

COPYRIGHT ENFORCEMENT ON THE INTERNET

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The experience of Belgacom

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together with



Ratio of the e-commerce legislation: reach a balance between rights owners, users, ISP



1. Ipr infringing content is only a part of the online illicit content
2. General monitoring obligation is forbidden
3. Internet designed to circumvent obstacles/worldwide
 - illegal content should be removed from its source location
 - different legal regimes for hosting / mere conduit activities
4. 1st line responsibility lies with the person who places the content on the internet
5. Injunctions upon ISP are possible but must comply with several legal criteria
6. ISPs' safe harbour apply only to certain services and under some conditions

Copyright enforcement in Belgium



1. ipr infringing content may lead to civil and criminal proceedings
2. rights representatives are entitled to require authorities to issue injunctions against ISP provided
 - effective, proportionate, dissuasive, ... (ipr legislations); and
 - this does not imply a general monitoring obligation (e-comm legislations)
3. obligations of ISP in case of actual knowledge of illicit content
 - promptly remove access to content hosted by it
 - comply with valid injunctions issued by competent authorities
 - Belgian e-comm law: notify to the competent authorities in any case (hosting, mere conduit)
4. not all notices cause “actual knowledge”
 - no specific legal expertise, esp. in areas of private rights
 - 50% notices unclear: no precision of the location of the illicit content nor of the legal basis
 - ipr notices massively generated by robots
5. identification behind an IP address possible only for criminal offences with a specific order issued by the following criminal authorities
 - the public prosecutor; or
 - the police officers especially mandated by the public prosecutor; or
 - the investigating magistrate

1. N&TD @ Belgacom

- specific clauses in the Internet services GTC
- links for e-notices (most of notices for racism, defamation, privacy breach)
- back up of the content as a proof
- no customers' identity disclosure unless specific order issued by a competent criminal authority
- give customer opportunity to react
- take down in case of doubt/no reaction by customer
- notification to the competent authorities > informal agreement with criminal authorities for the practical details of the notification
- informal specific N&TD deal with BAF/IFPI

2. EU Commission: Public Consultation on procedures for notifying and acting on illegal content hosted by intermediaries

- Divergences between national interpretations of “actual knowledge”, “awareness” “expeditiously” ...
- Minimum requirements for a valid notice?

3. Shift of on-line copyright infringements to mere conduit related activities

Mere conduit / P2P filter, blocking of websites 1/2



1. Scope of the injunction must comply with legal criteria

- effective: check circumvention possibilities, associated risks, international aspects, etc.
- proportionate: check effectiveness v. costs, fundamental rights etc.
- dissuasive: check circumvention possibilities
- no general monitoring: specific

2. P2P filter injunction issued by a civil judicial authority

- Scarlet/Sabam

3. Injunctions to block websites hosted abroad issued by competent authorities

- civil judge (Pirate Bay 2011)
- criminal authority (Pirate Bay 2012)
- administrative authority? Belgian law on gambling (2012)

4. DNS v. IP blocking?

- Concerns re effectiveness, proportionality, dissuasion, etc.
- effect on the Internet architecture and encryption
- attention to the side effect of political inaction e.g. child porn
- best efforts obligation

5. Voluntary blocking?

- Voluntary protocols on practical implementation for valid injunctions issued by a competent authority
- Voluntary blocking/private protocols with rights owners raise risks to lose safe harbour regime / implement a private and differentiated justice

1. No Hadopi-like law in Belgium

2. Legal obstacles to implementation of bilateral commercial agreements

2.1. Privacy related legislations

- Lawfulness of the data collected by rights owners?
- Lawfulness of the identification of the customer by ISP? Restricted list of legal basis allowing identification of the customer by ISP:
 - specific consent of the customer
 - processing of judicial data only for its own litigation

2.2. Internet access as a fundamental right?

- Necessary involvement of judicial authorities before any restriction of the Internet Access of the customer

3. Towards a Hadopi-like legislation? cf France, UK

- evaluation period of the French example (effectiveness and educational objective v. costs)
- no shift of the costs from one industry to other
- parallel development of attractive legal offers
- intervention of a specific authority + due process of law
- legal guarantees for ISP: compliance with data protection legislations and with fundamental rights

1. Global compulsory license?

- exception to the exclusive rights: not possible at national level (Bern Convention, restricted list of exceptions in the EU dir.)
- 3step test: unfair competition to the legal offers

2. Voluntary licences?

- partial solution
- concerns for legal offers?
- redistribution to foreigners?
- privacy concerns if monitoring

1. Online piracy is prejudicial to creation but other rights are also involved
> **balance to reach between ipr, e-com and data protection legislations**
2. Special difficulties due to technical realities and international aspects
> **promote international judicial cooperation**
3. Copyright infringement is only one type of on-line illegal content
> **specific measures may be appropriate but in coordination with an horizontal approach**
4. ISP are not legal experts esp. in third parties' copyrights
> **need to involve competent authorities and avoid private justice**

5. Progressive alignment of interests between rights owners and ISP against online piracy

- Parasitism of legal offers distributed by ISP
- Need to optimize bandwidth / net neutrality
- Traffic revenues become commodities

> **cooperation if compliance with all applicable legislations**

6. ISP can implement specific measures for copyright enforcement when such measures comply with all applicable legislations

> **need for legal security esp. re telecom secrecy, data protection and safe harbour**

7. ISP are partners for the development of online legal offers

> **full support, promotion of legal offers**

> **repression is just one aspect of copyright enforcement**

> **support of labelling, education of the public**