

CJEU adopts a wide definition of 'act of communication'

- Claimant requests Dutch ISPs block access to The Pirate Bay website
- Reference to the CJEU on the scope of the phrase 'act of communication'
- Does copyright infringement take place when a website provides a system of accessing protected works, even if the works themselves are not available on the website?

What's it about?

The Claimant is a Netherlands foundation which safeguards the interests of copyright holders. The Claimant brought a case in the Netherlands against two Dutch ISPs (the **ISPs**), many of whose subscribers used a peer-to-peer file-sharing website called The Pirate Bay to access copyright works from other users' computers. The protected works were not themselves available on The Pirate Bay. However, the website operated as a sharing platform, indexing data in such a way as to enable users to locate and share protected works.

Why does it matter?

Article 3(1) of the Copyright Directive (2001/29/EC) provides that copyright holders must be protected against any unauthorised "communication to the public". EU law also requires that rights holders should have the ability to seek injunctions against intermediaries (here, the ISPs) which are used by third parties to infringe their intellectual property.

The CJEU was therefore asked to consider whether "communication to the public" should be interpreted as covering the making available and management of a sharing platform on the internet.

Answering in the affirmative, the CJEU held that communication to the public has several cumulative criteria, which were satisfied by The Pirate Bay in this case.

In particular, the CJEU emphasised the essential role that The Pirate Bay played in indexing links, filtering content and deleting faulty files. Without this deliberate intervention, it would have been far more complex for users to access the infringing files.

Now what?

The CJEU again made it clear that, to ensure copyright law protects authors, "communication to the public" will be interpreted widely. The Pirate Bay website (and others like it) are firmly on the wrong side of the law. ISPs (as intermediaries) should take note.

[Stichting Brein v Ziggo BV and XS4ALL Internet BV, C-610/15](#)

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