



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-314/12  
UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH und Wega  
Filmproduktionsgesellschaft GmbH

## **According to Advocate General Cruz Villalón an internet provider can be required to block access by its customers to a website which infringes copyright**

*Such a court injunction must refer to specific blocking measures and achieve an appropriate balance between the opposing interests which are protected by fundamental rights*

According to EU law, Member States are to ensure that copyright holders or holders of related rights are able to apply for an injunction against intermediaries whose services are used by a third party to infringe their rights<sup>1</sup>. It is already established that internet providers<sup>2</sup> can in principle be regarded as intermediaries and therefore as persons against which such injunctions, which are aimed at bringing to an end infringements already committed and at preventing further infringements, can be granted. In practice, the operators of illegal websites and the internet providers which make them available online are frequently based outside Europe or conceal their identity, making it difficult to pursue them before the courts.

The Austrian Oberster Gerichtshof (Supreme Court) seeks to ascertain from the Court of Justice whether a provider which provides internet access only to users of an illegal website is to be regarded as an intermediary in that sense, that is to say as an intermediary whose services are used by a third party – such as the operator of an illegal website – to infringe copyright, meaning that an injunction can also be granted against it. It also seeks clarification of the EU rules on the content and procedure for the issuing of such an injunction.

The Oberster Gerichtshof is called upon to decide at third instance in respect of a legal dispute between UPC Telekabel Wien, a major Austrian internet provider, on the one hand, and Constantin Film Verleih and Wega Filmproduktionsgesellschaft, on the other. On application by Constantin Film and Wega, the courts at first and second instance granted an interim injunction – in the case of the appellate court without mentioning specific measures to be taken – prohibiting UPC from allowing its customers to access *kino.to*. By accessing that website, users were able to view by streaming or to download films the rights in respect of which are held inter alia by Constantin Film and Wega, without their consent<sup>3</sup>. UPC has no legal relationship with the operators of the website and made neither internet access nor storage space available to them. According to the findings of the Oberster Gerichtshof, it can, however, be assumed with near certainty that individual UPC customers availed themselves of the *kino.to* offer.

In his Opinion today, Advocate General Pedro Cruz Villalón takes the view that the internet provider of the user of a website which infringes copyright is also to be regarded as an intermediary whose services are used by a third party – that is the operator of the website - to infringe copyright and therefore also as a person against whom an injunction can be granted. That is apparent from the wording, context, spirit and purpose of the provision of EU law.

<sup>1</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

<sup>2</sup> Internet access services: see in that regard Order of the Court in Case [C-557/07](#) LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten, and Case [C-70/10](#) Scarlet Extended. See also Press Release No [126/11](#). The same applies to operators of social networking platforms: see Case [C-360/10](#) Sabam and Press Release No [11/12](#).

<sup>3</sup> In June 2011, the website *kino.to* closed after the German prosecuting authorities took action against its operators.

The Advocate General is also of the view that it is incompatible with the weighing of the fundamental rights of the parties<sup>4</sup> to prohibit an internet service provider generally and without ordering specific measures<sup>5</sup> from allowing its customers to access a particular website that infringes copyright. That also applies where the provider can avoid incurring a penalty for breach of that prohibition by showing that it has taken all reasonable steps to comply with the prohibition. Advocate General Cruz Villalón underlines in that connection that the provider of the user has no connection with the operators of the website that infringes copyright and has not itself infringed the copyright.

However, a specific blocking measure imposed on a provider relating to a specific website is not, in principle, disproportionate only because it entails not inconsiderable costs but can easily be circumvented without any special technical knowledge. It is for the national courts, in the particular case, taking into account all relevant circumstances, to weigh the fundamental rights of the parties against each other and thus strike a fair balance between those fundamental rights.

When weighing the fundamental rights it must however be taken into account that in future action could be taken in numerous similar cases against any provider before the national courts. Advocate General Cruz Villalón also points out that rightholders must, in so far as possible, claim directly against the operators of the illegal website or their providers.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 Opinion is published on the CURIA website on the day of delivery.*

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

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<sup>4</sup> On the one hand, the fundamental right of the copyright holder to property and, on the other hand, the provider's freedom to conduct a business and its customers' freedom of expression and information, on which the provider can also rely.

<sup>5</sup> For example an IP block, where requests are no longer forwarded to the blocked IP address, or a DNS block. DNS (Domain Name System) blocks concern domain names which are used instead of unwieldy IP addresses by users. DNS servers, which are operated by every provider, 'translate' domain names into IP addresses. In the case of a DNS block, such translation is prevented.