

EIP



The Fight to Protect Copyright Content from Unlicensed Streaming Websites

Columbia Pictures, Disney, Netflix & Ors v British Telecommunications, Sky, Virgin & Ors [2021] EWHC 2799 (Ch)

The applicants (the "Studios") are members of popular studio groups who own the copyright for vast amounts of motion pictures and television programmes, meanwhile the respondents (the "ISPs") are the six major UK internet service providers.

The Studios requested the grant of a website blocking order under section 97A Copyright, Designs and Patents Act 1988 ("CPDA") which the ISPs do not oppose. The application relates to five websites (the "Target Websites") such as 123movies.online, who are said to make available for streaming large amounts of copyright protected film and television content, including content owned by the Studios, without licences being in place.

Background

The Target Websites do not host the relevant content themselves: third-party sites host the audio-visual content which is transmitted. The way that the Target Websites work is by providing links to content on those third-party sites in a user-friendly way that enables users to search and access content straightforwardly.

Copyright infringement - communication

The Studios' position is that the operators of the Target Websites are liable for copyright infringement as they allow access to copyright works owned by the Studios. They contend that the necessary territorial link is established by targeting users in the UK. Providing

sites which allow access to copyrighted content in a straightforward way amounts to "communication".

Case Law

The relevant principles of "communication" were recently considered by the Court of Appeal in *Tuneln Inc v Warner Music UK Ltd* [2021] EWCA Civ 441 ("Tuneln"). The Judge was satisfied that, as in *Tuneln*, the Target Websites enable the public to access the content from a place and at a time of their choosing. Furthermore, by including links to content, the Target Websites are providing easy access. Also, the content is communicated to "the public" because the Target Websites have been accessed by a large and indeterminate number of persons.

Copyright infringement - authorisation and copying:

The Studios also maintained that the operators of the Target Websites infringe copyright by authorising acts of copying by UK based users. This is on the basis that the streaming process causes the user's device to create copies of the content in its memory, which is an infringement under section 17(1) CPDA. The Judge was satisfied there was authorisation and that infringement by copying is an inevitable consequence of accessing the material.

Evidence

The key evidence put forward was a witness statement in support of the application. This confirmed that in terms of the purpose and general mode of operation, the Target Websites are substantially the same as other websites that are currently subject to existing website blocking orders under section 97A.

Outcome

The Judge was satisfied that an injunction is necessary to reduce damage to the Studios and granted a website blocking order. The activities of the Target Websites have not been curtailed despite attempts to contact their operators. The Judge considered that the grant of the order would be the most effective means of impeding infringing activity of this nature.

The Studios confirmed that, following the grant of the order, they will notify the Target Websites to CloudFlare and request that they be allocated to dedicated IP addresses. This will help to ensure that only material on the Target Websites is blocked.

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