[FR] E-mail Protected by Privacy of Correspondence

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For the first time to our knowledge, the Courts have pronounced on the legal status of e-mail correspondence. The dispute was between a research student in a laboratory, and the director and two IT network administrators at the laboratory, charged with having violated the privacy of correspondence by reading the student's e-mail correspondence without his knowledge. The defendants claimed that e-mail messages could not have the benefit of the rules of confidentiality enjoyed by postal correspondence since these messages, which were unencrypted, were entrusted to intermediary servers which carried them with no protection and delivered them to their addressees. It was therefore necessary, in view of the potential amount of damage they could cause, to be able to check them on arrival in a network. The regional criminal court of Paris did not accept these arguments, however. It held that correspondence was protected by the law "as long as its content was exclusively sent by one particular person to another particular person, unlike messages made available to the public". The privacy of correspondence was governed by Articles 226-13 and 432-9 of the Criminal Code, embodied in the rule laid down in Article 1(1) of the Act of 10 July 1991 according to which "the privacy of correspondence effected by means of telecommunications is guaranteed by law". It was therefore necessary to determine whether the disputed electronic mail was protected by such privacy. The messages in question were sent exclusively to a natural or legal person; they were sent to a specific person (where the address was nominative) or to a person occupying a specific post (where the address was functional) and were personalised in that they established a relationship between the sender and the receiver. The Court concluded that "the sending of electronic messages from one person to another constitutes private correspondence". The plaintiff's mail was therefore entitled to the protection of privacy of correspondence by means of telecommunications, violation of which was covered by criminal law. The defendants were therefore ordered to pay fines of FRF 10 000 and FRF 5 000.

Tribunal de grande instance de Paris (17 e ch.), 2 novembre 2000 - Ministère public c/ Virieux , Fermigier et Hermann

Regional Court of Paris (17 chamber), 2 November 2000 - Public Prosecutor v. Virieux, Fermigier and Hermann

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