STUDY ON THE EFFECTIVENESS AND THE LEGAL AND TECHNICAL MEANS OF IMPLEMENTING WEBSITE BLOCKING ORDERS

ADVISORY COMMITTEE ON ENFORCEMENT

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TABLE OF CONTENT

I. INTRODUCTION AND SCOPE

INTRODUCTION AND SCOPE

The study analyzes the impact of blocking orders in combating copyright infringement, highlighting legal frameworks, technical measures, challenges and global best practices. It advocates for dynamic systems to strengthen enforcement and support legitimate services.

INTRODUCTION AND SCOPE

ILLEGAL PLATFORMS PROVIDING UNAUTHORIZED ACCESS TO

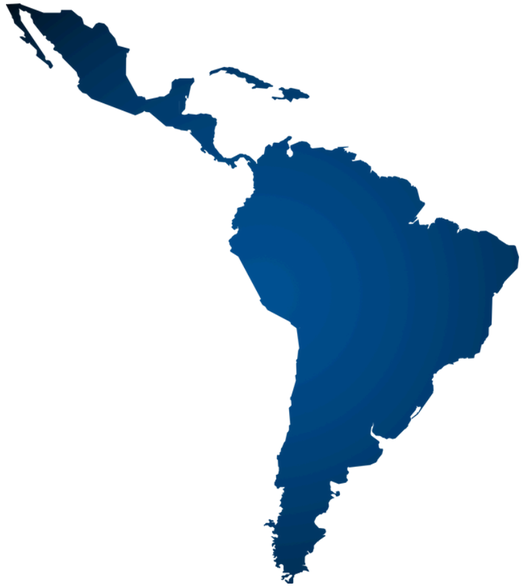
- FILMS & SERIES
- TV CHANNELS
- MUSIC
- LIVE SPORTS
- VIDEO GAMES
- OTHERS

MOTIVATIONS FOR CRIMINALS

- HIGH REVENUE *
- SENSE OF IMPUNITY
- ABILITY TO STEAL AND DISTRIBUTE CONTENT
- USER ATTRACTION

**** Revenue generated through advertising or subscriptions***

INTRODUCTION AND SCOPE



219 BILLION VISITS

TO PIRACY SITES
GLOBALLY IN 2022

USD 29.2 BILLION

IN LOST REVENUE EACH YEAR TO THE U.S. ECONOMY AND

230.000 LOST JOBS

USD 1.32 BILLION

LOSS OF TAX REVENUES FOR EIGHT LATIN AMERICAN COUNTRIES

INTRODUCTION AND SCOPE

Site blocking an effective remedy

Requested by rightsowners and enforced by national authorities, requires ISPs (Internet Service Providers) to block access to illegal platforms. When users attempt to visit such platforms, they are redirected to error messages or notices explaining the illegal activity and the reason for the block.

II. EFFECTIVENESS OF SITE BLOCKING

EFFECTIVENESS OF SITE BLOCKING

Brazil

BLOCKING ORDERS FROM 2021 THAT APPLIED TO 174 PIRACY SITES RESULTED IN A 5.2% INCREASE IN CONTENT CONSUMPTION FROM LEGAL SERVICES.

Denmark

SITE BLOCKING REDUCES VISITS TO ILLEGAL SERVICES BY AN AVERAGE OF 70% WITHIN 4-5 MONTHS OF IMPLEMENTATION.

Indonesia

62% OF CONSUMERS REPORT CHANGING THEIR VIEWING HABITS DUE TO EFFECTIVE SITE BLOCKING.

Malaysia

64% OF CONSUMERS REPORT CHANGING THEIR VIEWING HABITS DUE TO EFFECTIVE SITE BLOCKING.

India

BLOCKING ORDERS FROM 2019 THAT APPLIED TO 380 PIRACY SITES RESULTED IN A 8.1% INCREASE IN CONTENT CONSUMPTION FROM LEGAL SERVICES.

Korea

SITE BLOCKING ORDERS IN 2014-2015 REDUCED VISITS TO PIRACY WEBSITES BY 90%.

UK

PIRACY SITE VISITS DROPPED, AND LEGAL SUBSCRIPTION USAGE INCREASED BY 7-12%.

III. LEGAL BASIS FOR SITE BLOCKING ORDERS

LEGAL BASIS FOR SITE BLOCKING ORDERS

INTERNATIONAL TREATIES

WIPO Copyright Treaty

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

EUROPEAN UNION LAW

Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society (Infosoc Directive)

Directive 2004/48/EC on the enforcement of intellectual property rights (EU Enforcement Directive)

Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-commerce Directive)

Key decisions from the Court of Justice of the European Union (CJEU)

NATIONAL LAW

APAC: Australia, Republic of Korea, India and Indonesia; **LATIN AMERICA:** Argentina, Brazil and Uruguay.

LEGAL BASIS FOR SITE BLOCKING ORDERS

Fundamental conclusions from treaties, legislative provisions and court orders

- **Legal Remedy:** Site blocking is a recognized civil remedy and also it can be issued in criminal copyright cases.
- **Legal Basis:** Courts can issue site-blocking orders based on specific laws or general copyright provisions.
- **ISP Liability**: Safe harbor protections do not prevent ISPs from being subject to site-blocking orders.
- **Applicability**: Platforms facilitating copyright infringement, including linking sites and piracy apps, are eligible for blocking.
- **Enforcement**: Site blocking can be implemented via court orders or administrative procedures.
- **Implementation Costs:** ISPs typically bear blocking costs, with some discretion in choosing the blocking method.
- **Dynamic Orders**: Dynamic blocking orders can quickly extend to new domains and IPs, preventing circumvention.
- **Expanded Scope**: Some countries require other intermediaries (VPNs, DNS resolvers, search engines) to block illegal sites.

LEGAL BASIS FOR SITE BLOCKING ORDERS

Common procedural characteristics for blocking orders

1. **Evidence Collection**: Rightsholders gather proof showing that a site's primary purpose is copyright infringement.
2. **Legal Filing**: Rightsholders submit a case to a court or relevant administrative authority.
3. **Evidence Submission**: Courts or authorities review the provided evidence.
4. **Hearing Process**: Some court cases include hearings with ISPs and rights holders.
5. **Ruling & Costs**: Courts or authorities issue a decision and determine whether ISPs cover implementation costs.
6. **Implementation**: ISPs enforce the blocking order.

IV. TECHNICAL MEANS OF SITE BLOCKING

TECHNICAL MEANS OF SITE BLOCKING

	DNS (Domain Name System)	IP ADDRESS	URL (Uniform Resource Location)
GRANULARITY	DNS blocking offers precision by targeting specific domains and subdomains (e.g. blocking 'guilty.example.com' without affecting 'innocent.example.com').	IP address blocking offers precision by targeting specific IPs dedicated to piracy sites.	URL blocking is highly granular, allowing specific web pages or files under the same domain or IP address to be blocked while leaving other content accessible.
EFFICACY	DNS blocking effectively reduces traffic to pirate sites, especially with dynamic orders targeting many popular sites and new domains.	IP address blocking is highly efficient for illegal platforms using multiple servers. Dynamic orders allow quick updates for new IPs blockings.	URL blocking is less effective for sites with extensive infringing content, as each piece requires a separate block. Pirate operators can easily change URLs to bypass blocks.
FEASIBILITY	DNS blocking is cost-effective, quick to implement, and requires minimal resources.	IP address blocking is straightforward for ISPs to implement. Costs may be considered for this technical mean.	URL blocking is resource-intensive considering that thousands of illegal URLs must be managed.

TECHNICAL MEANS OF SITE BLOCKING

While DNS blocking is the most frequently employed measure, it is common for major pirate operations to include both DNS and IP blockings.

V. SITE BLOCKING AND POTENTIAL CONFLICTS WITH OTHER RIGHTS

SITE BLOCKING AND POTENTIAL CONFLICTS WITH OTHER RIGHTS

Site blocking is a fair and efficient tool that does not undermine other rights, free speech, or net neutrality

- **Proportionality**: Courts ensure site blocking is a balanced and necessary response to piracy while respecting fundamental rights.
- **Jurisdiction Considerations**: Blocking is often the most viable remedy when infringing sites operate beyond a court's jurisdiction.
- **Freedom of Expression:** Site blocking targets infringing content while preserving lawful access to information.
- **ISPs Business Rights**: Courts recognize ISPs' costs but find them reasonable and not infringing on their right to conduct business.
- **Open Internet Support:** Courts emphasize that blocking piracy sites aligns with open internet principles by protecting legal content.
- **Appeal Mechanisms**: ISPs and website operators can appeal site blocking decisions.

VI. PRACTICAL CHALLENGES AND MAINTAINING EFFECTIVENESS OF SITE BLOCKING

PRACTICAL CHALLENGES AND MAINTAINING EFFECTIVENESS OF SITE BLOCKING

The Importance of a Dynamic System
Pirate sites frequently change domain names, IP addresses, and URLs to evade blocks. Dynamic blocking orders allow quick updates to blocking lists without new legal proceedings.

Pirate Brand Blocking
Expand site blocking to include new piracy sites operating under the same branding (e.g., 123movies, 123moviesfree). Ensures that infringing sites with similar content and functions are blocked without requiring proof of direct ownership links.

VPNs and Proxy Services
Some users bypass site blocking by routing traffic through VPNs or anonymous proxies. Courts in some countries have begun issuing orders requiring VPN providers and alternative DNS resolvers to block access to piracy sites.

Alternative DNS Resolvers
Users can switch from their ISP's DNS to public DNS services to evade DNS blocking. Some courts have ruled that public DNS providers must comply with site-blocking orders.

Search Engine De-Indexing
Some courts require search engines to remove pirate sites from search results dynamically.

Targeting Content Delivery Networks (CDNs)
Some piracy operators use CDNs to mask their hosting locations and evade blocking. Courts have held CDNs accountable, ordering them to stop providing services to blocked piracy sites.

VII. CONCLUSIONS

EFFECTIVE TOOL

Site blocking effectively combats online copyright piracy including live events.

LEGAL FRAMEWORKS

Success relies on adaptable legal systems for dynamic and live injunctions.

BROADER COOPERATION

Including intermediaries like VPNs, CDNs, software system operators and search engines makes blocking more effective.

EFFICIENCY AND FAST PROCESSES

Voluntary agreements, fast processes, cost-effective actions, and collaboration from authorities boost impact.

CONSUMER AWARENESS

Education and promoting legal content alternatives encourage legitimate service use.

THANK YOU FOR YOUR ATTENTION