[FR] First Case-law on the Right to Reply On-line

IRIS 2002-7:1/31

Amélie Blocman
Légipresse

Exercise of the right to reply on the Internet comes up against the problem of the lack of specific rules and some judges have been wondering, in the absence of any precedent, about the possibility of transposing to the Internet the existing arrangements for the right to reply, whether in the written press (Art. 13 of the Act of 29 July 1881) or in the audiovisual sector (Art. 6 of the Act of 29 July 1982 and the Decree of 6 April 1987). On 5 June the Regional Court in Paris was called on for the first time ever to deliberate in a case on this point. The applicant, who considered that certain documents on the Internet site "gotha.fr" concerning the succession of the King of Romania were incomplete and incorrect, more particularly as they denied him his title as "Prince of the Royal Houses", had applied to the editor of the site claiming the right to reply. As this elicited no response, the applicant referred the matter to the Regional Court sitting in urgent matters so that it would order the editor to post the reply in question. In support of his claim, the applicant argued in his writ of summons that the disputed section of the Internet site constituted a press publication within the meaning of the Act of 1 August 1986, ie "a service using a written means of circulation of thought made available to the general public or to categories of the public and appearing at regular intervals". The applicant was thus implicitly indicating that the text of his reply ought to be published in application of the provisions of Article 13 of the Act of 1881 governing the right to reply in regard to the written directed only at the "periodical press" and that the applicant had not proved the periodical nature of the disputed electronic service which indeed, by its nature, involved continual updating and in any event did not constitute a regular periodical publication. The provisions concerning the right to reply in the written press therefore appeared to be inappropriate in the present case, as did - according to the Court - the provisions concerning the right to reply in the audiovisual sector. The practical measures prescribed for the circulation of the reply in the audiovisual sector were not suitable for an on-line communication service; furthermore, problems arose in determining exact dates as required by the legislation for broadcasting the reply. The judge sitting in urgent matters, holding that the legal argument invoked by the applicant was too uncertain, or indeed non-existent, declared that the Court could not admit the application on this strictly legal basis, which he found highly questionable. He pointed out that, within the limits of the powers he held by virtue of Article 809 of the Code of Civil Procedure which governs urgent matters, he was however in a position to prescribe any measure which could put a stop to the manifestly unlawful disturbance that circulation of the subject matter in

question constituted. To this end he therefore ordered the posting on the Internet site in question of a communiqué expressing the applicant's objection.

This decision is a good illustration of the limits of any attempt to transpose existing texts to the exercise of a right to reply on the Internet. The bill on the information society presented at a Cabinet meeting under the previous Government and never debated in Parliament provided for the addition of an Article 43-10-1 to the Act of 30 September 1986 in order to regulate this.

Tribunal de grande instance de Paris (ordonnance de référé), 5 juin 2002, P. Hohenzollern c/ S. Bern

Regional Court in Paris (order in an urgent matter), 5 June 2002, P. Hohenzollern v. S. Bern