# Counsel to step up anti-piracy efforts after copyright win

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Max Walters

In-house lawyers in the music industry say two court rulings that ordered internet service providers to block access to stream-ripping websites will encourage them to target other services that have slipped through the net, and will add weight to their demands for legislative changes.

Sources at the British Phonographic Industry (BPI) and PRS for Music say the England and Wales High Court's rulings that ISPs should block access to stream-ripping and cyberlocker sites is a "hugely significant" step. One tells Managing IP that the judgments have "broken new ground".

Kiaron Whitehead, UK-based general counsel at the BPI – which brought the cases on behalf of major and independent record companies – says it will be taking further actions following the victory and will build upon it later in the year.

"Each time a new category of site is blocked, it makes it easier for other intellectual property owners to follow suit and to help develop the precedent further," he says.

Simon Bourn, associate general counsel at PRS for Music in the UK, adds that the organisation will now look to target other means of accessing copyright-protected material, including through mobile apps and browser plug-ins.

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However, Whitehead notes that the judgments are not "silver bullets" and that the music industry is calling on the government to do more to help reduce piracy.

This includes introducing a 'duty of care' requirement on online platforms to prevent infringing material, as well as a statutory damages regime to deter illegal sites, and implementing faster and cheaper ways for right owners to secure blocking orders.

Neil Parkes, partner at Lewis Silkin in London, says the rulings should also provide the foundation for direct infringement claims against stream-ripping sites and give rights owners a chance to put pressure on other intermediaries, including search providers.

He also agrees that the music industry will probably strengthen demands to ensure platforms stop illegal content from appearing.

Whitehead notes that the BPI has been working with search engines to have stream-ripper links demoted and delisted from search results, and also with YouTube to ban "how to" piracy tutorial videos.

## Music's 'biggest threat'

Stream-ripping sites take music from platforms like YouTube, Facebook and Instagram, and enable users to download and listen to the music illegally without payments going to rights owners. Cyberlockers encourage users to upload music and other copyright-protected material, and to share links with others to download it.

According to the BPI, the two types of site are the music industry's biggest piracy threats. And Research by PRS estimates that overall usage of stream-ripping services increased by 1,390% between 2016 and 2019.

Whitehead at the BPI notes that stream-ripping sites tend to focus on music infringement while cyberlocker sites can infringe multiple right owners' IP.

"Together, and for the music industry alone, the two types of site are responsible for part of the £200 million a year that is illegally ripped out of the music industry and which could otherwise be helping to boost the legal music streaming economy," he says.

The cases in question targeted a cyberlocker called Nitroflare and stream-ripping sites including Flvto and 2Conv. Some of the websites also provided or linked to a downloadable stream-ripping app called MP3 Studio.

In the two rulings, handed down in February, Mr Justice Robert Miles found that the operators and users of the websites used the services of ISPs to infringe copyright, and that the ISPs should block access to them.

The six ISPs (BT, EE, PlusNet, Sky, TalkTalk and Virgin Media) did not attend the hearing and agreed not to oppose the case, and to comply with the court's decision, which has yet to be published.

## Breaking new ground

Bourn at PRS says the decision has broken new ground as stream-ripping sites and cyberlockers have never been subject to blocking orders before now.

“Whilst the operators have been using the services to facilitate and profit from piracy in the same way as other pirate services, legal arguments have previously been advanced in attempts to legitimise the operation of such services,” he notes.

He adds that comparisons are sometimes drawn between stream-ripping and the old practice of ‘home-taping’ from the radio.

However, not all practitioners agree that this was a precedent-setting judgment.

Ben Allgrove, partner at Baker McKenzie in London, says that given the case law to date it is “not at all surprising” that cyberlockers and stream-ripping services are subject to blocking orders.

“That said, as a practical matter, the precedent set will definitely make it easier for rights owners to get these sorts of services blocked (and shut down if they are located in the jurisdiction),” he adds.

Parkes at Lewis Silkin notes that orders like these are now commonly “dynamic” as they allow for changes and updates to be made without the need for another court application. This could be useful if domain names are tweaked in an attempt to circumvent an order’s scope, for example.

The BPI’s Whitehead notes that the judgments are also significant from a wider EU perspective, with the Court of Justice of the EU (CJEU) set to rule on another case concerning a cyberlocker.

In an opinion published in July last year, advocate general (AG) Henrik Saugmandsgaard Øe proposed that the CJEU should find that operators such as YouTube and Cyando (a cyberlocker) are not liable for infringement and do not communicate to the public.

However, Whitehead says Mr Justice Miles agreed with the BPI’s position that the CJEU is unlikely to follow the AG’s opinion when it comes to rule on the case.

If that turns out to be true, the arsenal available to protect against online infringements may well be growing in the EU, as well as in the UK.