

[FR] Legitimacy of Use of Technical Systems on CDs and DVDs

IRIS 2003-10:1/31

*Clélia Zérah
Légipresse*

In view of the increasing quantity of music and films downloaded and pirated using the Internet, the majors are increasingly including anti-copy systems in the CDs they put on sale. Four court cases have been brought in France against this practice. Consumer associations consider that these protected CDs totally prevent copying, which contradicts the French exception to private copyright included in Article L.122-5 of the Intellectual Property Code.

Two decisions have already been delivered in these cases by the regional court of Nanterre. In both cases the problem was the same. The applicants had purchased CDs, on the packaging of which it was stated that the CD contained a technical system limiting the possibility of copying. The CDs in question worked properly on some supports, but were inaudible on the in-car systems of both purchasers.

In the first decision on 24 June 2003, the court found that the fact of fitting a CD with an anti-copy system could constitute deception within the meaning of Article L.213-1 of the Consumer Code, since there was no specific indication of the effects such a system could have.

In the second judgment, on 2 September 2003, the court found that the technical systems intended to limit the possibility of copying the CD constituted a latent defect since they prevented the owner of the CD listening to it on all possible supports, thereby restricting its use.

The association Consommation Logement et Cadre de Vie for its part has suffered a set-back. The regional court of Paris rejected the complaint it had brought against BMG and Sony on 2 October for "failure to inform the consumer". The association also denounced their anti-copy systems, which could prevent CDs working on a car radio. The judge held that the association had not produced sufficient evidence in support of its claims and therefore rejected its arguments.

In the light of these decisions, it would appear that it is not the existence of the technical systems that is at question but their consequences and the way in which they are presented.

At the same time, a bill to prohibit the use of technical measures to protect CDs and DVDs that result in users being deprived of the right to make a copy for private use was tabled at the National Assembly on 10 September.

TGI Nanterre (6e chambre) 24 juin 2003 Association Consommation logement cadre de vie c/ Sté EMI Music France

Regional court of Nanterre, 24 June 2003, the association "Consommation Logement Cadre de Vie" (CLCV) v. the company EMI Music France

TGI Nanterre (6e chambre) 2 septembre 2003 Françoise Marc, UFC Que choisir c/SA EMI music France, société Auchan France

Regional court of Nanterre (6th chamber), 2 September 2003, Françoise Marc of the union of consumers "Que choisir" v. the company EMI Music France and the company Auchan France

TGI Paris 2 octobre 2003, CVCL c/ BMG, Sony

Regional court of Paris, 2 October 2003, CVCL v. BMG, Sony

Proposition de loi visant à interdire le recours à des mesures techniques de protection des CD et DVD ayant pour effet de priver les utilisateurs du droit à la copie privée, présentée par M. Didier Mathus, député, et les membres du groupe socialiste, déposée le 10 septembre 2003 à l'Assemblée nationale

Bill to prohibit the use of technical measures to protect CDs and DVDs that result in users being deprived of the right to make a copy for private use, tabled at the National Assembly on 10 September 2003 by Mr Didier Mathus MP and members of the Socialist Group

