not obliged to do so, the Authority has in almost every case consulted the parties before taking its decisions. That has allowed intermediaries to explain the technical and practical constraints facing them and enabled the Authority to evaluate all the interests at stake before taking a decision on blocking measures. To date, one injunction and two decisions by the Authority have been challenged in court by four intermediaries questioning the proportionality of the measures imposed on them.

## C. BELGIAN PLATFORM FOR DYNAMIC BLOCKING

18. In several European countries (France, Greece and Italy), administrative authorities have developed a semi-automated blocking mechanism to enable real-time blocking. In Belgium, this is not yet the case. The Authority is investigating how it could automate certain processes to improve the procedure's effectiveness. The goal is not to fully automate the procedure but to optimize certain processes, such as the search for mirror sites or the communication of information about updates on blocking or unblocking access to domain names. Ideally, that could be achieved via a secure platform enabling the Authority to centralize all the actions taken by it and the targeted intermediaries in a particular case. That, in turn, would allow the Authority to compile regular monitoring reports and statistics in order to minimize the risk of over-blocking.

19. In any event, a court order and human interventions by the official agents of the Authority will remain key to ensuring the proportionality and effectiveness of the provisional measures imposed by the Business Court.

## D. COOPERATION AGREEMENT

20. To encourage self-regulation, the Authority has organized regular meetings with rights holders and Belgian access providers, informing them about cooperation schemes in Denmark, France, the Netherlands and other European countries. Stakeholders are being encouraged to come to an agreement by the summer of 2026 with the support of the Authority, which will

moderate the discussions and try to help them to reach an agreement based on those discussions and experience gained abroad.

### **III. CONCLUSION**

21. Since March 2025, four rights holders have initiated the new hybrid procedure to obtain an order to block illegal content and services sites infringing their copyright or related rights. Some 852 domain names have been blocked and that number is growing rapidly as new mirror sites appear every day. The Authority has received injunctions on an almost monthly basis and has actively consulted parties to reach decisions on blocking measures that are proportionate and effective. In the medium term, the Authority aims to develop a semi-automated system to render certain processes more efficient and to establish a voluntary cooperation agreement between rights holders and different categories of intermediaries.

[End of contribution]