

**DECISION OF THE DEPARTMENT FOR COMBATING INFRINGEMENTS OF COPYRIGHT AND  
RELATED RIGHTS COMMITTED ONLINE AND THE ILLEGAL EXPLOITATION OF ONLINE GAMES  
OF CHANCE**

**OF 1 OCTOBER 2025 CONCERNING ORDER B/25/00051**

Having regard to the Act of 15 June 1935 on the use of languages in judicial matters;

Having regard to the Act of 18 July 1966 on the use of languages in administrative matters;

Having regard to the protection of copyright, neighbouring rights and rights relating to databases provided for in Book XI of the Code of Economic Law, in particular by Articles XI.164 et seq. of the Code of Economic Law (hereinafter “CEL”);

Having regard to the summary proceedings brought on the basis of articles XVII.34/1 et seq. of the CEL;

Having regard to the Royal Decree of 18 April 2024 on the creation of the Department for Combating Infringements of Copyright and Related Rights Committed Online and the Illegal Exploitation of Online Games of Chance (hereinafter “the Department”);

Having regard to the Order of the President of the Dutch-speaking Business Court of Brussels of 16 July 2025 with reference B/25/000051, received by the Department on 18 July 2025;

Having regard to the Department’s previous decision dated 30 July 2025 with reference 250730-BAPO-D-NL-004;

Having regard to the hearing of the parties, the applicant and Internet Archive on 23/07/2025, 28/07/2025 and 25/08/2025.

Having regard to the written observations received by the Department on 29/09/2025 regarding the draft decision that was communicated to the parties.

The Department has given an independent and impartial opinion on the implementing provisions of the provisional measures contained in the above-mentioned order that will apply to Internet Archive.

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## **I. Provisional measures contained in the Order**

By Order of 16 July 2025, the president of the Dutch-speaking Business Court of Brussels declared the claims admissible and well-founded and imposed the following measures:

- *Orders the cessation of the infringements of their copyrights identified by them on the "Target sites";*
- *Orders the intermediaries named by the applicants to take all appropriate measures to bring these infringements on the "Target sites" to an end or to prevent them;*
- *Extends these measures to websites or parts of websites that are replicas of the "Target sites" and to any address that provides direct access to them;*
- *States that each intermediary shall owe a one-off penalty payment of EUR 500,000 in the event of non-compliance with any of the measures, including the implementing provisions laid down by the Department;*
- *States that this penalty payment is due from the sixth working day following the implementation deadline set by the Department;*
- *Orders the internet service providers named by the applicants to display, at their own expense, within the implementation deadline set by the Department, in the three national languages and in English, the following message whenever an internet user attempts to access a page of a "Target site":*
- *States that the period for the applicants to initiate proceedings on the merits, as referred to in Article XVII.34/4 of the CEL, is six months from the decision of the Department setting out the implementing provisions;*
- *States that this order is valid for one year from today.*

## **II. Scope of the Department's mandate**

In its ruling, the president of the Business Court authorised the Department, in accordance with Articles XVII.34/1 §9 and XVII.34/3 §2 of the Code of Economic Law, to implement the provisional measures in order to ensure their effectiveness. The Department may not extend, restrict or amend the scope of the order.

## **III. Decision of the Department on the implementing provisions concerning Internet Archive**

### **A. Facts**

By order of 16 July 2025, the president of the Dutch-language Business Court of Brussels held that the applicant's rights appear to be valid and that there is a manifest and significant infringement.

The applicant identified five target websites ("Target sites") operating as illegal digital libraries. As the owner of the websites could not be identified, the applicant requested that provisional measures be imposed on four categories of intermediaries whose services are used to commit infringements of the applicants' copyright, namely:

- Internet service providers (ISPs)
- Search engines

- Hosting providers, domain name registrars, DNS managers, CDNs and/or reverse proxies
- Payment intermediaries

Following further analysis of the application by the Department and after hearing the parties, the Department established that, unlike the other four target sites, the owner of the website “Open Library” (Internet Archive) could indeed be identified.

The Department heard the applicant and Internet Archive separately on 23/07/2025 and 28/07/2025 respectively, and jointly on 25/08/2025. The parties then entered into discussions in an attempt to reach a mutual agreement. On 21/09/2025, the Department received a message from Internet Archive stating that no agreement had been reached.

The president ordered that appropriate measures be taken to bring an end to the infringements on the Target websites, in this case “Open Library”.

Internet Archive argues that such a measure cannot be imposed on it, as it is not an intermediary and because no infringement of the applicant’s copyright has occurred.

Article XVIII.34/1 of the CEL provides that, in the event of a manifest and significant infringement of copyright, a neighbouring right or the right of a database producer committed on the internet, the president of the Business Court of Brussels may, with respect to the alleged infringer as well as any intermediary whose services are used, issue an order in summary proceedings to cease the alleged infringements.

Internet Archive acquires books either through purchase or through donations from third parties. The works are then digitised by Internet Archive and included, on the one hand, in a catalogue and, on the other hand, in a system that can be described as a digital lending system allowing one user to read one work at a time for a limited period. The works available for consultation on “Open Library” originate from publishers and authors worldwide.

The Department finds that, without the involvement of Internet Archive, no works or excerpts of works belonging to the applicants would be made available online. As the website owner and host of “Open Library”, Internet Archive has full control over the content published on its website via its own servers. The provisional measures intended by the judge to put an end to the infringements on “Open Library” can therefore be imposed on Internet Archive, which may be considered an “infringer” within the meaning of Article XVII.34/1 of the CEL.

Internet Archive disputes the existence of any copyright infringement and argues that it may rely on a statutory exception under both U.S. law (fair use) and European law (Articles XI.189 to XI.193 of the CEL). The applicants did not grant any licences to Internet Archive and take the view that Internet Archive cannot invoke any exceptions.

Both parties also referred to a ruling by the District Court of New York dated 11 August 2023. In the United States, the parties to that case reached a settlement, confirmed by the judge in the form of a consent judgement, under which the four publishers involved provided Internet Archive with the list of 127 works they had identified and which had to be removed from the digital lending system. On 4 September 2024, the US Court of Appeals for the Second Circuit confirmed that Internet Archive could not rely on “fair use” for the digital lending of works by the publishers who had brought the proceedings.

The Department cannot rule on whether a Belgian statutory exception may be invoked. Such an assessment falls within the competence of the court.

However, the Department may take into account the fundamental rights and freedoms of the addressees and of other persons who may be affected by the provisional measures (Article XVII.34/3 §2, paragraph 4 of the CEL).

## **B. Respect for fundamental rights and freedoms**

By order of 16 July 2025, the president of the Dutch-language Business Court of Brussels held that the applicant's rights appear to be valid and that there is a manifest and significant infringement.

The president also finds that, after weighing the various interests (the privacy of internet users, freedom of expression and the freedom to conduct a business of the addressees), the measures requested by the applicant appear to be reasonably justified. Internet users are not prevented from accessing copyright-protected works without infringing them.

In determining the implementing provisions of the measures set out in the order, the Department took into account the fact that these provisions must be adapted to achieve the intended objective, must be necessary to achieve that objective, and must not impose a disproportionate burden on the intermediary in relation to the objective pursued (strict proportionality).

Strict proportionality implies a balancing of the interests involved: there must be a reasonable balance between, on the one hand, the protection of individual fundamental rights and freedoms and, on the other hand, the public interest (the protection of the copyright of publishers and authors) served by the restriction.

In light of this proportionality assessment, Internet Archive and the applicant were heard separately on 23/07/2025 and 28/07/2025, and jointly on 25/08/2025. On 24/09/2025, they were provided with a draft decision concerning the implementation provisions.

Both parties submitted their comments to the Department on 29/09/2025.

The Department notes that Internet Archive, on the one hand, provides access to an international catalogue. On the other hand, it also enables individuals with a login to digitally borrow works.

In the international catalogue, works published worldwide can be searched using various criteria such as the title of the work, the name of an author, the name of a publisher, or an ISBN. This catalogue can then be used to obtain bibliographic information about the works, such as the language(s) in which a work has been published, the genre, the format (e.g. hardcover, paperback, MP3 CD), and the libraries or (online) shops where the work can be found. In this respect, the catalogue provides general information about a work in the form of metadata and a description of the work. Users of the catalogue can also write a review.

Taking into account users' rights, it can be stated that the right to information must be safeguarded, and that, in particular, the (meta)data relating to a given work, the description of the work, and the localisation of a work in libraries or bookshops do not constitute infringements of copyright. Likewise, users' right to express their opinion about a particular book in the form of a review must also be protected as such.

In the catalogue, Internet Archive reproduces images of book covers and, in many cases, provides a preview, allowing readers to view a portion of a given work (one or more pages). In addition, Internet Archive enables users to digitally borrow an entire work from the catalogue free of charge for a limited period. The reproduction and making available online of (parts of) works, or the digital lending of entire copyright-protected works, may only take place with the prior consent of the copyright holder (art. XI.165, §1 CEL), unless a statutory exception applies or the works fall within the public domain.

Internet Archive invokes exceptions under both American law (fair use) and Belgian/European law (Articles XI.189 to XI.193 of the CEL). The Department cannot rule on whether a legal exception applies; this falls within the competence of the judge.

Works that fall within the public domain are works over which no copyright can be exercised anymore, as the protection period – 70 years after the death of the (last surviving) author<sup>1</sup> – has expired. These works must remain freely accessible to the public.

The detailed implementing provisions imposed on Internet Archive in the Department's final decision have been adjusted to achieve the intended objective, namely the cessation of manifest and significant copyright infringements concerning the works of the applicant, without undermining users' right to information and freedom of expression, nor Internet Archive's freedom to continue operating "Open Library" as a website and as a service.

The implementing provisions make it possible to effectively prevent access to the works that have been made available illegally. The right to information and freedom of expression remains safeguarded, as bibliographic data and public domain works remain accessible, and users are still free to write reviews on "Open Library". Internet Archive may continue to operate the "Open Library" website and its services, while respecting the copyright of the applicants.

Following the communication by the Department, Internet Archive is granted a reasonable period to carry out the implementation.

Consequently, this decision takes into account the fundamental rights and freedoms of the persons concerned, in accordance with Article XVII.34/3, §2, paragraph 3 of the CEL, and provides justification in compliance with Article 2, §4 of the Royal Decree of 18 April 2024 concerning the creation of the Department.

If the Department considers that the implementation measures taken by Internet Archive are insufficient, disproportionate or outdated, the matter shall be referred to the president of the Business Court in accordance with Article XVII.34/1 of the CEL, in order to request the withdrawal or amendment of the order or its implementation measures (Article XVII.34/3, §5 of the CEL).

If a party considers that the imposed implementing provisions constitute an unjustified infringement of fundamental rights and freedoms, or need to be amended to ensure their effectiveness, it may submit a request to the Department or the President of the Business Court.

### **C. Detailed implementing provisions**

After hearing the parties, analysing the arguments presented, and considering the fundamental rights and freedoms, the Department has established the following detailed implementing provisions:

*Both parties shall designate a reference person who will act as a contact point for the follow-up of the court order of 16 July 2025, and shall inform each other and the Department accordingly.*

*The applicants shall submit to the Department and to Internet Archive, via email, a complete list of the individual authors and publishers whom they represent in the context of these summary proceedings.*

*Based on this list, Internet Archive shall render inaccessible to the public all works of the applicants made available through digital lending on "Open Library", within a maximum period of 20 calendar days following notification of the list by the applicants.*

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<sup>1</sup> Art.XI.166 § 1 and § 2 CEL.

*Internet Archive shall also take measures to prevent these works from being made available in the future.*

*If any doubt arises as to whether a particular work by a publisher or author represented by the applicants has already entered the public domain, taking into account the protection period of 70 years after the death of the (last surviving) author, this shall be verified by Internet Archive's designated contact person with the applicant's designated contact person. The latter shall provide a response by email to Internet Archive's designated contact person and to the Department within five working days.*

*The provisional measures shall end on 16/07/2026.*

#### **IV. Monitoring by the Department of the implementation of the detailed implementing provisions**

Internet Archive must inform the Department and the applicant by email of the action(s) it has taken to terminate access to the works that have been made available illegally.

All communication shall take place via the Department's email address: [anti-piracy@economie.fgov.be](mailto:anti-piracy@economie.fgov.be).

The Department will verify whether the measures have been implemented.

Where applicable, Internet Archive shall provide the necessary facilities to enable the Department to carry out these checks.

#### **V. Publication of the Department's decision**

In accordance with Article XVII.34/3, paragraph 2, (5), the Department will publish this decision on the website of the FPS Economy at the following address:

<https://economie.fgov.be/en/themes/intellectual-property/intellectual-property-rights/copyright-and-related-rights/sanctions-and-legal-actions/online-piracy>.

This publication will take place within 5 working days of the date of this decision, i.e. by 6/10/2025 at the latest.

#### **VI. Penalties**

The president of the Dutch-speaking Business Court of Brussels imposed a one-off penalty payment of 500,000 euros for non-compliance with any of the measures imposed by the judge, including the implementing provisions laid down by the Department. This penalty payment is due from the sixth working day following the implementation deadline set by the Department.

Article XVII.34/1, §9, paragraph 3 of the CEL states that:

*The implementing provisions of the provisional measures, as specified by the Department, adapted where necessary to ensure their effectiveness, form an integral part of these measures, and the violation of the implementing provisions, provided that the Department's decision has been served on its recipient(s), gives rise to the same sanctions as those for non-compliance with the provisional measures, in particular any penalty payments to which they are subject, and for which the President of the Business Court has set the time at which they are due, taking into account the implementing provisions to be specified by the Department.*

## **VII. Recourse**

Title 1/1 of Book XVII of the CEL provides for several means of recourse against this decision:

### **A. Challenging the decision before the Department**

Article XVII.34/3 of the CEL states that:

*Any interested party, any legal entity referred to in article 17, paragraph 2, of the Judicial Code or any public institution pursuing the same ends as the legal entities referred to in article 17, paragraph 2, of the Judicial Code, may request the Department to modify the implementation of the order containing the provisional measures, in particular if it considers that these implementing provisions unjustifiably infringe fundamental rights and freedoms, or to adapt them in order to guarantee their effectiveness. The motivated request is sent to the Department by registered mail.*

*In the event of a request as referred to in paragraph 1, the procedure referred to in paragraph 2, (6), is suspended, provided that both procedures have the same object. The Department informs the clerk's office of the President of the Business Court by e-mail of the requests referred to in paragraph 1.*

### **B. Challenging the decision before the President of the Business Court**

Article XVII.34/3, §2, paragraph 6 of the CEL states that:

*Within thirty days of the publication referred to in paragraph 5, any interested party, any legal entity referred to in article 17, paragraph 2, of the Judicial Code, as well as any public institution pursuing the same ends as the legal entities referred to in article 17, paragraph 2, of the Judicial Code, may challenge the Department's decision. The challenge is brought exclusively before the judge who gave the order containing the provisional measures, the implementation of which has been specified or adapted by the Department, by summons to the legal entity to which the Department belongs and to the beneficiary who filed the original request.*

## **VIII. Validity period of this decision**

This decision is valid until 16 July 2026.

Done at Brussels on 1 October 2025

Paul LAURENT

General Adviser in charge of the Department for Combating Infringements of Copyright and Related Rights Committed Online and the Illegal Exploitation of Online Games of Chance