

Rik. No. 81/2022 ISB



FIRST HALL OF THE CIVIL COURT

JUDGE

ONOR. IAN SPITERI BAILEY LL.M. LL.D.

Today Tuesday, February 2, 2022

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Dr Jacqueline Mallia (ID 240475M) as special representative of the **Professional Association of the Maltese Professionals**, a legal entity registered in Spain with registration number G78069762

vs.

Epic Communications Limited registered company with registration number C 10865;

Melita Limited registered company with registration number C12715; U

GO plc registered company with registration number C22334

The Court,

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Sees **the application** of Dr Jacqueline Mallia (ID 240475M) as special agent of the foreign association **La Liga Nacional de Futbol Profesional**, a legal entity registered in Spain with registration number G78069762, of 1 February 2022, and through which it swore by its oath that:

That this is an application being made for the content of Article 8 of the Act regulating the Enforcement of Intellectual Property Rights (Cap. 488).

*That the Nominee Applicant is a special agent of the foreign association **La Liga Nacional de Futbol Profesional** by proxy, annexed and marked as Document "A";*

That the Applicant holds the international audiovisual rights of the games of the first and second divisions of the Spanish football league LaLiga and this as it results from the Royal Decree-Law 5/2015 of the thirty (30) of April of the year two thousand and fifteen (2015) is annexed and marked as Document "B" [an English copy is annexed and marked as Document "C"].

That therefore the Applicant enjoys the protection of copyright in terms of Chapter 415 of the Laws of Malta, including the exclusive right to transmit, communicate and make available to the public the said audiovisual content. among others got the territory of Malta;

That the respondent companies inter alia, operate as Internet Service Providers (ISPs) and therefore pass digital content from various sources on their electronic platform;

That from an exercise carried out by the company PriceWaterhouse Coopers in Malta (Document "D"), a number of IP Addresses were identified which give online access to the audiovisual content of the games underwritten and which is being transmitted / streamed without the due license and / or authorization of the Applicant. That therefore the transmission / streaming of the said audiovisual content is being carried out illegally and in violation of the copyrights that the Applicant holds;

That such illegally transmitted / streamed audiovisual content may be accessed in Malta through websites, mobile device apps and / or other software accessed / included / listed in set-top boxes, media players, computers and / or other electronic devices. through the service provided by respondent companies;

That therefore while the respondent companies do not themselves infringe the copyrights held by the Applicant, the service provided by them may nevertheless be used to commit such infringement as through them, the clients of the respondent companies may gain access to illegally transmitted audiovisual content;

That therefore the most effective way for the Applicant to protect her rights is to block access to the streaming servers that are

illegally transmit the audiovisual content on which it holds the copyright.

That in terms of Article 8 (3) of Directive 2001/29 / EC of Parliament European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, the following can be found:

Member States shall ensure that rightholders are in a position to apply for a restriction against intermediaries whose services are used by third parties to infringe copyright or a related right.

That Recital 59 of the same Directive says the following:

*"In the digital realm, in particular, the services of intermediaries can increasingly be used by third parties for illegal activities. **In many cases these intermediaries are best placed to put an end to these illegal activities.** Therefore, without prejudice to any available sanctions and other remedies, **rightholders should have the possibility to apply for an injunction against a networking intermediary by a third party of a protected work or other subject matter.** This possibility shall be available even where acts committed by an intermediary are exempt pursuant to Article 5.*

The conditions and related modalities of such injunctions shall be allowed in accordance with the national law of the Member States. " (emphasis added by exponents)

*That as stipulated in the judgment of the European Court of Justice in the so-called **Telekabel case**¹*

"In view of the above, the answer to the first question is that Article 8(3) of Directive 2001/29 must be interpreted as meaning that a person who makes protected subject-matter available to the public on a website without the agreement of the right holder, for the purpose of Article 3(2) of that directive, is using the services of the internet service provider of the persons accessing that subject-matter, which must be regarded as an intermediary within the meaning of Article 8(3) of Directive 2001/29."

That therefore, in terms of the said judgment, the respondent companies should be considered as intermediaries, and consequently subject to such injunctions issued by the Court intended for the protection of copyright as aforesaid;

That in fact Article 8 (1) (a) of Chapter 488 of the Laws of Malta gives a right to the holder of an intellectual property right to request the Court to issue such provision as it deems appropriate in order to prevent and / or prevent breaches

¹ Case C-314/12, REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Austria), made by decision of 11 May 2012, received at the Court on 29 June 2012, in the proceedings UPC Telekabel Wien GmbH v Constantin Film distribution GmbH, Wega film production company mbH,

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continued infringement of an intellectual property right against the alleged infringer of that right but also against intermediaries whose service is being used by third parties to infringe the same right.

That also in terms of Article 19 (1) of Chapter 426 of the Laws of Malta

'Where a service is provided by an information society, and that service consists of the transmission, in a communication network, of information provided by the recipient of the service, or the provision of network access communication provider, the provider of that service is not responsible, other than under inhibition, for information transmitted.

Provided that such provider:

- (a) does not initiate such transmission;*
- (b) does not select the transmission receiver; u*
- (c) does not select or modify the information contained in the transmission. " (emphasis added by exponent)*

That therefore the elements required by article 8 of the Act regulating the Enforcement of Intellectual Property Rights (Cap. 488) exist for the Court to issue a decree contemplated in the same article.

requested that:

safeguard its rights and while requesting this Honorable Court to order the issuance of this decree until it finally decides on the same and this in terms of Article 8 of Chapter 488 of the Laws of Malta. , the applicant requests this Honorable Court to issue such provisional and precautionary orders against the respondent companies in order to prevent the services of the same insider companies from being used to infringe the property rights.

intellectual property of the applicant, and in this regard calls on the Honorable Court to order the respondent companies to suspend access to the audiovisual content of the matches of the first and second divisions of the Spanish football league; LaLiga which is being transmitted / streamed in violation of the copyright held by the company La Liga by blocking access to all IP Addresses indicated in "Document D" and this under any other provision that this Honorable Court it deems it appropriate to impose.

With costs against the respondent companies

He saw the documents that were submitted with the application.

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Considered:

That this is an action brought by the applicant company in terms of **Article 8 (1) of CAP 488** of the Laws of Malta.

Art. 8 (1) of CAP 488 of the Laws of Malta

Any person referred to in article 3 may by application apply to Court:

(a) issue an injunction against the alleged infringer of an intellectual property right, a decree intended to prevent any imminent infringement of such an intellectual property right, or to prohibit, on a provisional basis and, where appropriate, subject to the payment of a penalty which may be made several times where provided for by law, from the continuation of any such alleged breach of that right, or from making that continuation subject

for guarantees intended to ensure compensation to the right holder. An interlocutory prohibition may also be issued, under the same conditions, against any intermediary whose services are being used by third parties in such a way as to infringe an intellectual property right;

(b) order the seizure or delivery of the goods suspected of infringing an intellectual property right.

The Court has carefully considered and complied with this provision of the law on which today's request is based.

The Court took note of the documents annexed to the application.

The Court also examined the other sub-indent 3 of the same **Article 8 of CAP 488**, and declares that it is satisfied that the requirements required by law to comply with the request made herein have been met. Thus, for example, with the attached documents, the Court is reasonably satisfied that the applicant company is the holder of the rights claimed by it².

Furthermore, from what has been put forward by the appellant company, the Court considers³ that any delay in a sector as delicate as the digital one can only

² Sub-indent 3

³ Sub-indent 4

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causes harm to the holder of the right not to be repaired and that is why he is proceeding to accede to the request without hearing the respondent company.

All this, however, is stated and is being made without prejudice to any other right that any party may have in terms of any other sub-indent of article 8 of CAP 488.

It must be made clear and unequivocal that this does not mean that this Court is in any way expressing itself on the merits or the claims that sometimes the appellant society may still have to advance on the merits.

The Court therefore, in the light of the evidence presented and the related provisions and discussed above of CAP 488 of the Laws of Malta and in the light of the above considered, considers it fair and equitable that:

1. **Welcomes the applicant's claim noe.** and **order** the respondent companies to set up and ensure that their services are no longer used in order to infringe the intellectual property rights of the applicants as described above, and

2. **Order** the respondents to suspend access to the audiovisual content of the matches of the first and second divisions of the Spanish football league LaLiga which is being broadcast / streamed in violation of their rights of the author holding the La Liga company by blocking access to all IP Addresses indicated in "Document D"

annexed to the application, Report of the PriceWaterhouse Coopers company dated twenty-fifth (25) of January of the year two thousand and twenty-two (2022).

3. **Order** the service of the documents, then the promoting application with the attached documents and the present provision to the respondent companies "*without any delay*", and this in terms of Article 8 (4) of CAP 488.

With the costs of these proceedings against the respondent companies.

Hon. Ian Spiteri Bailey Judge

Marisa Bugeja
Deputy Registrar