

LAUSEN

RECHTSANWÄLTE

Annex to the Press Release on the proceedings Publishers vs. library.nu and ifile.it:

The facts

An international alliance of publishing houses and publishers' associations has successfully taken legal action against two closely interrelated internet platforms that collect, and make accessible and usable, masses of e-book pirate copies. The services created and operated an "internet library" with more than 400,000 e-books illegally available for immediate, free and anonymous download. These books were offered in very good quality and the sites' presentation made customers believe these were legally available. The operators made an estimated turnover of € 8 million (\$10,602,400 US) from advertising buys on the sites, donations and sales of premium-level accounts, making it one of the most significant piracy websites in the world.

1. Description of the services

The technically sophisticated system of these two internet platforms has the objective of generating maximum profit from its own copyright infringements and actions by third parties.

The system consists of a link library under the domain www.library.nu and a sharehosting service under the domain www.ifile.it. The sharehoster ifile.it is an internet service which allows users to store files directly on its servers. The user is provided with a Direct Download Link (DDL), through which the user (and others given the link through such channels as Facebook, twitter or a link library) - can download the stored work. In addition to numerous illegal copies of films, software, computer games and other entertainment content, the servers of the sharehoster ifile.it also contain significant quantities of copyrighted literary works. Library.nu disguises itself as a legitimate provider with a domain name that suggests affiliation with legitimate library services, even though it provides thousands of links to illegal sources. The service allows its users to enter download links to e-books from various sharehosters (although it requires that the sharehoster "ifile.it" be used in any case to do so), or to search the link library for specific e-books and to download them to their own computer or e-reader device. The uploaded books are furnished with internet-compatible metadata, and are categorised into virtual

"shelves", so that the user can easily search for the corresponding pirate copies within a number of fields of study.

Both platforms, even evaluated separately, massively infringe upon copyrights due to their specific design. Furthermore, the operators give the external impression that the platforms are not related. However, this is presumably not the case. Intensive investigations and the assignment of technical experts made an organisational connection between the services most likely. The court saw an economic responsibility of the operators of the sharehoster also for the operation of the website www.library.nu. This would also explain the level of efficiency with which the illegal system was able to generate such massive volume within a very short period of time. The services accepted masses of copyright violations as their own, safeguarded them by additional uploads to other sharehosters like Megaupload and Mediafire and boosted them. The operators of the services generate an estimated **annual turnover of more than € 8 million (\$10,602,400 US)** from the pirated content, from advertising secured for their websites, users' "donations" and premium-level accounts.

2. The course of action taken by the publishers' alliance

In a concerted international action, extensive claims by the publishers were able to be asserted against the platform operators who had partially concealed their identities. A total of 17 interim injunctions had been obtained before the *Landgericht* (regional court) of Munich I, and service of these injunctions was affected in Ireland (see the list of court file numbers enclosed as an annex). The services had previously been sent cease-and-desist letters, and the operators had subsequently strongly restricted access to the illegal library and had not allowed new registrations. Yet copyright infringements continued within the group of already registered users.

The action against these obvious and massive infringements was a challenge. None of the internet pages involved contained any form of legal notice which would have provided information as to the identities of the site operators. The WHOIS entries on the domain holders were partially modified several times. Sometimes, fake company names without registration in a trade register were named, sometimes the registered offices of well-known Irish banks or names of people were used, although it was highly unlikely that these individuals or entities had any relationship with the operators of the platforms. E-mails were answered without giving any detailed contact data, under pseudonyms, whereby the various contradicting letters from the operators merely pursued the aim of misleading the prosecutors. The services' top level domains

lead to Italy and to the southern Pacific coral island of Niue. The servers were initially based in Germany, but were then relocated to the Ukraine. Additionally, the operators used a technically very sophisticated system which immediately detected and repelled higher access rates to the platforms from outside. The necessary securing of evidence - during which software which had been specifically developed by IT specialists for this purpose was used for the documentation of the infringements - was significantly impeded by this.

A ray of hope from these proceedings, which were conducted under these difficult circumstances, is that platform operators themselves can now be held responsible as perpetrators for the copyright infringements on their sites, and will therefore not merely be liable for the illegal conduct of their users. All four copyright chambers at the LG of Munich I who dealt with this issue and who promptly issued the 17 interim injunctions within a few days between Christmas and the New Year were in agreement on this matter.

There remained challenges due to the lack of legislation regarding the harmonisation of law governing the service of documents in other European countries. Due to various uncertainties in the European Regulation on the Service of Documents, the related treaties between various countries and the additional administrative obstacles, service of the injunctions to the operators required far more time than the issue of the injunctions. This situation significantly impairs an effective, prompt enforcement of expedited injunctions within the EU.

3. Conclusion

The publishing industry continues the route of systematically pursuing the rights of their authors as well as their own claims against mass infringement through pirate copies on the internet. For this purpose, the publishers make use of the few legal measures presently available on the international level, with high financial efforts and risks, in order to take systematic action against a network of criminals who are the ultimate beneficiaries of the infringements.

The process that had to be undertaken in this litigation highlights why additional legislative tools to address rampant piracy are needed.

The alliance of publishers is coordinated by the Börsenverein des Deutschen Buchhandels, the International Publishers Association and the law firm Lausen Rechtsanwälte, lead managed by

lawyer Dr. Ursula Feindor-Schmidt. The publishing houses involved are Cambridge University Press, Georg Thieme, Harper Collins, Hogrefe, Macmillan, Cengage Learning, Elsevier, John Wiley & Sons, The McGraw-Hill Companies, Pearson Education Ltd., Pearson Education Inc., Oxford University Press, Springer, Taylor & Francis, C.H. Beck as well as De Gruyter. The course of action is supported by the Association of American Publishers, Nederlands Uitgeversverbond NUV, Associazione Italiana Editori and the International Association of Scientific Technical and Medical Publishers (STM).

Annex: List of court file numbers

- 7 O 28506/11: Walter de Gruyter GmbH & Co. KG vs. Ivanova/Nunez/DF Hosting Ltd.
- 7 O 29035/11: Informa UK Limited vs. Ivanova/Nunez/DF Hosting Ltd.
- 7 O 29036/11: The McGraw-Hill Companies Inc. vs. Ivanova/Nunez/DF Hosting Ltd.
- 7 O 29037/11: John Wiley & Sons Inc. vs. Ivanova/Nunez/DF Hosting Ltd.
- 7 O 29038/11: Verlag C.H.Beck OHG vs. Ivanova/Nunez/DF Hosting Ltd.
- 7 O 29047/11: Elsevier Inc. vs. Ivanova/Nunez/DF Hosting Ltd.
- 7 O 29048/11: Springer Verlag GmbH vs. Ivanova/Nunez/DF Hosting Ltd.
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- 21 O 29039/11: Oxford University Press Inc. vs. Ivanova/Nunez/DF Hosting Ltd.
- 21 O 29040/11: Cambridge University Press vs. Ivanova/Nunez/DF Hosting Ltd.
- 21 O 29041/11: Cengage Learning Inc. vs. Ivanova/Nunez/DF Hosting Ltd.
- 21 O 29042/11: Pearson Education Inc. vs. Ivanova/Nunez/DF Hosting Ltd.
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- 33 O 29043/11: HarperCollins Publishers vs. Ivanova/Nunez/DF Hosting Ltd.
- 33 O 29044/11: Hogrefe Verlag GmbH & Co. KG vs. Ivanova/Nunez/DF Hosting Ltd.
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- 37 O 29046/11: The Chancellor, Masters and Scholars of the University of Oxford vs.
Ivanova/Nunez/DF Hosting Ltd.
- 37 O 29034/11: Pearson Education Limited vs. Ivanova/Nunez/DF Hosting Ltd.
- 37 O 29045/11: Macmillan Publishers Ltd. vs. Ivanova/Nunez/DF Hosting Ltd.
- 37 O 29033/11: Georg Thieme Verlag KG vs. Ivanova/Nunez/DF Hosting Ltd.