



Press release

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SABAM VS TISCALI (SCARLET)

The Court of Brussels imposes measures in order to prevent illegal downloads !

The Belgian Society of Authors, Composers and Publishers (SABAM) has just won an important legal battle within the context of the dispute that opposes it to the Internet Service Provider (ISP) *TISCALI*, which has become *SCARLET EXTENDED Ltd*. In its sentence of June 29, 2007, the Court of First Instance of Brussels is demanding from the access provider that it adopts one of the technical measures put forward by the expert in order to prevent Internet users from illegally downloading SABAM's musical repertoire via P2P software. The sentence could set a precedent.

Observers remember that, at the end of the year 2004, SABAM obtained an intermediary judgement by virtue of which the court acknowledged that copyright infringements (regarding the reproduction right and right of communication to the public) were being committed by *TISCALI* customers. However, estimating it was not sufficiently informed about the technical feasibility of the measures to be taken in order to put an end to the recorded infringements, the court of Brussels decided to appoint an expert. In his report filed on last January 3, the expert has notably developed 11 solutions as to the blocking or filtering of P2P systems, seven of which are applicable to *TISCALI*'s (*SCARLET*'s) network.

It appears from the sentence that the court retained none of the arguments put forward by *TISCALI (SCARLET)* as regards the right of privacy, the right of secrecy of correspondence and the right to freedom of expression. Nor accepted it the ISP's argument that "the requested technical measures came down to imposing a duty of supervision of the entire P2P activities, which is contrary to the legislation on E-commerce". As to the risk for *TISCALI (SCARLET)* of losing – due to the implementation of filtering measures – its waiver of liability for activities of mere conduit, the court decided not to uphold this argument.

The court insisted on the fact that the termination order does not impose on *TISCALI (SCARLET)* a general obligation to monitor its network. The solutions identified by the expert are "technical instruments" that limit themselves to blocking or filtering certain information transmitted on the network of *TISCALI (SCARLET)*. They do not constitute a general obligation to monitor the network. Moreover, the court considers that filtering and blocking software are not dealing as such with any personal data and that a blocking measure has a purely technical and automatic character, as the ISP is not playing any active role in the blocking or filtering.

Consequently, the Court ordered *TISCALI (SCARLET)* to put an end to the copyright infringements through the illegal file sharing of its customers, by way of P2P software, of electronic files containing a musical work belonging to SABAM's repertoire. Additionally *TISCALI (SCARLET)* has to notify SABAM in writing of the measures it will apply with a view to respecting this sentence. *TISCALI (SCARLET)* has 6 months to conform itself to this decision, on pain of a penalty of 2.500 € for each day's delay.

In a more general way, SABAM wishes to stress that a lot of Internet users are massively downloading copyrighted works, by way of P2P software, without the authors, composers and publishers having authorized it or having been remunerated. According to SABAM, if all Belgian Internet access providers would adopt the technical measures proposed by the expert so that P2P software could no longer be used for exchanging copyright works, this would put an end to the illegal traffic as Belgium is concerned.

SABAM finally adds that the P2P phenomenon is not the only reason for the drop in CD sales in Belgium but that it has certainly greatly contributed to it. It seriously wrongs the right owners who are members of SABAM - and artists in general - while jeopardizing part of the cultural heritage.

SABAM reminds that it is possible for each Belgian Internet user to listen to his/her favourite music, to download or to record it legally and in full security on the Web, in return for remuneration due to the artists.

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