



Court of Justice of the European Union

PRESS RELEASE No 126/11

Luxembourg, 24 November 2011

Judgment in Case C-70/10

Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs
SCRL (SABAM)

Press and Information

EU law precludes the imposition of an injunction by a national court which requires an internet service provider to install a filtering system with a view to preventing the illegal downloading of files

Such an injunction does not comply with the prohibition on imposing a general monitoring obligation on such a provider, or with the requirement to strike a fair balance between, on the one hand, the right to intellectual property, and, on the other, the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information

This case has its origin in a dispute between Scarlet Extended SA, an internet service provider, and SABAM, a Belgian management company which is responsible for authorising the use by third parties of the musical works of authors, composers and editors.

In 2004, SABAM established that users of Scarlet's services were downloading works in SABAM's catalogue from the internet, without authorisation and without paying royalties, by means of peer-to-peer networks (a transparent method of file sharing which is independent, decentralised and features advanced search and download functions).

Upon application by SABAM, the President of the Tribunal de première instance de Bruxelles (Brussels Court of First Instance, Belgium) ordered Scarlet, in its capacity as an internet service provider, on pain of a periodic penalty, to bring those copyright infringements to an end by making it impossible for its customers to send or receive in any way electronic files containing a musical work in SABAM's repertoire by means of peer-to-peer software.

Scarlet appealed to the Cour d'appel de Bruxelles (Brussels Court of Appeal), claiming that the injunction failed to comply with EU law because it imposed on Scarlet, de facto, a general obligation to monitor communications on its network, something which was incompatible with the Directive on electronic commerce¹ and with fundamental rights. In that context, the Cour d'appel asks the Court of Justice whether EU law permits Member States to authorise a national court to order an internet service provider to install, on a general basis, as a preventive measure, exclusively at its expense and for an unlimited period, a system for filtering all electronic communications in order to identify illegal file downloads.

In its judgment delivered today, the Court points out, first of all, that holders of intellectual-property rights may apply for an injunction against intermediaries, such as internet service providers, whose services are being used by a third party to infringe their rights. The rules for the operation of injunctions are a matter for national law. However, those national rules must respect the limitations arising from European Union law, such as, in particular, the prohibition laid down in the E-Commerce Directive on electronic commerce under which national authorities must not adopt measures which would require an internet service provider to carry out general monitoring of the information that it transmits on its network.

¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1).

In this regard, the Court finds that the injunction in question would require Scarlet to actively monitor all the data relating to each of its customers in order to prevent any infringement of intellectual-property rights. It follows that the injunction would impose general monitoring, something which is incompatible with the E-Commerce Directive. Moreover, such an injunction would not respect the applicable fundamental rights.

It is true that the protection of the right to intellectual property is enshrined in the Charter of Fundamental Rights of the EU. There is, however, nothing whatsoever in the wording of the Charter or in the Court's case-law to suggest that that right is inviolable and must for that reason be absolutely protected.

In the present case, the injunction requiring the installation of a filtering system involves monitoring, in the interests of copyright holders, all electronic communications made through the network of the internet service provider concerned. That monitoring, moreover, is not limited in time. Such an injunction would thus result in a serious infringement of Scarlet's freedom to conduct its business as it would require Scarlet to install a complicated, costly, permanent computer system at its own expense.

What is more, the effects of the injunction would not be limited to Scarlet, as the filtering system would also be liable to infringe the fundamental rights of its customers, namely their right to protection of their personal data and their right to receive or impart information, which are rights safeguarded by the Charter of Fundamental Rights of the EU. It is common ground, first, that the injunction would involve a systematic analysis of all content and the collection and identification of users' IP addresses from which unlawful content on the network is sent. Those addresses are protected personal data. Secondly, the injunction could potentially undermine freedom of information since that system might not distinguish adequately between unlawful content and lawful content, with the result that its introduction could lead to the blocking of lawful communications.

Consequently, the Court finds that, in adopting the injunction requiring Scarlet to install such a filtering system, the national court would not be respecting the requirement that a fair balance be struck between the right to intellectual property, on the one hand, and the freedom to conduct business, the right to protection of personal data and the right to receive or impart information, on the other.

Accordingly, the Court's reply is that EU law precludes an injunction made against an internet service provider requiring it to install a system for filtering all electronic communications passing via its services which applies indiscriminately to all its customers, as a preventive measure, exclusively at its expense, and for an unlimited period.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106