

Disputes 2018: Blocking injunctions

The Supreme Court will decide who should pay the costs of implementing injunctions to block access to websites infringing Intellectual Property (IP) rights.

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In brief

- A blocking injunction is a method of forcing UK Internet Service Providers (ISPs) to block their users from accessing particular websites, so far chiefly copyright infringers like BitTorrent trackers but more recently sites selling counterfeit goods in infringement of trade mark rights.
- The legality of such measures is all but settled, but the key battleground has moved on to who pays for them - the rights owners who want them or the service providers who have to put them in place and maintain them.
- On 30 January 2018, the UK Supreme Court is expected to decide this question when it hears the appeal in [Cartier International v British Sky Broadcasting Ltd.](#)

The decision of the UK Supreme Court

Blocking injunctions require UK ISPs, of which five providers serve most of the market, to block their users from accessing certain websites. They began life in 2011, dealing with copyright infringing BitTorrent trackers and similar websites and services under section 97A of the Copyright, Designs and Patents Act 1988.

In 2014, Richemont - owner of the Cartier and other luxury brands - asked the High Court to apply similar principles to infringements of its trade mark rights in the form of websites selling counterfeit luxury goods. As section 97A covered only copyright, Richemont sought to rely on the Court's inherent power to order injunctions where it was "just and convenient" to do so.

Richemont won at first instance and in the Court of Appeal in 2016. But the Court of Appeal's judgment, as well as having to deal with whether or not blocking injunctions were available for trade mark infringement, also addressed the question of who should pay the costs of implementing such injunctions. While Jackson and Kitchin LJ thought it should be the ISPs, Briggs LJ thought it should be Richemont, drawing an analogy with both *Norwich Pharmacal* and *Bankers*

Trust orders.

The UK Supreme Court will now have the final word - subject to any EU law angles which might come up and for which, for now, a referral to the CJEU might still be required.

What it means for you

The relatively recent invention of blocking injunctions is a rare form of judicial activism in the UK, and a very useful weapon for rights owners trying to deal with endless infringement online. However, cost is key and should the Supreme Court rule in favour of the ISPs, the jurisdiction may cease to be quite so useful. If, on the other hand, the ruling goes in favour of Richemont, we may see a surge in the number of applications. Those applications can, in theory, now concern any type of intellectual property right and may also be deployed against other types of online service provider - not just the ISPs that provide us with fixed line internet access.

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