# [FR] Peer-to-peer: towards a Reversal of Precedent?

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On 2 December, the National Assembly adopted two amendments to the draft legislation on copyright and neighbouring rights in the information society (DADVSI) granting the benefit of making a private copy to copies made by downloading from networks on condition that the Internet users pay remuneration to the rightsholders. As Parliament prepares to consider the text again in early March, the courts are finding it hard to achieve any coherency on peer-to-peer activities.

After a series of recent decisions, the courts were tending to "legalise" downloading activities on the basis of the exception for making a private copy, while coming down against activities that made recordings available to the general public (see IRIS 2005-10: 13). In a recent high-profile judgment, however, the Regional Court in Paris - for the first time, to our knowledge - discharged an Internet user who had not only downloaded but also offered for exchange 1875 music files using the Kazaa system. In doing so, the Court based its findings on the principle of the strict interpretation of criminal legislation, and stated that there was no presumption of bad faith because a peer-to-peer system had been used, and no presumption of refusal to authorise sharing on the part of the rightsholders of the musical works. Under the Kazaa system it is not in fact possible to distinguish between files of works according to their legal category (subject to authorisation, authorised or in the public domain), and the Court held that the absence of a prior check of databases of authors and editors and the possibility of freely disposing of a work could not be held to characterise culpable intent. In the case at issue, of the 1875 music files referred to, only 1212 corresponded to works whose legal status was clearly defined and the Internet user had no information that would prevent the use of works for which distribution was not lawful.

According to legalis.net, the decision to discharge this case should be put into perspective because of the procedure applied. This judgment was made in the context of a summons issued by a senior law-enforcement officer, a procedure without prior investigation that reduces the time before a case comes to court and does not allow an expert's report on both sides. In cases involving the counterfeit of intangible elements, the courts are particularly attentive to the reliability of proof produced and to observance of the defence's rights. Both the public prosecutor and the civil society of phonographic producers ( *Société Civile des Producteurs Phonographiques* - SCPP), which is also a party to the

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proceedings, have nevertheless appealed against the judgment. Perhaps by then Parliament will have taken another look at the situation and either maintained the present arrangements or extended them to include the activities of making files available in the context of an optional global licence.

***Tribunal de grande instance de Paris, 31e chambre, 8 décembre 2005, SCPP c/ A. G.***

http://www.juriscom.net/jpt/visu.php?ID=785

*Regional Court of Paris, 31st chamber, 8 December 2005, SCPP v. A. G.*

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