

"all reasonable measures"

Dirk Visser

Leiden Law School

Visser Schaap & Kreijger

- It is not about injunctions,
- It is not about damages,
- it is about taking "all reasonable measures"
  - (on penalty of incurring coercive penalties).

"The fundamental rights recognised by EU law must be interpreted as not precluding a court injunction prohibiting an internet service provider from allowing its customers access to a website placing protected subject-matter online without the agreement of the rightholders when that injunction does not specify the measures which that access provider must take and

when that access provider **can avoid incurring coercive penalties** for breach of that injunction by showing that it has taken **all reasonable measures**,

provided that (i) the measures taken do not unnecessarily deprive internet users of the possibility of lawfully accessing the information available and

(ii) that those measures have the effect of preventing unauthorised access to the protected subject-matter or, at least, of **making it difficult to achieve and of seriously discouraging internet users** who are using the services of the addressee of that injunction from accessing the subject-matter that has been made available to them in breach of the intellectual property right, that being a matter for the national authorities and courts to establish.

- CJEU in UPC Wien, ECLI:EU:C:2014:192, operative part sub 2.

# What are 'all reasonable measures'?

- Being able to identify infringers. ('know your customer')
- Block and refuse service to repeat infringers.
- Block clearly infringing websites or other sources.
- Install reasonable filtering mechanisms.
- Do not encourage (anonymity for) clearly infringing services.

