



**IN THE CIVIL COURT - FIRST HALL
JUDGE
ONOR. IAN SPITERI BAILEY LL.M. LL.D.**

Today 27 June 2022

Case No: 2

APPLICATION NUMBER: 315 / 2022ISB

Dr Jacqueline Mallia (ID 240475M) as special agent of the foreign company Infront Sports & Media AG, a legal entity registered in Switzerland with registration number CHE-101.159.299

VS

Epic Communications Limited a registered company with number C 10865

Melita Limited a registered company with registration number C12715, and

GO Plc is a registered company with registration number C22334

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The Court,

Saw the application of the applicant noe. of 11 April 2022, li hereby claims that the Court should:

(1) *Declares that the transmission / streaming of the audiovisual content of the direct matches of the first division of the Italian football league Serie A without the authorization of the Applicant, including but not limited to the content accessible from the IP Addresses indicated in Document C, infringing the copyright held by the same Applicant;*

(2) *It states that the service provided by the respondent companies is being used by third parties in order to infringe the copyright of the copyright holder.*

Applicant;

(3) *Order, in terms of Article 10 of Chapter 488 of the Laws of Malta, on the respondent companies to block access to IP addresses, including but not limited to the IP Addresses indicated in the attached document and marked as Document C, through which access to the audiovisual content of the direct matches of the first division of the Italian football league is granted*

Serie A for the seasons 2021/2022 and 2022/2023 which is being transmitted / streamed without the authorization / license of the Applicant, and therefore in breach of the copyright which it holds, and this under the modalities and subject for any provision which this Honorable Court deems fit to impose in order for such an order to be effective, efficient and dynamic, including the appointment of identifying technical experts during the course of the said seasons, other IP Addresses who may from time to time illegally transmit the audiovisual content on which the Applicant holds the copyright and which can be accessed through the service of the same respondent companies so that access to the same IP Addresses is also subject to the restrictive order of this Honorable Court. vis-à-vis the respondent companies;

With costs against the respondent companies.

And this after promising that:

*That the Applicant nomine is a special proxy representing the foreign company **Infront Sports & Media AG**, by proxy, herewith annexed and marked as Document "A";*

That the Applicant holds the international audiovisual rights (except those for the United States of America and its territories and the Caribbean), of the games of the first division of the Italian football league Serie A for the 2021 seasons / 2022, 2022/2023 and 2023/2024, as follows from the document attached hereto and marked as Document "B";

That therefore the Applicant enjoys the protection of copyright in terms of Chapter 415 of the Laws of Malta, including the exclusive right to

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transmit, communicate and make available to the public the said audiovisual content, inter alia in the territory of Malta;

That the respondent companies inter alia, operate as an Internet Service Provider (ISP) and therefore on their electronic platform passes digital content from various sources;

That from an exercise carried out by the company PriceWaterhouse Coopers in Malta (Document "C"), 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 it turns out that the streaming servers from which the illegal transmission takes place change their IP Addresses regularly, even during the actual transmission of any said game;

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 the respondent companies;

That therefore while the respondent companies do not themselves infringe the copyrights held by the Applicant, the service provided by them is nevertheless being used to commit this infringement as through them, the clients of the respondent companies must access to content illegally transmitted audiovisual material;

That therefore the most effective way for the Applicant to protect her rights is to stop the access to the streaming servers that are illegally transmitting the audiovisual content on which she holds the copyrights.

That Article 10 (2) of Chapter 488 of the Laws of Malta gives a right to an holder of an intellectual property right to request the Court to issue such prohibitions as it deems appropriate in respect of intermediaries who have s their use by third parties in order to infringe the said intellectual property right in order to prohibit the further infringement of the same right;

Saw all documents attached to the same promoter application.

It saw its decree of 22 April 2022 showing that the case was placed on the Court's list for the hearing of 6 June 2022 at 9:45 am.

Saw the Answer of Melita Limited of 18 May 2022 and Go Plc of 24 May 2022;

It saw the minutes of the hearing of 6 June 2022 which show that "the defendants of the parties presented a joint note with a compromise agreement date of 1 June 2022 and asked the Court to pass judgment to incorporate such an agreement and that

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cover the entire 2022/2023 season'. Also, the parties agreed that "the court will use what is necessary from the agreement in the publicity of the decision but where possible the agreement and in particular its operating methodology should remain confidential".

Having regard to the fact that the case was left for decision on 30 September 2022;

It saw its decree of xxxxxx by which the case was reclaimed for today as in order to give the judgment today.

Considered:

That through this procedure, the applicant noe. on behalf of the foreign association **Infront Sports & Media AG**, a legal entity registered in Switzerland with registration number CHE-101.159.299, applied to this Court to:

- 1) *Declare that the transmission / streaming of the audiovisual content of the direct matches of the first division of the Italian football league Serie A without the authorization of the Applicant, including but not limited to content accessible from the IP Addresses indicated in -Document C, infringe the copyright held by the same Applicant;*
- 2) *Declare that the service provided by the respondent companies is being used by third parties in order to infringe the copyrights held by the Applicant;*
- 3) *Order, in terms of Article 10 of Chapter 488 of the Laws of Malta, the respondent companies to block access to IP addresses, including but not limited to the IP Addresses indicated in the attached document and marked as Document C, through which access is granted to the audiovisual content of the direct matches of the first division of the Italian football league Serie A for the seasons 2021/2022 and 2022/2023 which is being transmitted / streamed without authorization / license of the Applicant, and therefore in breach of the copyright which it holds, and this under the modalities and subject to any provision that this Honorable The Court considers it appropriate to impose such an order as to be effective, efficient and dynamic, including to appoint technical experts who identify during the course of the said seasons other IP Addresses which may from time to time illegally transmit the audiovisual content on which the Applicant holds the copyright and may be accessed through the service of the same respondent companies so that access to the same IP Addresses is also subject to the restrictive order of this Honorable Court against the respondent companies. ;*

With costs against the respondent companies.

Further Considered:

That the applicant noe, namely **Infront Sports & Media AG** (hereinafter referred to as "**Infront**") is making these claims as it allows it to hold,

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with reference to the matches of the first division of the Italian football league, the international audiovisual rights (except those for the United States of America and its territories and the Caribbean) of the matches played in the first division of the Italian football league. In this sense it was exhibited with the application promoter DOK B which is a declaration of the Lega Nazionale Professionale Serie A together with the International tender for audiovisual rights for the seasons 2021/2022, 2022/2023, 2023/2024.

It is against this background that **Infront** contends that it enjoys the protection of copyright in terms of CAP 415 of the Laws of Malta, the so-called "Copyright Act" and thus it has the exclusive right to transmit, communicate and make available to the public, including the Maltese, the audiovisual content of the matches of the first division of Italian football.

Infront harassed the respondent companies as as *Internet Service Providers* (ISPs) they provide their electronic platform for streaming digital content from various sources to the public.

Infront contends that a number of IP Addresses have been identified which give online access to the audiovisual content of the games described and which is being transmitted / streamed without its due license and / or authorization, and therefore claims that the transmission / streaming of the said audiovisual content is being made illegally and in violation of its copyright. In support of its evidence, it exhibits as Doc C a report of a renowned auditing company, the company *PriceWaterhouse Coopers* (PwC) in Malta.

Illi mir-rapport msemmi, jirrizultaw mijiet ta' IP Addressess illi PwC iddiskreviet bhala "a list of all internet sites identified as a content streaming or location, gathered throughout the packet capture session" u tinkludi "date and time of packet capture", "stream channel name", "stream details ie name of sporting event or program", "stream source IP address" u "stream source URL".

Infront further contends that the streaming servers from which the illegal transmission takes place change their IP Addresses regularly, sometimes even during the actual transmission of a game, and such transmitted / streamed audiovisual content. illegally 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 the respondent companies.

Infront therefore contends that while the respondent companies are not themselves in breach of their rights, the service provided by them is nevertheless being used to commit such an infringement. This is because through them, the clients of the respondent companies have access to the illegally transmitted audiovisual content.

The Court considers that these facts as they result from the sworn application and the documents annexed to it are in no way contradicted, rather they appear to be accepted by the respondent companies. The Court will therefore consider that the recitals set out in the application are well substantiated by facts, above all documentary, which are not contradictory.

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Further Considered:

That in the light of the facts presented by **Infront**, it is asking that this Court provide an effective remedy so that it protects its rights, in particular and precisely by blocking access to streaming servers that are illegally transmitting audiovisual content. on which it holds the copyright.

Infront makes this request in terms of **Article 10 (2) of Chapter 488 of the Laws of Malta** which entitles the holder of an intellectual property right to request the Court to issue such prohibitions as it deems fit. in respect of intermediaries whose services are used by third parties to infringe the said intellectual property right in order to prohibit the continued infringement of that right.

Further Considered:

That **Article 10 (2) of Chapter 488 of the Laws of Malta** expressly states thus:

10. (1) Where the Court finds that there has been an infringement of an intellectual property right, it may, on an action brought by the plaintiff, issue a prohibition against the infringer with a view to prohibiting the infringement. the continuation of that breach. Failure to comply with that prohibition would constitute contempt of court.

(2) The action referred to in subarticle (1) may also be made in respect of intermediaries whose services are used by third parties to infringe an intellectual property right, without prejudice to article 42 of the Act. on Copyright.

That Article 10 contemplates a prohibition order. This is the action that **Infront** has chosen to protect its rights, even if CAP 488 of the Laws of Malta provides for other remedies, which nevertheless remain prejudiced to it as this action is strictly done and imposed on Article 10 of CAP 488 alone, even if the recitals to the agreement reached between the parties make the position of all parties in this clear and defined pending.

The Court also considers that while the ban sought by **Infront** relates to two seasons of football matches, with all this the 2021/2022 season is now definitively closed and in view of the nature of the action brought, it would be superfluous therefore for this judgment to apply to what has already been done and passed.

In this sense, the Court is making it clear that this judgment should be considered applicable for the next season, **ie the football season 2022/2023**, and further especially for the first division of Italian football. referable for the same season.

Further Considered:

That in the last hearing, the parties presented a joint note by which they not only informed Court that they had led to an agreement by which they had transferred the case

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but requested the Court to give judgment with a view to enforcing the said agreement reached between the parties.

The Court notes that **ALL** parties to this dispute have acted in a straightforward, disciplined and serious manner and are aware of their obligations and rights, without undue delay, leading to an agreement that they wish this Court to adopt in the judgment so that the illicit situation described above as agreed between the parties and which lasted during the course of the 2021/2022 season does not recur in the next season, that of 2022/2023.

The Court, satisfied with all this, finds no difficulty in incorporating in its judgment what has been agreed between the parties, and therefore, the Court is ordering that the Document marked **DOK KB 1** presented with a note at the hearing of 6 June 2022, which is the agreement between the parties in this case, reached and signed on 1 June 2022, referred to as **'the agreement'**, shall, for all intents and purposes of this judgment, form part of it with the Court ordering that

- (a) this judgment must always be read and given effect in the light **of the agreement** and
- (b) such **agreement**, provided that it is in the records, is not published with the present judgment at the request of the same parties and rather shall be sealed by the Registrar and opened only in case and in the event that it is necessary if it arises. any dispute / dispute between the parties over the same **agreement** and this ends before a judicial or quasi-judicial Court / Arbitration or Tribunal.

THEREFORE, the Court, having considered all the above submitted and having considered all the facts arising from it, including **the agreement** reached between the parties as described above, is proceeding to decide this pending case by:

1. **WELCOMES the first request** and declares that the transmission / streaming of the audiovisual content of the direct matches of the first division of the Italian football league without the authorization of the same **Infront**, including but not limited to for the content accessible by the IP Addresses indicated in Document C with the promoting application, infringes the copyright held by the same **Infront**.
2. **WELCOMES the second claim** and states that the service provided by the respondent companies is, in the sense and context explained above, used by third parties in order to infringe the copyright held by **Infront**, without prejudice to it should not be understood that the same respondent companies are liable for the incident.
3. **WELCOMES the third request** within the meaning ordered herein and therefore orders, in terms of Article 10 of Chapter 488 of the Laws of Malta and also **of the agreement** reached between the parties on the first of June 2022 (DOK KB1 in deeds) hereinafter referred **to as "the** agreement", in order to:
 - a. First, the respondent companies block and / or block, in the terms below decided and above all as agreed between the same parties **to the agreement**, access to the IP Addresses identified and listed in the PwC report. , exhibited as DOK C with the application, as referred to in the first paragraph of

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decide, so that they do not transmit / stream the audiovisual content of the direct matches of the first division of the Italian football league for the **2022/2023 season**;

- b. Secondly, the respondent companies must set up and / or block, in the terms decided here and above all as agreed between the same parties **by agreement**. _____
DOK KB 1, access to IP Addresses identified and listed in accordance with the methodology agreed between the parties to the same agreement (clause 5 of the agreement), at any time by Infront before or during the 2022/2023 football, so that they do not transmit and / or stream the audiovisual content of the live games of the first division of the Italian football league for the **2022/2023 season**, provided that:
- i. respondents shall be informed of the dates and times of blocking and / or stopping the requested access, in writing not less than 96 hours before the event that Infront is seeking to request the blocking and / or stopping its, and
 - ii. respondents must receive, from Infront, a list of IP Addresses to be blocked / blocked from accessing them, and such list must reach the respondents, at least 24 hours before the event that Infront is looking for. to request its blocking / stopping, and in case the event is will be held on Sunday or a public holiday that is inserted t Monday, then such a list above must be provided by Infront to the respondents no later than Friday. (Friday) before the event, and
 - iii. Infront shall not submit such requests with IP Addresses lists more frequently than twice a week and shall be the sole one to assume full legal responsibility for the correctness of the information provided to the respondent companies as agreed and hereby decided (clause 6 of the agreement).
- c. Thirdly, that any arrangement reached between the parties **to the agreement** _____ of 1 June 2022 in respect of *fees / processing fees* (paragraph 4 **of the said agreement**) must be respected.
- d. Fourth, for the purposes of the methodology which may lead to the identification of IP Addresses in respect of which access may be requested and / or blocked during the **2022** football season / **2023**, the Court is ordering that such an investigation be conducted by PriceWaterHouse Coopers (PWC) Malta as identified by the parties themselves.
- e. Fifth, the IP Addresses information requested by the respondent company to be blocked and / or stopped from transmitting, which information is provided by Infront and / or by a third party so authorized by

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In front, it shall be sent to the e-mail addresses indicated ***in the agreement*** _____
(clause 7).

f. Sixth, the terms of that agreed between the parties ***to their agreement*** (clause 8), in the event that one or all of the respondent companies, following the blocking and / or setting up of an IP Address in line with the agreed and ordered, receive written information from a third party or authority that such blocking and / or discontinuance of such IP Address is also blocking and / or discontinuing audiovisual content over which Infront has no rights, so such blocking and / or discontinuation shall within 24 hours of such information being received, pass to the parties. the other on the agreement.

g. Seventh, also in terms of what was agreed between the parties ***to the agreement*** _____ (clause 9), in case Infront notifies the respondents or any of them that any IP Address indicated previously and consequently blocked and / or blocked by the respondents or any of them, should be released, then this should be done at the latest from 24 hours from when the respondents or any of them receive such instruction. In this regard, any arrangements reached between the parties ***in their agreement*** of 1 June 2022, if any, of *fees / processing fees* (paragraph 9 of the said agreement) shall be respected.

h. Eighth, it applies by virtue of this judgment, the agreement in respect of any payment obligations due between the parties in terms ***of the agreement*** reached (clause 10 and clause 11).

Costs and fees of these proceedings as well as of the proceedings numbered 81 / 2022ISB decided on 2 February 2022 shall be borne by the applicant **noe**.

Ian Spiteri Bailey
Judge

Marisa Bugeja
Deputy Registrar