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CROWELL & MORING CLIENT SCARLET OBTAINS A FIRST POSITIVE DECISION IN *SABAM VS. SA SCARLET EXTENDED*

Brussels – 24 October 2008: Today, the Brussels Court of First Instance delivered its verdict in *SABAM vs. SA Scarlet Extended*, known as the "Scarlet/SABAM" case. After an initial judgment forcing Scarlet to pay a fine for copyright infringement for its subscribers who downloaded songs by "peer to peer" (P2) networks that are copyright protected, the Court today decided that Scarlet would not have to pay for past offenses. Scarlet has launched an appeal procedure with the Brussels Court of Appeal in October 2009.

"Today's decision is a significant victory for internet access and service providers, such as Scarlet. As a result of today's ruling, they can breathe a collective sigh of relief that the Brussels Court of First Instance decided that it was previously badly informed when it decided that appropriate filtering technologies were available on the market," said Brussels-based Crowell & Moring lawyer Christoph De Preter, who co-heads Scarlet's litigation team.

On 29 June 2007, Scarlet launched a procedure for "absolute impossibility of compliance" against the decision of the Tribunal of First Instance in Brussels. According to this decision, Scarlet should make it impossible for its customers to send or receive a P2P file that would include works from SABAM. In this procedure for "absolute impossibility of compliance," which is dealt with by the same judge and the same Tribunal as in first instance, Scarlet argued that it is technically impossible or unreasonably expensive to block the P2P traffic. Thus, it appeared that the solution developed by Audible magic, a filter mechanism, does not work. Additional technical options have been considered and implemented but none of them led to a satisfactory solution.

Today, the Brussels Court of First Instance delivered its verdict that Scarlet had indeed done all that was in its power to respect the initial Court ruling and that the filtering technologies recommended by the SABAM did not work. The court therefore retrospectively ruled that Scarlet does not need to pay any fines. To put things in context, since January 2008, Scarlet was under threat of paying 2500€ of fines a day, which meant a total sum of nearly 750.000€. The Court's verdict today means that Scarlet no longer has to pay this sum. For the rest, the Court ruled that it could not judge on the technical and legal issues put forward by Scarlet and that the Brussels Court of Appeal was the only competent court to rule on these. The appeal case will take place in October 2009.

Scarlet is now confident in the outcome of the appeal case, in which all the technical and legal issues on which the Court of First Instance could not rule will be reexamined. Such issues include: can it be made legally compulsory for Internet Access Providers – such as Scarlet - to filter content; unfair competition; consumer rights; and whether encrypting does not make any filtering technologies impossible. Scarlet stresses that it does not approve of online copyright infringements, but it believes that ISP's cannot and should not police the Internet and that more proportionate means of action exist.

“Today’s decision slammed Pandora’s Box shut, but who’s to say when it will be reopened,” added De Preter.

The Crowell & Moring team acting for Scarlet included Brussels-based lawyers Christoph De Preter and Thomas De Meese.

Crowell & Moring LLP is an international law firm with more than 450 lawyers practicing in litigation, antitrust, government contracts, health care, corporate, intellectual property and a variety of other practice areas. More than two-thirds of the firm's attorneys regularly litigate disputes on behalf of domestic and international corporations, start-up businesses, and individuals. Crowell & Moring's extensive client work ranges from advising on one of the world's largest telecommunications mergers to representing governments and corporations on international arbitration matters. Based in Washington, D.C., the firm also has offices in New York, London, Brussels, Los Angeles, and Irvine, CA. Visit Crowell & Moring online at http://www.crowell.com.

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