[FR] Libel on Internet and Qualification of Services

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Two District Courts (which have jurisdiction for hearing civil cases where the amount of the claim does not exceed FRF 50 000) have recently had to deliberate on disputes concerning libel on the Internet. The facts of the two cases were broadly similar, which makes the divergence between the two judges involved all the more remarkable. Both courts, on the basis of completely different grounds and arguments, declared themselves unable to deal with the disputes.

In the first case, on 3 August, the District Court of the 11th arrondissement in Paris declared it was unable to deal with a case concerning the publication, on a website, of critical comments about computer magazines. The company which produces the magazines in question was suing the author of the comments for libel. In declaring itself unable to deal with the case, the court referred firstly to Article R 321-8 of the French Judicial Code which makes District Courts responsible for hearing cases of public libel, whether spoken or written, other than in the press. It went on to recall that Article 1 of the Act of 1 April 1986, reforming the legal system applicable to the press, defines as a press publication «any service using a written method of distribution of thoughts made available to the general public or categories of the public and appearing at regular intervals». The court held that the guide at issue, which also contains editorials, advertisements and a list of addresses, and which is updated regularly, could be assimilated to a specialised magazine aimed at providing its readers with information, and should therefore be considered as a press publication. The dispute was therefore quite logically outside the jurisdiction of that court.

In September, the District Court of Puteaux followed a completely different path of reasoning. The judge took as his starting-point the assumption that Internet, in its capacity as a means of telecommunication, was an audio-visual communication service since the service consisted of transmitting signs, signals, images or sounds which did not constitute private correspondence, to unspecified persons. This was the case here, namely a server making personal pages available to the public. By virtue of the rules of competition referred to above, the court was therefore able to hear this case of libel by a means of telecommunication. However, the amount of the damages claimed put the case beyond the jurisdiction of the court, as the court duly declared.

Press publication or audio-visual communication service? The debate necessary for the proper regulation of Internet is now in the hands of the regional courts.

In the second case, the district court of Puteaux was also called upon to deliberate on the matter of the host's liability. Being assimilated to the director in charge of the publication on an audio-visual communication service, the host cannot be held responsible unless the disputed messages had already been fixed in some manner. In the present case, experts' reports had shown that the transfer between the author and the public had taken place electronically and at extremely high speed, such that no control on the part of the service provider would have been possible; the latter could not therefore be held to be the principal instigator of the libel. This analysis, although in line with the current legislative trend (as in the Bloche amendment or in the draft directive on electronic trading), has nevertheless been seriously criticised in some doctrinal quarters in France.