



<http://www.leaseweb.com>

Legal statement regarding sites listing Bittorrent files

LeaseWeb gives great importance to the freedom of expression and privacy of its clients and subscribers. In order to protect these rights LeaseWeb has developed proper proceedings that will be conducted in case of any complaints or requests about alleged unlawful information or behaviour on the internet provided or carried out by a LeaseWeb client. LeaseWeb will always exercise the utmost care in these instances in order to ensure there will be no rash breaches of privacy rights or fundamental freedoms. LeaseWeb reserves at all times the right not to proceed to take down sites or give away any personal information. Furthermore LeaseWeb will always hear both sides of the argument.

However, due to the present state of Dutch case law, LeaseWeb has recently found itself confronted with a legal obligation to provide personal data of its clients and to take down websites, containing allegedly (indirect) intellectual property rights infringements (or at least sites that make this possible in some way).

As you may know on June 20th 2007 LeaseWeb was ordered by the Amsterdam District Court to provide personal data of a client, who maintained a site that listed bittorrent files, and take down the site. In this case LeaseWeb argued (in short) among other things that the content on the site was not manifestly unlawful since no copyrighted works could (directly) be downloaded and uploaded from or to the site. Therefore there was no obligation for LeaseWeb to comply with what was claimed. ISP's should not be required to thoroughly evaluate the legality of third party content. Only if third party content is manifestly unlawful, an ISP should be required to take appropriate action when the ISP has been notified of such content.

This case is the most recent one in the ongoing struggle between ISPs and the Dutch anti-piracy organization 'Stichting Brein', which represents intellectual property rights holders of the entertainment industry in the Netherlands. Obviously at the present state of legal affairs an ISP finds itself in a very difficult position: on the one hand the ISP has the responsibility to protect the rights of its clients and the right of freedom of expression in general and on the other hand is held liable for intellectual property rights infringements by intellectual property rights holders. LeaseWeb has filed an appeal and will keep fighting for its client's privacy and right of freedom of expression up to the highest court.

Pending the final legal decision, however, LeaseWeb regrettably has no choice but to obey the court order and not only take down sites that list bittorrent files, but also provide personal information about these clients.

As 'Stichting Brein' states on its website it is the central contact for government, law enforcement, trade and media in the Netherlands with respect to *all issues* concerning the unauthorised copying and distribution of entertainment products both offline and online.

We suggest that for any complaints or questions about (the background of) this issue please feel free to contact 'Stichting Brein' at any time.

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