

Transparency Report 2021

Producer Rights Denmark



Foreword

2021 has been an eventful year for Producer Rights Denmark ('PRD'). As in the past years, the focus has been turned sharply on strengthening the producer's role towards creative contributors as well as to TV stations and streaming services. The work was also devoted to ensuring that producers' revenues received via Copydan are maintained in future. For many producers, these revenues are crucial to their ability to invest in new Danish content, and it is therefore vital that distributors and aggregators continue to remunerate them when doing business based on the content producers provide to their customers.

In relation to finances, in 2021 we distributed and disbursed approx. DKK 326 million.

We wish you pleasant reading!

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Producer Rights Denmark (PRD) Annual Report 2021

Transparency Report 2021

Producer Rights Denmark

1. Introduction

Producer Rights Denmark ('PRD') is a members' organisation owned by TV and film producers as well as distributors.

The purpose of PRD is to manage copyright and related rights on behalf of TV and film producers as well as distributors, which in particular includes managing the redistribution of copyright revenue received from Copydan organisations. In addition, PRD distributes rights revenue from abroad in respect of Danish TV and film productions used outside Denmark.

In 2021, PRD continued working on strengthening producers' rights position. The vast majority of Danish producers are members of PRD and have therefore placed a range of rights for management by PRD with a view to collective management.

2. Activity report for the past financial year

In 2021 PRD's activities – over and above the daily operations focused on the distribution of rights revenue – continued to relate to strengthening producers' rights position in particular.

PRD works closely with its members and the Danish Producers' Association on the regulation of reservations regarding rights in contracts concluded between producers and TV stations.

Producers continue to be challenged when TV stations demand that they transfer their producers' rights to an unreasonable and unnecessary extent.

For many producers, revenue received via Copydan and PRD is crucial to their overall financial position and, by extension, to the individual production companies' ability to allocate resources for innovative thinking, creative activities and the development of new, exciting content formats and productions for the pleasure and benefit of viewers, Danes especially. It must therefore be ensured that producers continue to hold the rights related to this revenue and that these rights continue to be handled through Copydan.

In 2021 PRD succeeded in getting a number of broadcasters to acknowledge the producer's right to remuneration from tv-distributors, also in new exploitation areas. Negotiations to help achieve a similar outcome are underway with other broadcasters. This work has been supported by the adoption of L 205 in June 2021, for which PRD have been lobbying actively. This effort is a top

priority for PRD, as the supplementary revenue from distributors greatly determines producers' opportunities for continuing to produce good Danish content. The work is being carried out in cooperation with the individual producers and the Danish Producers' Association and will continue in 2022.

3. Management areas

PRD primarily manages rights in the areas related to the provisions governing extended collective licence in the Danish Act on Copyright (sections 13, 17, 30a, 35 and 50(2)), and compensation for the reproduction of audiovisual content onto removable media (blank media); see sections 39-46a of the Danish Act on Copyright. The organisation represents both Danish and foreign holders of rights to TV and film productions.

PRD does not enter into agreements with users of audiovisual content in its own right. Accordingly, the organisation's work consists primarily of distributing the rights revenue collected via Copydan, which has been mandated to license the rights managed by the organisation. The organisation then also distributes rights revenue received from foreign cooperation organisations.

By far the bulk of the rights revenue distributed at PRD relates to TV distributors' retransmission and digital exploitation of TV content; for further details, refer to the specifications in Table 2, pages 22-23 in PRD's annual report for 2021, where these areas figure as Retransmission basic, Retransmission commercial and Digital services.

Another important area, particularly for feature film producers and distributors, is the licensing of feature films for schools. Effective as of 2018 a new agreement was concluded permitting schools to stream feature films via CFU's streaming service, MitCFU. The service offers a broad range of Danish and foreign titles suitable for use in schools. The new agreement replaces the former one, which primarily covered the use of DVDs in schools.

PRD additionally manages rights in a few smaller areas such as TV for seafarers, TV for the military, DR Archives and other areas, and has given Copydan a mandate for this purpose.

As well as distributing rights revenue on an individual basis, PRD also manages the distribution of collective revenue received as compensation for the lawful reproduction of audiovisual content on removable media (blank media). This area currently constitutes a very limited portion of the total funds managed.

4. Distribution policy

The board of PRD adopted a general distribution plan regulating the distribution of revenue in all PRD's revenue areas.

The fundamental distribution principle at PRD for retransmission revenue is actual consumption, with duration and viewing figures being the two key parameters for calculating the rights revenue to be distributed.

In principle revenue is distributed in respect of TV channels with a certain reach, as distributing revenue in respect of all available TV channels would be administratively and financially cumbersome, and this would be disproportionate to the revenue for channels that have only very limited reach and/or viewing figures.

In 2021 in the retransmission area for the royalty year 2020, disbursements were made to Danish and foreign right holders regarding DR1, DR2, DR Ramasjang and TV2 Danmark and to Danish right holders regarding TV3, TV3+, TV3 Puls, TV2 Zulu, TV2 Charlie, TV2 Fri and Kanal 5. The reason that revenue is disbursed only to Danish right holders regarding the commercial channels is a decision made earlier by the Copyright Licence Tribunal that addressed this problem, among other issues.

The revenue that constitutes compensation for legal copying for private use (blank media) and which is individually distributed is distributed to Danish and foreign right holders alike on the basis of the central disbursement channels mentioned above (DR1, DR2, DR Ramasjang, TV2 Danmark and TV3).

Revenue as regards digital exploitations such as StartOver is distributed to Danish and foreign right holders on the basis of reporting received from Copydan, which receives data direct from TV distributors. The revenue is thus distributed across TV channels without consideration for which channels are disbursement channels otherwise. As huge volumes of data are involved, a triviality limit has been introduced to avoid revenue being distributed to AV productions with very modest levels of activity.

In a few smaller areas, Copydan receives only random sample reporting, which thus forms the basis for distributing rights revenue to Danish and foreign right holders.

5. Rights system

The disbursement of rights revenue to Danish and foreign right holders alike is contingent on the individual right holders having claimed their rights to individual AV productions.

This means that prior to the disbursement of rights revenue Danish and foreign right holders are made aware that they should claim their rights to the works registered as having been exploited and thus as being entitled to the distribution of rights revenue. Once right holders have claimed their rights, the revenue is disbursed to them.

There will always be a few AV productions to which the right holder cannot immediately be traced, and in such situations a specific right holder cannot be asked to claim his/her rights. These AV productions are put on a list of unclaimed works available for right holders to view. On this basis Danish and foreign right holders can let it be known that they hold the rights to the otherwise unidentified productions.

In the event that several right holders claim to hold the rights to the same AV production, the production becomes the subject of a conflict, and the parties involved will be asked to clarify who holds the rights to the said production so payment can be disbursed to the correct right holder. The management organisation does not resolve such rights conflicts, but assists the parties with factual information for the purpose of their handling of the case.

6. Non-distributable and undisbursed funds

Non-distributable and/or undisbursed funds at PRD may be due to three circumstances:

- the management organisation has been unable to identify the right holder
- the management organisation has identified the right holder, but been unable to trace the right holder
- the management organisation has identified and contacted the right holder, urging the right holder to claim its rights, but the right holder has not done so despite repeated requests to this effect

The two latter examples are not cases of genuinely non-distributable funds, but rather of the funds being undisbursed because the management organisation has had no recipient to which to disburse the revenue, despite the fact that the identity of the right holder to the production is known.

It follows from PRD's rules that when three years have elapsed from the expiry of the year to which the rights revenue relates, and these funds still remain non-distributed or undisbursed, they become time-barred and can no longer be individually claimed. The general meeting of PRD decides on the use of time-barred funds; see article 9.4(11) of the statutes.

At PRD's general meeting in 2021 it was decided to redistribute by far the bulk of the time-barred funds in 2021, with only a minor portion being withheld as a reserve fund to cover any future legitimate claims from right holders.

7. Collective funds

PRD receives rights revenue from Copydan KulturPlus on behalf of TV and film producers for the lawful private copying that takes place in Denmark (the blank media scheme). Under the act, two-thirds of the revenue received is distributed individually to Danish and foreign producers that have supplied productions to Danish TV stations. The remaining third of these funds is distributed collectively through a support fund managed by a sub-committee appointed by the board.

The objective of the support fund is to promote film as a cultural medium, both nationally and internationally. Support is granted to projects that preserve, develop and benefit the film medium and the TV and film industry that produces moving images (film, TV and similar).

Anyone can apply for support from the fund. The applications must relate to industry-relevant initiatives that can promote film and TV as cultural media, both in Denmark and abroad. Danish film and TV are the prime focus of support.

In 2021 PRD granted support in the amount of DKK 1,867,520. A list of those who received support can be found on PRD's website. The committee that considered applications in 2021 consisted of Anders Kjærhauge, Søren E. Jakobsen and Mads K. Jørgensen.

8. Payment frequency

Disbursements are made four times a year. The disbursements in June, September and December are primarily main distributions and relate to the royalty year prior to the disbursement year for all business areas. The March disbursements relate primarily to previously unclaimed rights revenue, for which reason the amounts disbursed are smaller and may relate both to the year prior to the disbursement year and to earlier years.

PRD receives rights revenue for Danish productions used abroad. This revenue relates primarily to retransmission and blank media and represents a modest portion of PRD's total turnover. Rights revenue is typically disbursed in March and September along with the other smaller disbursements.

9. Grounds for delay if a collective management organisation has failed to distribute and pay within the time limit set

In 2021 PRD was able to distribute rights revenue in most business areas within the time limit.

However, for revenue to be distributed and disbursed within the nine-month time limit prescribed in section 15 of the Act on Collective Management of Copyright and Related Rights, all reporting on and payments for the use of AV productions in relevant areas must have been received well within this time limit. For example, in the digital area – StartOver and Catch-Up – which relies on large data volumes and where considerable resources must therefore be expended to ensure correct individual distribution, it has proved impossible in 2021 to complete the processing of reported data within the nine-month time limit. Accordingly, this rights revenue relating to the 2020 rights year was not disbursed until December 2021.

10. Total non-distributable amounts and an account of their use

At the end of 2021 the rights revenue for 2018 still undisbursed became time-barred. In addition, in 2021 PRD received a few payments relating to earlier years. This revenue also became time-barred at end-2021.

The general meeting of PRD decides on the specific use of time-barred funds.

11. Legal structure

PRD is a members' organisation owned by Danish TV and film producers as well as distributors.

PRD is headed by a CEO and by the organisation's board. The supervisory function according to Act on Collective Management article 8 is undertaken by the board of PRD and the board has been assigned the authorities of the Act on Collective Managements article 6 section 5(6-9).

12. Expense policy and policy for cost deductions

Administration costs are deducted in advance from the remuneration received prior to distribution and disbursement to right holders. Until 31 December 2020, administration costs were collected in connection with each disbursement to right holders. As far as disbursement of remuneration for the royalty year 2019 and previous royalty years is concerned, administration costs continue to be offset against each disbursement to ensure right holders are treated equally irrespective of the time of the claim and disbursement of funds.

Prior to a given calendar year a budget is drawn up for PRD's total administration costs and approved by the board.

As described above, the budgeted administration costs are deducted in advance from the remuneration received prior to distribution and disbursement to right holders. The main distribution for a royalty year (2020), which is made in the subsequent calendar year (2021), must cover all costs of administration for the calendar year (2021).

Administration costs are distributed proportionately between the various business areas, based on an average of the two preceding royalty years.

Once a calendar year (2021) has ended and the calculated administration costs turn out to deviate from the budgeted costs, the deductions made by business area are correspondingly adjusted by means of the same distribution key used for the first budget-based deductions. The distribution keys are thus frozen once and for all and are not changed. The difference in administration costs will be regulated in connection with subsequent distributions concerning the same royalty year, provided this is possible.

Funds received from abroad do not go towards covering the administration costs.

The budgeted administration costs and the administration costs later incurred by PRD are carefully assessed in the interest of running a cost-effective administration and thus optimising the right holders' financial position.

13. Investment and risk policy

It has been decided not to make investments that could potentially reduce disbursements to right holders, for which reason no funds are invested in securities. Undisbursed funds are placed in deposit accounts with Nykredit Bank A/S or the Tax account of PRD at SKAT (Danish Customs and Tax Administration). Through Nykredit Realkredit A/S's ownership of Nykredit Bank A/S, the bank is essentially covered by the 'Systemically Important Financial Institution' (SIFI) rules and thus subject to stricter capital adequacy requirements.

It is imperative that the board and the administration continuously minimise the risk associated with managing right holders' funds, an aim reflected not only in the investment policy but also in the daily discharge of the administrative duties.

The management organisation's general investment and risk policy is approved at the annual general meeting of PRD.

14. Supervisory function

In 2021, the CEO of PRD, supervised by the board of PRD, oversaw the day-to-day management of PRD.

In 2021 the board of PRD held four meetings, and the various committees also held separate meetings. In addition, there have been regular meetings between the chairman of PRD and the CEO of PRD.

15. Remuneration of management and board

In 2021 the total remuneration paid to the board (supervisory function) and the executive board (responsible for day-to-day management) amounted to DKK 1,610,000.

16. Affiliations with other collective management organisations

PRD is a member of Copydan's four AV organisations (Copydan Verdens TV, Copydan AVU-Medier, Copydan KulturPlus and Copydan Arkiv). PRD licenses TV and film producers' rights through Copydan. Copydan pays the TV and film producers' share of the rights revenue to PRD,

which is then responsible for ensuring the correct individual distribution and other use of the rights revenue.

PRD cooperates with foreign management organisations.

Cooperation in the retransmission area is based primarily on a reciprocal agreement concluded with AGICOA, a global management organisation that represents the majority of foreign right holders in this area and in the TV in public venues area.

In the blank media area, a reciprocal agreement has been concluded with 12 foreign management organisations. In addition, representation agreements have been entered into with six companies/organisations, which means that PRD represents these companies in the blank media area in Denmark (including the American majors).

A full list of the companies/organisations with which PRD has agreements can be found on PRD's website.

17. Money in and out of PRD

Tables 1-5 have been drawn up for the purpose of showing the flow of money in and out of PRD. Starting from 2018 the tables constitute an integral part of the audited annual report, to which reference is made (see pages 17-27 of PRD's annual report for 2021). A descriptive review of the individual tables is provided below as a supplement. In connection with the changed method of collecting administration costs described in paragraph 12, the tables have also been restated relative to prior years to reflect this change.

Table 1

Table 1 provides a general overview of debt developments from start- to end-2021 by type of use (business area) and royalty year as well as a further specification of amounts disbursed in the year.

'Debt at 31 December 2020' reflects total amounts received but not yet disbursed to right holders as of the cut-off date, that is, amounts owing to right holders by type of use (business area) and royalty year.

'Adjusted 2021' represents funds allocated as a result of board decisions made during the year.

'Payments received 2021' includes amounts received in 2021, that is, amounts paid into the organisation's bank accounts by type of use (business area) and royalty year.

'Administration costs "from the top" 2021' are the administration costs, described in paragraph 12, that are deducted in advance from the remuneration received prior to distribution and disbursement to right holders.

‘Financial income and expenses, net’ represents total financial income and expenses for 2021. Financial income and expenses for the financial year 2021 are proportionately added to/deducted from funds received for the individual business areas in the corresponding royalty year and are included in the subsequent distribution of funds.

‘Reallocated funds’ comprises the funds time-barred at end-2020 and which the general meeting in 2021 decided to redistribute at the next main distribution.

‘Time-barred funds’ are the funds that were time-barred at the end of 2021 and whose use must be determined by the general meeting in 2022.

‘Disbursed’ includes all amounts disbursed in the financial year 2021. The amount disbursed is specified in further detail in ‘Total administration costs’ for royalty years up to and including 2019, ‘Adjustment concerning reorganisation 25%’ for royalty years up to and including 2019, ‘Cultural funds’ and amounts ‘For individual disbursement’. In the table, ‘Total administration costs’ and ‘Adjustment concerning reorganisation 25%’ are also stated as a percentage of the total payments received by type of use (business area) for the financial year as a whole.

Finally, ‘Debt at 31 December 2021’ to right holders has been calculated by type of use (business area) and royalty year.

Table 2

Table 2 provides a general overview of all types of use (business areas) for the royalty years 2020 and 2021 independently of financial year. All historic transactions up to and including 31 December 2021 are thus included.

‘Payments received’ includes amounts received through 31 December 2021, that is, amounts paid into the organisation’s bank accounts by type of use (business area) and royalty year.

‘Adjusted’, ‘Administration cost “from the top”’, ‘Reallocated funds’, ‘Financial income and expenses, net’, ‘Disbursed’ and ‘Debt at 31 December 2021’ follow the specifications under Table 1.

‘For distribution’ specifies the portion of received revenue that can be distributed to right holders, and for cultural funds and collective funds, respectively. ‘Distributed’ specifies the portion of ‘For distribution’ that right holders can claim and that can subsequently be disbursed. ‘Non-distributed’ are funds remaining for later distribution. Some amounts may remain undistributed because the distribution basis for a given area has yet to be calculated or, alternatively, because the organisation received revenue after the latest distribution was completed.

The table also contains a breakdown of ‘Distributed’ by Danish and foreign right holders, respectively, and a breakdown by fiction and by non-fiction. Finally, the amount distributed to Danish right holders is broken down by fiction and by non-fiction.

Table 3

Table 3 provides a general overview of amounts 'For individual disbursement' in 2021 to other collective management organisations by type of use (business area) and royalty year. The table contains amounts disbursed in the financial year 2021 in respect of the royalty year 2020.

Table 4

Table 4 provides a general overview of 'Payments received' in 2021 from other collective management organisations by type of use (business area) and royalty year.

Table 5

Table 5 contains information for use in connection with the submission of information to Copydan in accordance with 'Members' decision regarding policies, audits, etc'. The table shows the distribution of disbursed funds, broken down by the four Copydan organisations from which PRD receives revenue.

18. Sub-report on use of the deductions made for social, cultural and educational purposes

In 2021 a deduction for cultural purposes was made from the 2020 revenue. The deduction amounted to DKK 12.120 million to the Danish Producers' Association and RettighedsAlliancen, respectively. The figure that can be found in the above-mentioned Table 1 under the heading 'Cultural funds'.

Both organisations work to improve the political and financial framework conditions for the film and TV industry in Denmark, work that benefits Danish and international right holders alike.

Use of cultural funds by the Danish Producers' Association

In 2021 the Danish Producers' Association experienced an extraordinarily high level of activity in connection with initiatives aimed to promote the framework conditions for film and TV as cultural media and strengthen Danish producers, both in Denmark and abroad.

The Danish Producers' Association and Producer Rights Denmark (PRD) have engaged in close collaboration to have Danish copyright legislation modernised and elements of the DSM directive and the SatCab II directive, etc, implemented. This collaboration, which also included the rights organisation Copydan, entailed considerable meeting and lobbying activity in relation to the Folketing, the Danish parliament, throughout the spring. These efforts succeeded, and the Folketing unanimously passed bill no. 205 before the 2021 summer recess. The modernised Danish Copyright Act represents a major step forward for Danish producers.

The Danish Producers' Association also drew on its collaboration with PRD during the tough, protracted negotiations with the artists' organisation Create on a framework agreement regarding

rights payment for fiction content for streaming services. These negotiations, which had been going on for several years, drew heavily on the resources of the Danish Producers' Association, particularly in the autumn of 2021. Shortly before Christmas, the parties successfully concluded an agreement essentially ensuring that producers have uniform, transparent contractual conditions when rights payments are to be agreed with artists.

After lengthy negotiations, the Danish Producers' Association concluded an agreement with the artists' organisations on a modernised Copydan reservation. The work of implementing the artists' Copydan reservation and a corresponding position for producers in relation to broadcasters and foreign service providers has been complicated, and at end-2021, final agreements had not yet been reached with all service providers and broadcasters. The modernised Copydan reservation clearly strengthens producers' rights position and ensures they will continue to receive a share of revenue from the Copydan system in future, so this remains to be negotiated in 2022.

2021 was thus a year characterised by major change and complex negotiations of momentous importance for producers' rights positions. The close collaboration with and support from PRD has been crucial to the Danish Producers' Association's ability to provide producers with the necessary and qualified advice they require to command the strongest position possible in contract and rights negotiations. The streaming sector in particular, is undergoing rapid development, with new international service providers planning production in Denmark. This requires continuous market monitoring and provision of intensified advice in the often-complex contract negotiations with service providers unaccustomed to operating according to the 'Danish model'.

The cultural funds also play an utterly crucial role for the Danish Producers' Association in terms of securing influence on political agreements. Examples in point included the modernisation of the Danish Copyright Act referred to above and the lengthy run-up to the new media settlement. According to the government, a proposal for a new media agreement would be tabled in autumn 2021, and the Danish Producers' Association has therefore devoted great effort to preparing its lobbying campaign in connection with the media negotiations, even though they were later postponed until February 2022.

The COVID-19 pandemic also dominated 2021, with major consequences for film and TV productions. The cultural funds helped support the Association's political work to secure financial relief packages and reasonable special agreements with the professional organisations, thus reducing producers' production risk during the pandemic.

In 2021, the Association continued to invest in surveys and ongoing documentation of the industry's development and potential. Efforts to this end included the annual report 'Danish Content Producers' (*Danske Indholdsproducenter*), which shows that the industry is making good progress in terms of turnover, jobs and, not least, exports. As a consequence of a strong surge in demand for content, producers increasingly experienced problems with recruiting qualified labour. Therefore,

the Danish Producers' Association teamed up with FilmFyn and Den Vestdanske Filmpulje to initiate a survey of capacity, education and recruitment in the Danish digital visual industry. The survey results will form the basis for systematic, prioritised efforts to increase capacity in the industry.

In 2021, the Danish Producers' Association continued working to strengthen the industry identity. Despite demanding conditions owing to COVID-19, the Association's events department again organised a range of events and networking meetings for the industry. Some events could be held as normal in autumn, but spring events were exclusively held digitally. Among other things, the Danish Producers' Association organised the annual games award, 'Spilprisen', Copenhagen Match-up, the Copenhagen TV Festival and the Danish TV Award, which brings together and celebrates the entire TV industry.

The Association received several applications for membership in 2021, ending the year with a total of 145 member companies, primarily within film and TV. The majority of members receive rights revenue from PRD. This makes providing advice on and negotiating right holders' conditions and revenue a core task for the Association.

Use of cultural funds by RettighedsAlliancen

2021 has been yet another year of great devolvement in Rights Alliance's work to protect the creative rights holders.

At the end of 2020, the closure of the Danish closed-torrent scene took place, in the light of the police's actions against the illegal services DanishBits and NordicBits. However, many users continued their illegal activities on the smaller sites ShareUniversity and Asgaard. The sites, however, quickly chose to shut down in early 2021, based on the actions of the police and Rights Alliance's adamant communication against backers and users in the environment.

And so, Rights Alliance has succeeded in shaking the illegal market in Denmark in its core. From October 2020 until March 2021 has there been a 95% reduction in traffic to Danish file sharing services, based on these shutdowns. This not only means that fewer people access the movies on these services, but it also has an influence the continued sharing of the movies. It is known that most Danish movies start of by being shared illegally in the closed networks, from where they are then spread to the large open platforms. By closing the torrent scene, the process of sharing has been thoroughly disrupted.

There are more actions and legal cases coming in 2022, and "our" cases have been given a boost in competence and priority by the police. At the same time, the police are diligent in sharing the actions with the press, which we see has a great preventive effect on the illegal distribution and

use of illegal movies, series and more.

Another significant development in 2021, has been the access to protection tools on Facebook and YouTube. Through a diligent effort and with the support of its members as well as the implementation of the copyright directive in Danish law, Rights Alliance has gained access to the platforms' tools, that makes it possible to filter content that violates members' rights. It is thus possible to actively prevent illegal uploads of movies and series on the platforms. MediaVision's Nordic Piracy 2021 survey shows that Danes' illegal consumption of movies and TV series is increasingly taking place on social media platforms. 54% of Danish pirates use YouTube to watch illegal content, while 31% use Facebook.

In 2021, Dialogforum was restarted, and the initiative was expanded with new co-signatories of Kodex, including TrustPilot and Publisher Platform, among others. The signatories of the Kodex Agreement commit themselves to blocking advertisements on and payments to illegal services. Rights Alliance has also continued its information work through campaigns and projects. In 2021, both the campaigns Os Der Elsker Viden and Os Der Elsker Film have been very successful. The latter reached 482,000 people on social media, corresponding to 75% of the target group, the 16-24-year-olds. Furthermore, Kino.dk has been integrated on the platform Filmfinder.dk so that users now also can be guided to movies that still run in the cinema. At the same time, Filmfinder.dk has generally been upgraded and redesigned, to a more modern and user-friendly look.

Blockings is still one of the most effective tools to prevent Danish users from using illegal content online. In 2021, the Rights Alliance blocked 175 illegal websites.