

COMPUTER SAYS 'NO'



LATEST NEWS 28 October 2011

On Wednesday Arnold J handed down judgment on the form of the order in *20th Century Fox v BT* following his substantive judgment on the case on 28th July. In July the Judge had held that the Claimants were entitled to an injunction under section 97A of the Copyright Designs and Patents Act 1988 to an injunction requiring BT to block access to the Newzbin2 website. Newzbin2 was the Phoenix risen from the ashes of the old Newzbin website which had been closed down by a judgment of Kitchin J last year.

Section 97A implements part of the EU Information Society Directive which requires Member States to make it possible for rightsholders to apply for injunctions against mere conduit ISPs to prevent infringement of their rights.

Following judgment in July the parties had been unable to agree the precise terms of the order. Arnold J has now finalised the form of the order.

The injunction granted specifies precisely what BT is required to do in terms of the mechanism to be adopted for blocking access to the Newzbin2 website. The Judge held that, in view of the relatively low level of cost involved in implementation, it would be proportionate in this case for BT to bear those costs itself. He rejected BT's claim for an indemnity or cross undertaking in damages. BT had argued that its customers or others affected by the blocking might make claims against BT but the Judge indicated that BT's compliance with the order would provide it with a defence to any claim by a third party. This is an important consideration since that protection would not be available for an ISP that agrees to block a website without a Court order.

On the question of costs, the Judge gave BT their costs down to the service of the Claimants' evidence, on the basis that they were entitled to insist on the Claimants obtaining a Court order before implementing any blocking. Thereafter he gave the Claimants their costs on the basis that BT should not have resisted the granting of such an order. Both parties were ordered to pay their own costs of the post judgment argument on the form of the order.

BT were represented by **Antony White QC** of **Matrix Chambers** and **Roger Wyand QC** of **Hogarth Chambers**.

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