

[FR] Acquittal of a Video Pirate Upheld

IRIS 2005-4:1/15

*Amélie Blocman
Légipresse*

The court of appeal in Montpellier has upheld the acquittal by the regional court in Rodez (see IRIS 2004-10: 10) of an Internet user who downloaded one-third of the 488 CD-ROMs seized at his home from peer-to-peer networks and copied the remaining two-thirds from CD-ROMs lent to him by friends. The defendant said he had made the copies exclusively for his own private use and that he knew it was against the law to copy films using the Internet. He also said that he had never sold or exchanged any of the CDs he had copied. On the basis of Articles L. 122-3, L. 122-4 and L. 122-5 of the Code de la propriété intellectuelle (French intellectual property code - CPI), the Court recalled that, once a work has been made public, its originator may not prohibit copying or reproduction that is strictly for the private use of the person making the copy and not intended for any collective use. The court held that no collective use had been established. At the most the defendant admitted that he had watched one of the copies in the presence of one or two friends and had lent CD-ROMs to a number of other friends. The court found that this was not sufficient to deduce that the copies had been made for any purpose other than the private use referred to in the CPI. The acquittal of the defendant was therefore upheld.

In this case the court does not make a clear statement on "uploading", ie making works available on a peer-to-peer network, contrary to two other notable judgments (regional court of Vannes on 29 April 2004 and the regional court of Pontoise on 2 February 2005). The court had been asked whether an Internet user who downloads such works is able to benefit from the private copying exception. Contrary to the opinion held by a substantial body of legal opinion, the court appears to be confirming that the mere operation of downloading and reproducing downloaded works on an external medium (CD or DVD), without the authorisation of the rightsholders, may benefit from the private copying exception regardless of the origin of the works (downloaded a priori illegally using peer-to-peer networks). The parties whose claims for damages were rejected - companies producing and editing videos, and professional syndicates - have announced that they will appeal to the Court of Cassation, and its decision on the matter is awaited with much interest.

Cour d'appel de Montpellier (3e ch. correctionnelle), 10 mars 2005, Buena Vista Home entertainment et autres c/ D. A. C.

<http://www.foruminternet.org/telechargement/documents/ca-mtp20050315.pdf>

Court of appeal of Montpellier (3rd chamber dealing with minor offences), 10 March 2005, Buena Vista Home Entertainment et al. v D.A.C.

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