UK

“Cartier”

Decision of the Supreme Court

13 June 2018 – Case No. [2018] UKSC 28

Charlotte May QC and Jaani Riordan v. Adrian Speck QC and Benet Brandreth QC

E-Commerce Directive, Arts. 12–15, 18; Information Society Directive, Arts. 3, 8, 11; case law concerning website blocking injunctions

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Keywords Internet service providers (ISPs) · Burden of costs · Intellectual property infringement · Innocent intermediary · Compliance costs · Website blocking injunctions

1. In principle, intellectual property right-holders should indemnify ISPs against their compliance costs when an injunction is obtained against them to prevent the use of their facilities by wrongdoers for unlawful purposes.
2. Such indemnity must be limited to reasonable compliance costs.
3. Furthermore, it is crucial that the intermediary in question is legally innocent – that it acts as a “mere conduit”.
4. Different considerations may apply to intermediaries engaging in caching or hosting governed by Arts. 13 and 14 of the E-Commerce Directive, because these operations involve a greater degree of participation in the infringement, which is more likely to infringe national laws protecting intellectual property rights if the conditions of immunity are not satisfied. That must, however, depend on the precise facts and on the relevant provisions of national law.

Available at <https://www.supremecourt.uk/>.

For more on this topic see the French Supreme Court decision “*Société Française du Radiotéléphone v. Union des Producteurs de Cinema*” in this issue of IIC at <https://doi.org/10.1007/s40319-018-0763-6>.