



Press and Information

Court of Justice of the European Union

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Judgment in Case C-360/10

Belgische Vereniging van Auteurs, Componisten en Uitgevers (SABAM) v
Netlog NV

The owner of an online social network cannot be obliged to install a general filtering system, covering all its users, in order to prevent the unlawful use of musical and audio-visual work

Such an obligation would not be respecting the prohibition to impose on that provider a general obligation to monitor nor the requirement that a fair balance be struck between the protection of copyright, on the one hand, and the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information, on the other

SABAM is a Belgian management company which represents authors, composers and publishers of musical works. On that basis, it is responsible for, inter alia, authorising the use by third parties of copyright-protected works of those authors, composers and publishers. SABAM has an objection to Netlog NV, which runs an online social networking platform where every person who registers acquires a personal space known as a 'profile' which the user can complete himself in the knowledge that that profile becomes available globally. The most important function of that platform, which is used by tens of millions of individuals on a daily basis, is to build virtual communities enabling those individuals to communicate with each other and thereby develop friendships. On their profile, users can, inter alia, keep a diary, indicate their hobbies and interests, show who their friends are, display personal photos or publish video clips.

According to SABAM, Netlog's social network also enables all users to make use, by means of their profile, of the musical and audio-visual works in SABAM's repertoire, making those works available to the public in such a way that other users of that network can have access to them without SABAM's consent and without Netlog paying it any fee.

On 23 June 2009, SABAM had Netlog summoned before the President of the Court of First Instance of Brussels (Belgium), requesting inter alia that Netlog be ordered immediately to cease unlawfully making available musical or audio-visual works from SABAM's repertoire and to pay a penalty of €1000 for each day of delay in complying with that order. In that regard, Netlog submitted that granting SABAM's injunction would be tantamount to imposing on Netlog a general obligation to monitor, which is prohibited by the E-Commerce Directive¹.

In those circumstances, the Court of First Instance of Brussels made a reference for a preliminary ruling to the Court of Justice. It asks, in essence, whether European Union law precludes a national court from issuing an injunction against a hosting service provider, such as an owner of an online social network, which requires it to install a system for filtering information stored on its servers by its service users, which applies indiscriminately to all of those users, as a preventative measure, exclusively at its expense and for an unlimited period.

According to the Court of Justice, it is not in dispute that Netlog stores information provided by the users of that platform, relating to their profile, on its servers, and that it is thus a hosting service provider within the meaning of EU law.

¹ Article 15 of 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)

It is also common ground that implementation of that filtering system would require the hosting service provider to identify, within all of the files stored on its servers by all its service users, the files which are likely to contain works in respect of which holders of intellectual-property rights claim to hold rights. Next, the hosting service provider would have to determine which of those files are being stored and made available to the public unlawfully, and, lastly, it would have to prevent files that it considers to be unlawful from being made available.

Such preventive monitoring would therefore require active observation of the files stored by users with the owner of the social network. Accordingly, the filtering system would require that owner to carry out general monitoring of the information stored on its servers, something which is prohibited by the E-Commerce Directive.

The Court next recalls that, in the context of measures adopted to protect copyright holders, national authorities and courts must strike a fair balance between the protection of copyright and the protection of the fundamental rights of individuals who are affected by such measures.²

In the main proceedings, the injunction requiring the installation of a filtering system would involve monitoring all or most of the information stored by the hosting service provider concerned, in the interests of the copyright holders. Moreover, that monitoring would have to have no limitation in time, be directed at all future infringements and be intended to protect not only existing works, but also works that have not yet been created at the time when the system is introduced. Accordingly, such an injunction would result in a serious infringement of Netlog's freedom to conduct its business since it would require Netlog to install a complicated, costly, permanent computer system at its own expense.

Moreover, the effects of that injunction would not be limited to Netlog, as the filtering system may also infringe the fundamental rights of its service users - namely their right to protection of their personal data and their freedom to receive or impart information - which are rights safeguarded by the Charter of Fundamental Rights of the European Union. First, the injunction would involve the identification, systematic analysis and processing of information connected with the profiles created on the social network, that information being protected personal data because, in principle, it allows those users to be identified. Second, that 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's answer is that, in adopting an injunction requiring the hosting service provider 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 freedom to receive or impart information, on the other.

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.

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

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² Case [C-70/10 Scarlet Extended](#) see also Press Release No [126/2011](#).