[FR] CD Writer Shops - the First Convictions

IRIS 1999-10:1/13

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The appearance of digital recorders making it possible to produce copies of audio CDs or CD-ROMs which are perfectly identical to the original on low-cost supports increases the risk of the work of creative artistes being copied. After the Regional Court in Valence on 2 July, it was the turn of the Regional Court in Clermont-Ferrand to find against the manager of a free access CD writer shop for forgery. The shop made available to its customers, equipment for copying CDs and a computer used for personalising inlays. Having been informed of this situation by a television programme, the Public Prosecutor took up the matter at the instigation of a number of societies of authors and producers. To appreciate the material element of the offence the court recalled that, under Article L 122-5 of the French Intellectual Property Code (CPI), «where the work has been made public, the author may not prohibit (...) copies or reproductions strictly reserved for the private use of the person making the copy and not intended for collective use». This waiver of the author's right of publication has always been interpreted in its strictest sense by the courts.

In the present case, the court adopted the argument developed by the Court of Cassation concerning the photocopying of books in the famous decision in the Rannou-Graphie case on 7 March 1984, recalling that «the person making the copy» means the person who owns the machines on which the disputed copies are made. It is therefore irrelevant whether their production may be entrusted, whether occasionally or otherwise, to an employee or to the actual clients. In the present case, the copying equipment acquired for the purpose of copying CDs or software belonged to the company managed by the defendant and he could therefore not contest that he was the person making the copies. The exception for private copying only refers to the use of the person making the copies and, according to the court, the use the clients intended to make of the copies they requested was of little importance. Thus the mere fact of the manager of the shop selling the copy he had produced on a blank CD he had supplied was sufficient proof that he was making commercial use of them, excluding private use. Having demonstrated the material element of the offence of forgery, the court looked at the element of intent, which the defendant contested. The court took note that the defendant had also, at the request of performers, made lawful copies for which he had proper authorisation, and found that the defendant could not seriously claim ignorance of the legal difficulties his project would come up against. The element of intent could therefore be deduced from the

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circumstances in which the offences had been committed. The judges categorised the facts as serious because of the harm done to the rights of authors, editors and producers, and ordered the confiscation of the equipment at the centre of the dispute and the closure of the establishment in order to prevent the forger from continuing his activities. Moreover, because of the harm done to the collective rights of authors, editors and producers as a result of his activities, the defendant was ordered to pay damages to a number of societies for the collective management of royalties, which had associated themselves with the Public Prosecutor in the case.

This decision should be viewed in the light of the recent amendment to the European Commission's proposal for a directive on the harmonisation of certain aspects of copyright and related rights in the information society, which extends the exception of reproduction rights to private digital copying. Under its current wording, the Member States would have the possibility of providing this exception for reproductions on a digital support of sound, visual or audio-visual recordings by an actual person for a private and strictly personal use for non-commercial purposes, without prejudice to effective technical means intended to protect the interests of beneficiaries.

Tribunal de grande instance de Clermont-Ferrand (statuant en matière correctionnelle), 27 octobre 1999, Ministère public c/ D. Baffeleuf.

Regional Court of Clermont-Ferrand (deliberating in criminal matters), 27 October 1999, Public Prosecutor v. D. Baffeleuf.

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