

Contact Persons:

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IP & TMT

Bahari Yeow Tien Hong
Partner
DID: +603 6208 5856
Fax: +603 6201 0122
Email: yth@lh-ag.com

Adlin Abdul Majid
Partner
DID: +603 6208 5816
Fax: +603 6201 0122
Email: aam@lh-ag.com

Eunice Chan Wei Lynn
Partner
DID: +603 6208 5872
Fax: +603 6201 0122
Email: cwl@lh-ag.com

Premier League 2 Illegal Streaming 0

Football Association Premier League Ltd v British Telecommunications plc & Ors^[1]

Just last month, the High Court in London granted Football Association Premier League Ltd an injunction against the six biggest internet service providers in the UK,^[2] compelling them to block access to the IP addresses of servers used to stream live Premier League matches for the 2017/2018 season illegally. The court had granted a similar injunction near the end of the last season in March,^[3] from which the court found that such a measure was effective in preventing the illegal streaming of live Premier League matches.

The injunction was granted based on section 97A of the Copyright, Designs and Patents Act 1988,^[4] which empowers the High Court to grant injunctions against service providers who have actual knowledge of persons using their service to infringe copyright. This provision was enacted to implement article 8(3) of the Information Society Directive of the EU,^[5] which provides that:

“Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.”

Such an injunction is a “live” blocking order, effective when live Premier League matches are being broadcast. Using video monitoring technology which quickly identifies infringing streams, the list of IP addresses is updated and reset every two weeks as new servers are detected.

Targeting servers rather than websites, the injunction avoids the “whack-a-mole” problem where infringers put up multiple websites and IP addresses to overwhelm the enforcement mechanisms deployed by rightholders. It also addresses the use of set-top boxes and mobile applications that are constantly lowering the barrier to entry for prospective viewers of illegal streaming services. Last but not least, this approach dispenses with reliance on offshore server hosts who tend not to cooperate promptly enough until after the damage is done.

The terms of the injunction, including the selection process for the IP addresses to be blocked, are kept confidential on the grounds that its disclosure would facilitate circumvention of the order. However, the

court requires that in assessing the IP addresses to be blocked, the applicant must:

- (a) have a reasonable belief that the sole or predominant purpose of the particular server is to enable or facilitate access to infringing streams of Premier League match footage; and
- (b) not know or have reason to believe that the server is being used for any other substantial purpose.

In the age of Twitter and Snapchat, it may be argued that the currency of information has become more valuable than its quality. It is therefore crucial that enforcement mechanisms are improved to protect content when it is most valuable. For this purpose, “live” injunctions are a much-needed upgrade to traditional take-down notification mechanisms, which are inadequate to the task of blocking time-sensitive content.

In Malaysia, amendments to the Copyright Act 1987^[6] introduced a similar, although much more limited, remedy to the “live” injunction. Section 43C of the Act empowers courts to order non-infringing service providers to take reasonable steps to disable access to online locations hosting infringing content that are physically outside Malaysia.

The enforcement of intellectual property rights in cyberspace has seen [a growing trend of injunctions against internet service providers, who are non-parties to the infringement dispute](#). In the present case, five of the six internet service providers named by the applicant actually supported the application for the injunction,^[7] as each of them had their own vested interest in the legal transmission and re-transmission of Premier League broadcasts. It will therefore be interesting to see if “live” injunctions will become the norm, as rightholders and internet service providers join forces in the fight against illegal streaming.

Ong Wei Shen

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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^[1] [2017] EWHC 1877 (Ch)

^[2] British Telecommunications plc, EE Ltd, Plusnet plc, Sky UK Ltd, TalkTalk Telecom Ltd and Virgin Media Ltd

^[3] *Football Association Premier League Ltd v British Telecommunications plc & Ors* [2017] EWHC 480 (Ch)

^[4] 1988 Chapter 48

^[5] European Parliament and Council Directive 2001/29/EC of 22 May 2011 on the harmonisation of certain aspects of copyright and related rights in the

information society

[\[6\]](#) [Act 332], as amended by the Copyright (Amendment) Act 2012 [ActA1420]

[\[7\]](#) While TalkTalk did not support the application, it confirmed in writing that it did not oppose it either