

PELISPEDIA:

Three years and four months of conviction for pirate site administrators.

Backgrounds

PELISPEDIA. Illegal websites formed by the domain names www.pelispedia.tv, www.pelispplus.tv and www.pelispedia.org (hereinafter PELISPEDIA), related to each other, streaming¹-dedicated and non-authorized download of movies and TV series.

At PELISPEDIA, internet users accessed in a simple, direct and free way to the audiovisual content protected by Intellectual Property rights without previous authorization (or corresponding payment), of the proprietors of said rights.

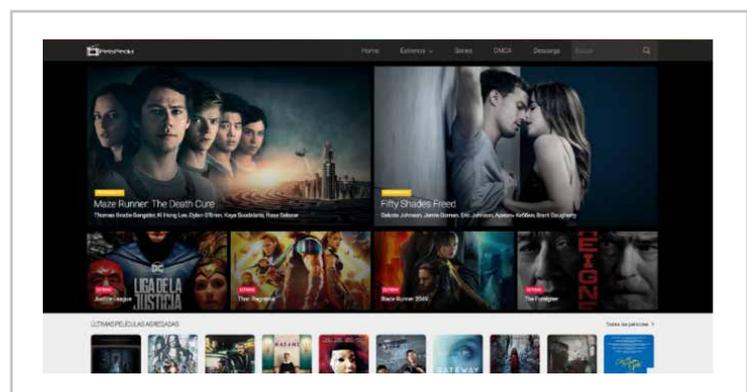
HOW DOES IT WORKED. The movies and series available were stored by an administrator in “cyberlockers”² (cloud servers), or own servers. Through those servers streaming or content downloading was available on the site, without any payment of this access.

MONETIZATION. Although the user accessed the contents made available

1. Streaming: digital distribution of multimedia content through a computer network, and the user uses the product while downloading.

2. Cyberlocker: internet online storage service of files, designed to host mostly large and files.

Case	PELISPEDIA
Prosecutor's Office	Criminal Prosecutor Office of Montevideo of Narcotics of 1° Shift, Dr. Mónica Ferrero.
Competent Judges	Judge from Lavallega of 4° Shift, Dr. Viviana Galletto. Judge of First Instance in Criminal Matters of 43° Shift, Dr. Marcelo Malvar, Criminal Judge Specialized in Organized Crime of 4° Shift, Dr. María Helena Mainard.
Police Authorities	Investigation Department of Special Crimes and Department of Computer Crimes of the Direction of Fight against the Organized Crime and INTERPOL and the Laboratory of Computer Analysis of the National Direction of Scientific Police.



by PELISPEDIA at no cost, the economic benefit of its administrators was obtained by charging for the inclusion of advertisements on the site.

Due to the above and in order for the user to be able to watch a movie or series, he/she necessarily had to “Click” on parts of the page that trigger the display of pop-up ads, in new navigation windows or in the same window, over the content the user wanted to watch.

In addition, each server used by the administrator to store the illegal content needed to pay a sum to the administrator for each reproduction that the user made.

PELISPEDIA was listed as “Publisher” together with advertisement intermediation companies called “ad networks.” These companies made contracts with advertisers, and receive a determined cost for an advertising campaign, and the ad network committing to assure the advertiser a certain quantity of visualizations or clicks on the advertising. For each clicking or viewing of an advertisement in PELISPEDIA, the administrator received a payment by the ad network.

Steps of the case

1. Legal arguments

The legal basis for the criminal complaint was based on article 46 Lit. A of Law N °. 9.739 (in the wording of Law No. 17.616), which punishes with three months imprisonment to three years, to whoever places in public knowledge, for own profit or to cause unjustified damage, a transmission without the written authorization of the owner.

The infraction committed by the administrators of PELISPEDIA is to place at public’s disposal through the websites pelispedia.tv, pelispedia.org and pelisplus.tv, digital broadcasts without authorization from their owners, in an endeavor to obtain profits and cause unjustified damages.

2. Search warrant & seizure

Preliminary investigation in conjunction with the Police authorities, were assigned to the Narcotic Public Prosecutor of Term N°1, Dr. Mónica Ferrero. This investigation implied the data verification and the operative and physical location of the reported administrators in the city of Minas.

On May 8, 2019, the competent Prosecutor requested the Judge from Lavalleja of 4th Term, Dr. Viviana Galletto, the search warrant regarding the property of the suspect, for the purpose of seizing all materials related to the illegal condemned, internet domain names denounced, the gathering of users and passwords of social networks and sites related to the crime and detention of Messrs. J.A.G.R and M.J.H.G. All this material was taken and stayed at disposal of the acting Prosecutor.



On May 9th, 2019, and when the judicial order was granted, police authorities of the Special Crimes Investigation Department in conjunction with personnel from INTERPOL Cybercrimes Department and the Computer Analysis Laboratory of the National Direction of Scientific Police conducted the search warrant of the domicile. In the procedure the following items were seized: cell phones, PC, hard disks, debit cards (from BROU Bank, PAYONEER, Prex, among others), cash and various vehicles.

During the search at the domicile a computer preliminary analysis was made with the Mr. J.A.G.R. consent. It was confirmed that from that computer and through a remote connection, he managed the reported sites and the cloud servers where the files were hosted. From such connection, he not only uploaded content to PELISPEDIA, but also downloaded and stored audiovisual content protected by Intellectual Property laws.

His couple, Mrs. M.J.H.G also had a user and as well as Mr. J.A.G.R., with an international PAYONEER debit card (which has neither control by the Central Bank of Uruguay nor representative in the country), they received the profits for said illegal activity.

Under arrest Mr. J.A.G.R. and Mrs. M.J.H.G were transferred to Montevideo, where they admitted the illicit action before the competent prosecutor, both confirming that they were dedicated exclusively to the reported activity.

3. Investigation formalization & preventive prison

On May 10, 2019, on a hearing held before Mr. Judge of First Instance in Criminal Matters of 43 ° Term, Dr. Marcelo Malvar, and with the presence of the plaintiff, public defender and the accused, the Prosecutor requested the formalization of the investigation, requiring:

- ▶ The accusation of Mr. J.A.G.R. and Mrs. M.J.H.G, as alleged perpetrators of ***“a sustained criminal activity of making available a digital broadcast for***

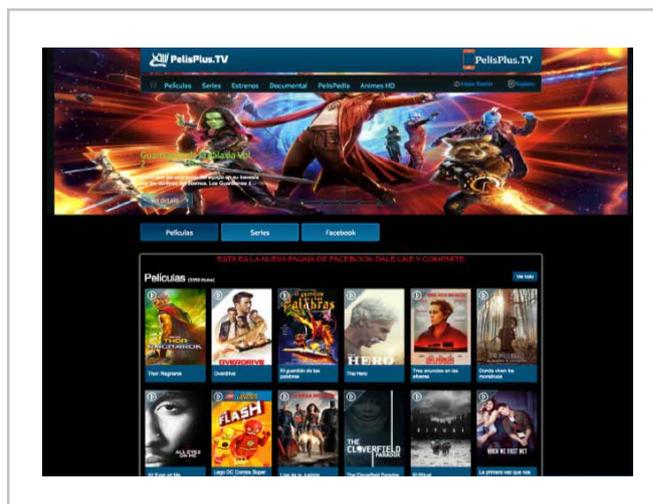
44
million



monthly views had PELISPEDIA, according to the official report of The Alliance for Creativity and Entertainment.

profit purposes, without the written consent of their respective owners or assignees and asset laundering in reiteration, as authors”.

- ▶ The **immediate technical** deactivation of the sites pelispedia.tv, pelispedia.org and pelisplus.tv.
- ▶ The **removal of the infringed audiovisual content**, hosted on the used servers by the accused, in an endeavor to prevent the spreading of said materials.
- ▶ That Mr. J.A.G.R. **provide his e-mail password and the statements of account** of the PAYONEER cards.
- ▶ The **declination of the Judge of Organized Crime competence**, to assume competence in order to investigate an alleged crime of asset laundering.
- ▶ **Pre-trial detention** for the term of 90 days of Mr. J.A.G.R. and Mrs. M.J.H.G, to safeguard the gathered evidence and to be able to fulfill requirements without any risk.



The competent Judge, by Order of Formalization N°. 1292/2019, at the hearing acknowledged the formalization requested and granted pre-trial detention for 30 days and the completion of all requested measures.

Due to the delay in the evidence processing, the Competent Prosecutor subsequently requested an extension of 30 additional days of pre-trial detention for both accused, that was granted by the Judge on the case, holding them in prison facilities.

4. Desactivating sites & files removing

On May 20, 2019, in compliance with the court order N°. 1292/2019, it was ordered to proceed with the deactivation of pelisplus, tv, pelispedia.org and pelispedia.tv sites and to delete the hosted multimedia files on the servers by Mr. J.A.G.R.

The sites deactivation and the deletion of the files from servers by the accused, in cooperation with the Justice authorities, determined the speeding up in the fight against crime, thus avoiding the filing of offices and international petitions.



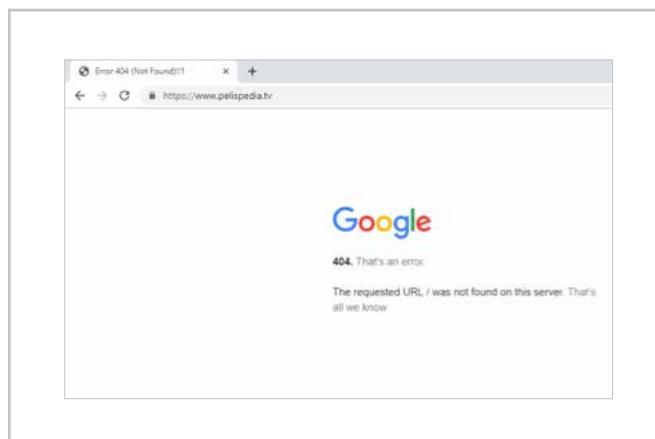
30
terabytes

With more than **55,000 links** to approximately **8,000 movies and TV series** that were hosted in PELISPEDIA, according to the Representatives Office of Trade of the United States (USTR).

5. Money laundering investigation and specialized justice intervention

The investigation of the alleged perpetration of asset laundering crime in reiteration with an Intellectual Property Violation Crime was assigned to the Criminal Judge Specialized in Organized Crime of 4th Term, Dr. Maria Helena Mainard.

A financial – economical investigation of the criminal activity was performed by judicial order and in compliance with the legal provisions with the purpose of identifying the criminal network´s reach and trace the criminal assets.



The investigation resulted in the identification of the national and foreign bank accounts, where the accused received the profits, being found large amounts in Uruguayan currency and US dollars. It was also possible to determine the goods that were bought with the profits of the criminal activity, among which was the property where the accused lived in the city of Minas.

6. Application of the abbreviated process And conviction

In line with the facts of the case and according to the provisions in article 272 of the Criminal Procedure Code, the Competent Prosecutor, agreed with the accused the application of an abbreviated process to judge the punishable acts, which draw the following conclusions:

- ▶ Being informed of the charges presented against them and the background of the investigation, the accused, J.A.G.R y M.J.H.G, explicitly accepted the alleged facts and expressed their agreement in the abbreviated process application.
- ▶ The Prosecutor Office called for the conviction of the accused as criminally responsible perpetrators of a sustained criminal activity of making available a digital broadcast for profit purposes, without the written consent of their respective owners or assignees and asset laundering in reiteration, and imposed a penalty of three (3) years and four (4) months imprisonment and the seizure of certain goods, no objections were presented by the defense.

By Decree N° 376/2019, dictated in hearing dated June 28, 2019, the Criminal Judge Specialized in Organized Crime of 4th Term admitted the

judging in the abbreviated process, considering that the legal requirements have been fulfilled.

Finally, First Instance Final Judgement N° 6/2019, dictated in hearing dated June 28, 2019, provided:

1. **The conviction of J.A.G.R, as a criminally responsible perpetrator of a sustained criminal activity of making available a digital broadcast for profit purposes, without the written consent of their respective owners or assignees and asset laundering in reiteration, imposing a penalty of three (3) years and four (4) months imprisonment.**
2. **The conviction of M.J.H.G, as a criminally responsible perpetrator of sustained criminal activity of making available a digital broadcast for profit purposes without the written consent of their respective owners or assignees and asset laundering in reiteration, imposing a penalty of three (3) years and four (4) months.**
3. **The seizure of the following goods, that will remain at the disposal of the National Drug Board: a property located in the city of Minas, a van, a motorbike, two national bank accounts in Uruguayan currency and US dollars and two international PAYONEER bank accounts.**

Article 272 of the Criminal Procedure Code stipulates:

The abbreviated process shall be applied regarding the judging of acts whose classification by the Public Prosecutor's Office determines the implementation of a minimum penalty of no more than six years of imprisonment or a different type of punishment, whatever its nature.

It is required that the person accused, informed about the charges presented and the background of the investigation, explicitly accepts the alleged facts, and express its conformity to the application of this process. In the case of several accused, these rules can be applied to some of them.

In that event, the agreement celebrated with one of the accused shall not be used as evidence against the others.

Conclusions

The application of copyright regulations to an illegal activity developed online enabled:

- ▶ **The cautionary measurement of pre-trial detention against the site administrators, in order to safeguard the gathered evidence and to prevent the obstruction of the investigation considering that with only "one click" deleting of all evidence was possible.**
- ▶ **The immediate technical deactivation of the sites and deleting of almost 30 Terabytes of illegal audiovisual content, taking into account that according to the Office's data of Trade Representatives of the United States (USTR), PELISPEDIA had more than 44 million monthly views.**

- ▶ **Criminal conviction of the site´s administrators, as criminally responsible perpetrators of a sustained criminal activity of making available a digital broadcast for profit purposes without the written consent of their respective owners or assignees and asset laundering in reiteration.**

For the abovementioned reasons this case marks a milestone in the interpretation and application of the legislation regarding the protection of intellectual property rights in Uruguay and in the conscious of the public officials responsible of fighting these crimes.

The application of a legislation created in the first half of the twentieth century to crimes produced in a globalized era, where Internet moves at a faster pace than the law, demonstrates that Uruguay is a country that enables in virtue of its rules and officials a serious fight against transactional crimes, developed via the internet and that affect Intellectual Property rights.

by:



**Dr.
Virginia Cervieri**

Senior Partner
vcervieri@cmlawyers.com.uy



**Dr.
Jorge Achard**

Lawyer
jachard@cmlawyers.com.uy



**Dr.
Lucía Cantera**

Senior Associate
lcantera@cmlawyers.com.uy



**NP.
Daiana Pereira**

Notary Public
dpereira@cmlawyers.com.uy