[FR] Another Case Upheld against a Producer for Using an Anti-copy Device on a CD

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In a judgment on 10 January, the Regional Court in Paris upheld the attitude adopted by the Court of Appeal in Paris in a decision made on 22 April 2005 in the case of S. Perquin and the association Que Choisir v. Universal Pictures Vidéo France (see IRIS 2005-6: 13), prohibiting the use by the producer of the phonogram at issue of a technical protection device on the Phil Collins CD *Testify* that made it impossible to make a private copy on any medium. In the present case, a private individual, with the backing of a consumer defence association, complained that he was not able to play a CD with a protective device on his laptop and was not able to copy it onto a digital medium. The Court held that the bailiff's official report produced by the user to establish that the disputed CD could not be played on his CD-ROM player constituted sufficient proof that the CD was affected by a defect resulting from the incompatibility of the protective device used to prevent digital copying that made it unfit for its intended use.

The court held that the exception for making a private copy laid down in Articles L.122-5 and L.211-3 of the Intellectual Property Code constituted an exception of public order incumbent on the beneficiaries of neighbouring rights and on authors whatever the medium used. In line with the Court of Appeal of Paris in the previous case already mentioned, the Court considered whether this exception met the conditions laid down in Article 5-5 of Directive 2001/29/EC of 22 May 2001 - the "three-step test" - although this has not in fact been transposed into domestic legislation. As the exception was limited to reproduction strictly for private use, this constituted a special case (first step). The private copy made by the user for his personal use did not conflict with normal exploitation of the CD (second step), and did not unreasonably prejudice the legitimate interests of the rightsholder (third step). Although devices that prevent copying are not actually illegal, they must be compatible with the lawful exception for making a private copy. In failing to use a device that allowed a private copy to be made on any medium, the producer of the phonogram caused the applicant prejudice for which he was entitled to reparation.

The judgment laid particular emphasis on the failure on the part of the producer and the vendor of their obligation to inform (Article L.111-1 of the Consumer Code), as there was no indication that it would not be possible to play the CD on the CD-ROM player of a computer. The Court therefore ordered the producer and the vendor to pay the user and the consumers' rights association EUR 59.50 and

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EUR 5,000 respectively in damages, and prohibited the producer from using a technical device for protection that was incompatible with the exception for making a private copy.

Tribunal de grande instance de Paris, (5e ch. 1re section), 10 janvier 2006 - Christophe R., UFC Que choisir c/ Warner Music France, Fnac

http://www.legalis.net/breves-article.php3?id_article=1567

Regional Court of Paris, (5th chamber, 1st section), 10 January 2006 - Christophe R., UFC Que Choisir v. Warner Music France, FNAC

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