[FR] Violation of Right of Personal Portrayal and Liability of Internet Hosts

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The Regional Court (TGI) in Nanterre has just added a new nugget in the debate on the liability of Internet hosts. In a case on which judgment was delivered on 8 December, the solution adopted by the judges has already aroused applause on the one hand and severe criticism on the other. Once again the case involved a model prohibiting the publication on Internet sites of photographs of her in which she appeared partly or totally unclothed. In its judgment in favour of the model, the Court began by referring to the absolute right of any individual in respect of personal portrayal, which entitled anyone to object to such portrayal being fixed, reproduced or disseminated without his/her authorisation, regardless of the support used. Thus, even if the model had agreed to pose in the nude as part of her paid activity, any further publication of the photographs beyond the original agreement required her authorisation. Her right had therefore been violated not only by the creators of the site but also by the hosts; their respective liability is based on Articles 1382 and 1383 of the Civil Code.

The host is indeed able to access the site and check its content. Its activity, exercised in the field of the communication of ideas, opinions and information, participates in the freedom of expression, but is limited by the legitimate rights of third parties. The Court therefore held that in the present circumstances, ie in the absence of State regulation and with self-regulation in its infancy, the system to apply to this liability should be sought by referring to common law defined by Article 1383 of the Civil Code. The host is bound by a general obligation of prudence and diligence; it must take the necessary precautions to avoid infringing the rights of third parties, and to do so it must implement reasonable means of information, vigilance and action. The judges even went so far as to take the opportunity to recall the dispute for the same reason early in 1999 between the well-known model Estelle Halliday and the host Valentin Lacambre (see IRIS 1999-3: 3), which they felt should have made professionals aware of the problem of violation of the right of personal portrayal on networks. The TGI thus followed the larger part of legal opinion, but went far beyond the current projects on regulation (the Bloche amendment and the directive on electronic trading) which are more in favour of reducing the liability of hosts.

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TGI Nanterre, 1re ch. Sec. A, 8 décembre 1999, L. Lacoste c/ Sté Multimania Production, Sté France Cybermedia et autres.

Regional Court (TGI) in Nanterre, 1st chamber, section A, 8 December 1999, L. Lacoste v. Sté Multimania Production, Sté France Cybermedia et al.

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