[FR] Court of Cassation Makes No Decision on Private Copying

IRIS 2006-7:1/19

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The position of the Court of Cassation on the difficult matter of the applicability of the exception for private copying set out in paragraph 2 of Article L. 122-5 of the French Intellectual Property Code to the downloading of protected works was much awaited. Yet although it seemed to be an ideal opportunity, the Court reversed a court of appeal's decision which had discharged an Internet user who had downloaded cinematographic works … merely on questions of procedure, leaving the matter still not settled.

There was the high-profile decision of the court of appeal of Montpellier (see IRIS 2005-4: 10) on 10 March 2005, in which it recognised the exception for private copying and rejected the prosecution for counterfeiting of a man who had recorded 488 films on CD-ROMs - some had been downloaded from the Internet and others had been copied from other CD-ROMs lent to him by friends. In support of his discharge, the court of appeal felt that the defendant could claim the exception for private copying since he had stated that the copies had been made solely for private use. A further appeal against this decision was brought by the public prosecutor as well as the rightsholders and professional organisations in the field of video publishing, on the grounds that the court had not replied to their argument that the unlawful nature of the source of the copies (meaning downloading from the Internet) excluded the possibility of the exception provided for by Article L. 122-5 (2) of the CPI. The law is silent on this - vital - point of whether or not the source of the copy must be lawful in order to be able to claim exception, and experts are divided. Thus the Court of Cassation had a good opportunity for providing an answer. However, it merely overturned the appeal decision on the basis of Article 593 of the Code of Criminal Procedure, according to which "any judgment or order must include the reasons justifying the decision and answer the peremptory points contained in the parties' submissions. Insufficient or contradictory reasons are equivalent to their absence". The Court of Cassation held that the court of appeal had discharged the defendant party without any explanation about the circumstances in which the works had been made available to him, and without answering the complainants' submissions that the exception for private copying was dependent on the source being lawful. In other words, the court of appeal in Montpellier had not properly justified its decision. It was therefore for the court of appeal in Aix-en-Provence, to which the case was referred, to do so. In the meantime, the legislation on "copyright and neighbouring rights in the information society" has been adopted (see IRIS 2006-

7: 11). This text takes unauthorised downloading out of the range of criminal counterfeiting and makes it merely an offence. The position adopted by the court of appeal in Aix-en-Provence and the applicability of private copying to downloading is therefore of little importance.

Cour de cassation (chambre criminelle), 30 mai 2006, Procureur général près la cour d'appel de Montpellier et autres

http://www.juriscom.net/documents/cass20060530.pdf

Court of Cassation (criminal chamber), 30 May 2006, public prosecutor at the court of appeal in Montpellier et al