



On-line piracy, and the intermediaries

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- **Increasing numbers of on-line counterfeit and piracy**
 - From remote and exotic parts of the world
 - Mostly untraceable anonymous entrepreneurs
 - Action against the source is fruitless

- **Hosting provider**
- **Access provider**
- **Proxies**
- **Payment providers**
- **Market places**

- **E-Commerce directive**
 - Liability of intermediaries is restricted
 - No restriction on injunctions
- **Art. 11 and 9 EU Enforcement directive**

“injunction against intermediaries whose services are used by a third party to infringe”

 - Art. 8.3 EU Copyright directive

- Proportionality test
- Subsidiarity test?

- **Action against hosting providers**
 - Website is hosted on their server
 - Many ISP's have NTD procedures
 - They will often take down counterfeit or pirate sites
 - Except for a few "rogue" ISPs

Case in point: REACT v AltusHost

- **AltusHost hosted thousands of counterfeit websites**
- **Anonymous website owners**
- **No effective NTD policy**
- **Established in Belize and with a fake office in Sweden**
- **Servers in the Netherlands and Luxembourg**
- **Years of refusal to co-operate**

Strategy against AltusHost

- **Website owners were summoned based on *whois* data**
- **AltusHost was notified of the counterfeit websites**
- **Assets (servers) were seized in the Netherlands**
- **Summary proceedings were initiated**

Strategy against AltusHost

- **Injunction**
- **Settlement**
- **AltusHost now is an ally of REACT**

- **REACT / Ecatel**
 - Ex parte injunction 29 March 2013

- **Re-emerging piracy websites**
- **Action against the access provider?**

- **XSP's provide internet access to their subscribers**
 - Relatively distant from "the source"
 - Do not contribute to infringement. (mere conduit?)

The Pirate Bay

- **TPB does not comply with national decisions and are now serving jail time**
- **Action against web hosts proved unsuccessful**
- **TPB is its own hosting provider**
- **TPB switches transit providers if necessary**
- **Access providers are “last resort”**

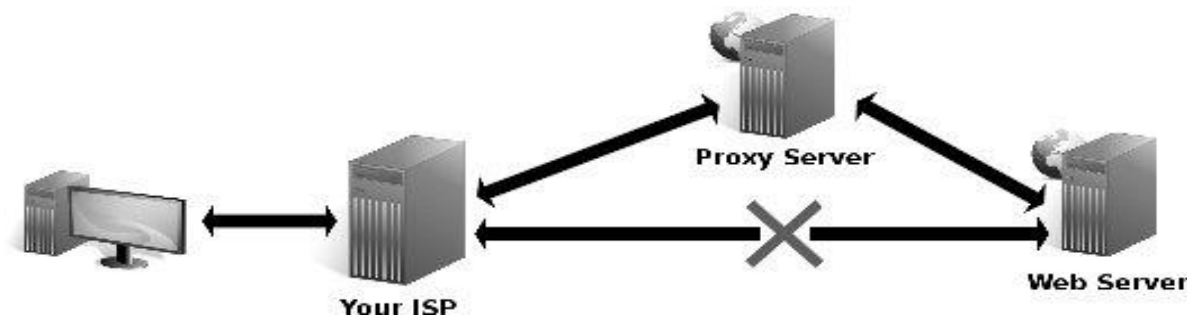


- **Pirate Bay Blocking order 11 Jan 2012**
- **Par 11 Enforcement Directive - intermediaries**
 - Art. 26d Copyright Act and 15e Neighbouring Rights Act
- **Balance fundamental rights v. copyrights**
 - No violation of art. 10(2) EVRM and 'net neutrality'
 - IP rights vs. freedom of enterprise
- **Blocking of new domains on request of BREIN**
- Judgement in appeal expected late 2013



- **Summary blocking order - 10 May 2012**
 - Proportionality - effectiveness
 - Subsidiarity
 - Freedom of expression and right of privacy
- **Appeal and proceedings on the merits pending**
- **No blocking of new IP addresses**
- **Ex parte injunctions for new domains TPB**
 - 80, 81, 82, 83

- **Proxy servers: bypass to TPB**
 - Facilitating circumvention of court orders
 - “Dedicated” proxies
- **“Ex parte” injunctions’ granted**
 - BREIN v. Bobbeldijk (20 March ‘12)
 - Brein v. Pol (6 July ‘12)
 - Brein v. Greenhost (11 July ‘12)
- BREIN has taken more than 100 proxies down



IP address and domain name blocks

- **Access providers in the UK, Finland and Italy block access to TPB**
- **TPB is blocked, not filtered: all content is blocked, not only infringing content**
- **UK: court ordered access providers to block various P2P websites**

Whack a mole?

- **Pirate bay visitors decrease**
- **Spotify and legal movie sites are up**

- **ECJ Kino.to (C-314/12)**
 - ECJ to render judgment by the end of this year
 - on blocking of movie streaming website Kino.to

- **ECJ Kino.to (C-314/12)**
 - Four questions
 - Is a streaming website using the services of the users access provider?
 - Is private copying from an illegal source permissible?
 - Is a website blocking order in line with fundamental rights and is it enough that the XSP takes all reasonable measures?
 - Does an injunction against an access provider have to be effective?

- **ECJ Scarlet v. SABAM**
 - Monitoring of all internet traffic by XSP to filter out infringing content
 - is not proportionate

Payment providers

- **Lotto Betfair**
- **Brein v. Pirate Bay**
- **Counterfeiting websites can not survive without payments**
- **Taking on the payment providers is key**
- **PayPal, Visa and Mastercard appear to be co-operative (...but are they)?**