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PETER BLOK

Artificial intelligence plays an increasingly important role in the development of new products and processes. This development raises the question how inventions made by means of artificial intelligence fit in the European patent system. This article argues that an artificial intelligence application should be seen as a tool, and that inventions made with that tool are patentable as long as the artificial intelligence application is not a tool the average skilled person would use routinely.

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This article explores the problem of collateral damage that blocking measures give rise to. In awarding injunctions against internet service providers (ISPs), courts in the UK and some of the other EU, as well as Nordic, states have preferred to require ISPs to implement Domain Name Service (DNS) blocking, as opposed to blocking of Internet Protocol (IP) addresses, in cases where the target website that infringes an intellectual property right shares its IP address with other legitimate websites. This is to avoid the problem of collateral damage associated with IP blocking in such situations. Yet, as this article points out, DNS blocking could also give rise to a different form of collateral damage that must be equally avoided. In the circumstances, courts may be left with the single option of adopting URL blocking, which, although it is highly accurate and entails no collateral damage, could easily be circumvented without any cost being incurred. It is therefore argued that the EU’s injunctive framework for the enforcement of intellectual property rights ought to be utilised in innovative ways in order to target other categories of online intermediaries, including hosts. This would not only transform the injunctive remedy into a more holistic one, but also avoids ISPs being overburdened as a result of having to implement blocking measures.

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On 12 October 2016 the Court of Justice of the EU (CJEU) handed down its judgment following a reference from the Riga Regional Court, Latvia, in the Ranks v Microsoft case (C-166/15). According to the CJEU, lawful acquirers of computer programs cannot resell back-up copies of the programs.