Site Blocking In Europe

Introduction

This paper presents a high-level survey of European countries in which site blocking has been used or attempted. The subject is legally complex, and this paper focuses on 'What happened?' and 'What was done?' rather than on the nuances of the legal system. It has also been very difficult to get the same level of detail for all of the countries.
For each country, we give a summary of the legal situation (Article 8.3 implementation, cases brought, won, and lost, etc.), social and political background (if relevant), mechanisms used for any blocking that has been imposed, results of any blocking, and blocking related to other industries (gambling, child pornography, etc.)

The final section tries to draw some general conclusions and makes some recommendations.

Country Summaries

Quick cheat-sheet for cases and countries

Article 8.3 of the Copyright in the Information Society Directive is the EU legal framework for these things. Article 8.3 permits injunctions against Internet intermediaries even where the intermediary is not legally responsible for the infringing activity on its site or network. Experience has shown that generally, a country must have a national implementation of 8.3 for actions brought under 8.3 to be effective. It is generally easier to win against a hosting provider than an ISP.

Civil Cases (rightsholder(s) vs. ISP or ISPs) have been successful in Denmark and Ireland. These were brought mainly by the music industry. Film rightsholders have a recent success in Austria.

Criminal cases have been brought and succeeded in Spain and Italy.

A case was lost in Norway.

Germany is been problematic for social, legal, and techno-perceptual reasons. Film rightsholders have lost before the Court of Appeal in Hamburg and are considering a case on the merits. Music cases are underway.

Cases are ongoing in Belgium, the Netherlands, Greece and the UK.

'IWF' is the Internet Watch Foundation, which provides a list of child pornography sites to block.
## Tabular Summary

<table>
<thead>
<tr>
<th>Country</th>
<th>Sites blocked</th>
<th>Status</th>
<th>Source of sites to block</th>
<th>Technology used</th>
<th>Monitoring of effectiveness</th>
<th>Other notes</th>
<th>8.3 implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>kino.to</td>
<td>Preliminary injunction granted.</td>
<td>Civil litigation</td>
<td>DNS, IP</td>
<td>Unknown. There are already reports of redirection to alternative sites</td>
<td>UPC had argued that DNS and IP blocking were expensive and ineffective.</td>
<td>Yes</td>
</tr>
<tr>
<td>Belgium</td>
<td>None</td>
<td>Court loss by BAF against 2 ISPs being appealed SABAM/Scarlet case referred to EU Court of Justice</td>
<td>Civil litigation</td>
<td>NA</td>
<td>NA</td>
<td>The SABAM/Scarlet case is about P2P blocking and filtering, not necessarily about site blocking, but the results of the appeal may have repercussions on site blocking</td>
<td>Yes</td>
</tr>
<tr>
<td>Denmark</td>
<td>TPB, child porn, gambling, on-line medicines</td>
<td>Active, Active, Active, Proposed</td>
<td>Civil litigation, government, government, NA</td>
<td>DNS, Unknown, Unknown, NA</td>
<td>Unknown, Unknown, Unknown, NA</td>
<td>German courts tend to think DNS blocking is not a proportionate response because it can be circumvented</td>
<td>Yes</td>
</tr>
<tr>
<td>Finland</td>
<td>No</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Pending legislation on notice-sending</td>
<td>Yes, but not an ideal implementation</td>
</tr>
<tr>
<td>France</td>
<td>Not yet</td>
<td>In progress</td>
<td>Civil Litigation</td>
<td>IP, DNS, URL</td>
<td>Unknown</td>
<td>French RHs hope to launch the case this summer</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany</td>
<td>Nazi stuff, No piracy-based blocking</td>
<td>Active, Litigation in process</td>
<td>Unknown, NA yet</td>
<td>Through search engines, NA</td>
<td>Unknown, NA</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Greece</td>
<td>No</td>
<td>Litigation underway</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
## Site Blocking in Europe

**Confidential**

<table>
<thead>
<tr>
<th>Country</th>
<th>Sites blocked</th>
<th>Status</th>
<th>Source of sites to block</th>
<th>Technology used</th>
<th>Monitoring of effectiveness</th>
<th>Other notes</th>
<th>8.3 implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>• Gambling sites&lt;br&gt;• TPB&lt;br&gt;• Bitjunkie and affiliates</td>
<td>Active</td>
<td>Court orders&lt;br&gt;• Court orders based on criminal case&lt;br&gt;• Court orders based on criminal case</td>
<td>Unknown&lt;br&gt;• IP and DNS&lt;br&gt;• IP and DNS</td>
<td>Unknown&lt;br&gt;• Some monitoring; temporary effect on Italian P2P traffic. Site effectively blocked</td>
<td>8.3 sanctions against an access provider have been interpreted very restrictively and as a result the FAPAV case against Telecom Italia has so far been unsuccessful.</td>
<td>Yes</td>
</tr>
<tr>
<td>Ireland</td>
<td>TPB blocked</td>
<td>Active</td>
<td>Civil suit by IRMA</td>
<td>Unknown</td>
<td>Unknown</td>
<td>In a subsequent case (IRMA v. UPC), the judge said there isn’t an 8.3 implementation, but the same judge had previously granted an order for Eircom to block TPB.</td>
<td>Unclear</td>
</tr>
<tr>
<td>Netherlands</td>
<td>None</td>
<td>TBP found illegal, but blocking of it is stuck in the courts</td>
<td>Civil suit by Brein</td>
<td>Unknown</td>
<td>NA</td>
<td>Legislation being drafted</td>
<td>No</td>
</tr>
<tr>
<td>Norway</td>
<td>None</td>
<td>None</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Legislation on site blocking has been sent to Brussels for scrutiny</td>
<td>No</td>
</tr>
<tr>
<td>Spain</td>
<td>16 sites blocked</td>
<td>Still blocked</td>
<td>Court order based on criminal case</td>
<td>Probably DNS</td>
<td>Short-term analysis of national traffic impact and traffic to similar sites Some of the sites have re-formed under new names</td>
<td>Legislation on site blocking has been sent to Brussels for scrutiny</td>
<td>Yes</td>
</tr>
<tr>
<td>Sweden</td>
<td>None</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Legislation tends to focus on getting hosting providers to shut down sites</td>
<td>No</td>
</tr>
<tr>
<td>UK</td>
<td>• Child Porn&lt;br&gt;• No content sites</td>
<td>Active</td>
<td>IWF&lt;br&gt;• Civil Litigation</td>
<td>BT cleanfeed&lt;br&gt;• N.A.</td>
<td>New discussions between government and various industries ISPs already filter spam, malware, etc</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
Austria
As the result of a suit brought by Verein für Anti-Piraterie der österreichischen Film und Videobranche (VAP), a court in Austria ordered UPC to take action on kino.to with a combination of DNS and IP blocking. UPC had argued that DNS and IP blocking were expensive and too easily circumvented.

The ruling seems to recognize the fluidity of the situation with changing IP addresses, site names, and so on. Nevertheless, alternate sites that may have a connection to kino.to are available. This shows the importance of trying to obtain blocking against a family of sites rather than a single one.

Belgium and Luxembourg
In Belgium, SABAM (Société d’Auteurs Belge – Belgische Auteurs Maatschappij) won a case around music P2P in 2004 requiring 'filtering and blocking.' The wording was a little vague, and an expert advised in 2007 that both were possible, with caveats. Scarlet (the ISP) was ordered to prevent P2P infringement using filtering or blocking. Scarlet appealed the case and the Brussels Court of Appeal referred the question to the EU Court of Justice.

BAF (the Belgian Anti-Piracy Federation) also brought an Article 8.3 action against the ISPs telenet and belgacom to block TPB and lost, but an appeal is underway.

In Luxembourg, BAF recently a case against Root eSolutions, a hosting provider, for the disconnection of various pirate websites. No judgment has with remedies has been issued yet, but one is imminent.

Denmark
In 2006 ifpi (the International Federation of the Phonographic Industry) filed a civil suit against Tele2, demanding that the ISP block access to AllofMP3.com. The court ruled in ifpi’s favor in October 2006.

In February 2008 Telenor, one of Denmark’s largest ISPs, was ordered to block The Pirate Bay. This was appealed to the High Court and upheld in November 2008. In May 2010 the Danish Supreme Court upheld it as well, stating that DNS blocking was sufficient to fulfil the injunction. Other Danish ISPs have also blocked the site.

DNS blocking was not mandated, but it was stated that it was a preferred solution. The ruling also took some notice of changing IP addresses, new site names, and so on.

Denmark currently has a list for blocking gambling, and one for blocking child pornography. There is an administrative authority for managing both of those lists. A similar process for fraudulent medicines is also proposed.

Because of all this, Denmark has some experience blocking sources of illegal media, and experience with the administrative mechanisms for a more general solution. For any such solution, it would be very important to have very clear guidelines about how it was decided that site should go on the list, an appeals process for erroneous inclusion, and so on.

**Finland**

There has been no attempt at site blocking. Legislation on notice-sending is pending.

**France**

Implementation of the most recent HADOPI law has focused on P2P traffic, although the law does have provisions that cover blocking of, e.g. streaming sites. As of early May, France was close to initiating 8.3 actions (EU-speak) or 336.2 action or actions en cessation (in French). They are considering multiple and hybrid solutions – IP, DNS, and URL blocking – since they understand that no one scheme will be complete or always appropriate. There is very little information available on how the site list would be built, managed, and distributed.

France has been working on this for over a year and is taking the same great care with it as they did with the notice-sending implementation.

**Germany**

Germany has no implementation of the Article 8.3 of the EU Directive, which makes some courts unwilling to take action based on it.

The current feeling is that blocking in Germany is unlikely, for socio-political reasons. On the other hand, informing users that they are going to a suspect site might be socially acceptable. Some German courts have stated that blocking is not a proportionate or appropriate remedy because circumvention is possible. Germany needs more clarity that partial success is OK in this area.

Although some people say that Germany blocks neo-Nazi sites, it appears that this is done through the search engines rather than through site blocking. This makes it harder for the sites to acquire new users, but does not prevent access to such sites that are hosted outside of Germany; inside Germany, there are legal ways of closing down such sites. There are also bans on linking to Nazi sites. See, for example [http://de.wikipedia.org/wiki/NSDAP-Aufbauorganisation](http://de.wikipedia.org/wiki/NSDAP-Aufbauorganisation) which contains:

> Die Websites der NSDAP-AO werden in der deutschsprachigen Wikipedia aus juristischen Gründen nicht verlinkt

*(The websites of NSDAP-AO are not linked in German Wikipedia due to legal reasons.)*

The state of North Rhine-Westphalia has forced ISPs to block Nazi sites, which was done via DNS, and has attempted to force them to block gambling sites.

**Greece**

An action is underway by the collecting societies in Greece.
Ireland
Eircom blocked access to The Pirate Bay following a court order based on an agreement with IRMA (the Irish Recorded Music Association). The agreement also covered graduated response. There was also a case against UPC in which a judge has confusingly said that Ireland has no Article 8.3 implementation, which raises concerns about the existing settlement.

Italy
Blocking injunctions in Italy are aimed at a particular site, and apply to all ISPs. The courts have required both IP blocking and DNS blocking. Similar rulings are in effect for gambling sites.

There have been actions around The Pirate Bay in Italy, and some measurements made of the results:

- TPB Ordered blocked in Feb 2010
- It fell out of top 10 destinations for residents of Italy
- Temporary reduction in national bittorrent traffic for about 6 months
- Kickasstorrents, torrentreactor, and btjunkie eventually took up the slack

In April 2011, a similar blocking order was applied to BTJunkie, which has been implemented so that www.btjunkie.org, www.btjunkie.com, btjunkie.org, and btjunkie.com all map to localhost.

In general, criminal cases seem to work in Italy, and civil cases are less successful. Agcom (the telecoms regulator) is proposing regulatory solutions with a basis in existing legislation.

Italy does not implement the IWF block list.

Netherlands
Recently there have been some signs of eventual policy change to address the issue of downloading from an illegal source. Although details are still sparse, it seems like offering illegally copied files will be prohibited and sanctioned.

Rather than implementing the IWF block list, the Dutch use an informal but effective mechanism for blocking child pornography, involving informal police processes and contacts. It is not clear how well this would translate to blocking content sites for copyright reasons.

The general ISP (and perhaps societal) opinion is that blocking is bad, but that warning before sending someone to a bad site is OK.

For content, in 2009 a judge ordered The Pirate Bay to render their site in accessible to Dutch users. Brein then brought a case against Ziggo to get them to block TPB. The court said that the Dutch implementation of 8.3 does give the possibility of requiring access providers to block directly infringing web sites, but that TPB is not directly infringing. Appeals have been filed.
Norway

Article 8.3 actions against Telenor had 'disappointing results' because the courts found that there was no basis in Norwegian law for site-blocking. The Ministry of Culture has launched a consultation that covers a variety of topics, including site-blocking.

Spain

16 sites (all connected with one individual) were blocked in March 2010. All sixteen became inaccessible in Spain, although some were still available outside Spain. Some of the sites have re-formed under new names, which are not blocked. The courts do not mandate a technology, and ISPs tend to use DNS blocking\(^2\). In Spain, such orders are sent to the 6 main ISPs, covering 95% of the subscriber base.

Only one of the blocked sites would have been in the top 50 piracy sites for Spain, so the overall impact of their closure is unclear. Envisional did a study a few months after the blocking, but we are not aware of any longer-term follow-up.

Legislation on blocking has been passed and sent to Brussels under the 'technical standards directive.'

Spanish ISPs do not implement the IWF block list.

Sweden

Swedish cases tend to involve cutting off the hosting of sites, rather than blocking access to sites. This is more like whack-a-mole than real blocking, since the sites just move.

UK

The UK has an implementation of Article 8.3, and current actions are being brought under 'copyright and patents 97a', which does not explicitly cover site blocking. Per-site injunctions are allowed under sections 17 and 18 of the Digital Economy Act but there is a zone of uncertainty around the DEA at the moment, with another set of parliamentary/regulatory/industry consultations going on.

There are discussions about a voluntary, cooperative list for bad sites, but there are many disagreements between the ISP industry and the content industries:

- The list would have to be made and approved. This would require very clear terms for inclusion and a way of appealing against inclusion on it. This might require a 'special master' (or whatever the European equivalent is).
- There is an argument that being precise in this regard is very difficult, but the HADOPI requirements in France for flagging P2P users are very detailed, very technical, and easy to summarize in an understandable way. Similar thought could be given to site blocking lists, if all the parties were willing.

\(^2\) However, some reports seemed to indicate that IP blocking was used in some of these cases.
• Underblocking is preferable. There may be a perception that the content industries wouldn't mind overblocking. See conclusions section for a discussion of the problem in general.

• There is concern over grey areas. For example, is there a second list for which warnings are popped up, or are they just ignored? Once again, underblocking in order to get something at all is preferable to wangling over how to deal with the grey sites.

ISPs already filter spam, malware, etc. 95% of the UK ISPs implement the IWF block list, using cleanfeed (a hybrid/proxy solution from BT) or equivalent products from other vendors such as NetIntelligence.

Newzbin was shut down when it lost in court, but has re-established itself out of the country. There are now attempts to get the new site blocked. The Digital Economy Act does allow blocking, and Newzbin2 is being used to test this, although the case also relates to laws that have been in effect since 2003.

Observations and Recommendations
Site blocking is rejected for lots of reasons. Those based on details of the law are outside the scope of this paper, but many of the others can be countered with the right information. This information is certainly of use when preparing legal arguments, and can also be used for broader education and outreach campaigns. Better education on these issues may in turn provide a better environment in which to conduct legal actions, commercial negotiations, and regulatory activity. There are several specific areas for the industry to focus on.

Judicial Attitudes
In some jurisdictions (e.g. Germany) courts refuse to allow blocking because it is claimed to be too easy to circumvent. The industry should continue to work on the following:

• Explaining the principle of friction, both how it deters some consumers and how it makes it more expensive and harder for the bad sites to operate

• Explaining that deterring some percentage of consumer traffic is a worthwhile result, and that accepting that no victory can be complete.

• Showing that there are more legal offers coming, reducing friction for people who want to be law-abiding and giving those who were deterred by the blocking mechanisms someplace legal to go rather than another illegal source

Doubts about effectiveness
In countries that have done blocking, there are not many published studies on the success or failure. Existing measurements tend to be simplistic, don’t publish the methodology, and cover only a short period of time. For example, both the pro-blocking and anti-blocking sides have used the Italian data about TPB to say that blocking either does or doesn’t work.
Proper instrumentation is always a good thing. If it shows success (and the measurements can be defended) the industry's case for blocking is stronger. If it does not show success, then the industry should do something else.

Although it is more effective to draw information from dealing with classes of piracy within a country (e.g. P2P in France), measuring the effects of individual actions allows people to start to build up a broader picture than they currently have.

The industry should

- Establish a reliable source of historical and current information on piracy-oriented web sites.
- Consistently collect data in jurisdictions where blocking occurs or might occur, and continue the collection after blocking has occurred to measure the effectiveness.
- Learn more about how access to other illegal content (child porn, gambling, etc) is restricted and how successful the restrictions have been

**ISPs**

Some ISPs don't like DNS blocking. The reasons they give are:

- It costs them too much. We need to collect real information in order to counter this argument
- It's too easy for consumers to get around. See the MovieLabs tech note on circumventing DNS blocking for another opinion.

ISPs in general shouldn't like alternate DNS providers, since ISPs have found that managing their own DNS allows for better quality of service and does not open their customers to DNS poisoning from an unknown DNS provider. CDNs are also impacted by the use of an alternate DNS provider, since some CDNs exploit knowledge of the location of the DNS resolver to return the “closest/cheapest” path to content. All of these strongly imply that the ISP has to take strong ownership of DNS in its own network, and this level of control ought to make managing blocking easier

The industry should engage in education and outreach to clarify the viability of DNS blocking.

**Which Sites to Block/How to Manage the List**

There is some controversy that blocking individual sites is not robust, and doesn't really change a country's overall piracy pattern. It does appear that efforts that focus on a list or sets of sites rather than individual tactical legal targets will cause changes in a country's piracy pattern.

The piracy landscape changes, but its changes tend to be evolutionary, not revolutionary, so any list of sites will change slowly. Furthermore, some studies have shown that the 80/20 rule, or something even more extreme, applies to piracy sites – blocking a few hundred of the thousands available would have a significant impact. As sites get blocked, people will move to others, but that takes time, and adds more friction to the system. People on the internet tend to gravitate toward
popular sites, so it is unlikely in the near to medium term that the illicit content world will fission into thousands of equal and equally small sites.

As an example, the IWF was originally 4000 – 6000 URLs. Now it is a list 400 – 600, changed daily. This means that a list of 500 – 600 piracy sites updated fortnightly or monthly shouldn’t be that hard to manage\(^3\).

Even without a full country-wide strategy or implementation, it is better to try to block a family of sites or a site and all of its known alternatives rather than a single site. The information needed for understanding the cross-site relationships is an important part of any list of infringing sites.

The management of such a list should be done by a trusted administrative body, with the right of appeal and so on. Missing a site is almost certainly less damaging than being pilloried for overblocking.

Ideally, the industry should build and maintain such a list of its own, and offer access to the list and the data behind it to qualified regulatory bodies.

\(^3\)In the UK, an ISP’s core router is updated with the IWF list either manually or automatically, and the information is then automatically pushed out to the other components.