[FR] Downloading Music: Towards Greater Interoperability?

IRIS 2007-2:1/19

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In the opinion of UFC-Que Choisir, one of the most important associations for consumer protection in France, "DRM technology is a total disaster for consumers and for the development of the market for online music". For several months, the association has been spearheading a fierce battle against technical means of protecting works (DRM devices). The main object of the battle is to achieve the interoperability of platforms for downloading music and players, i.e. to prevent the development of the model of a single online sales platform associated with a single brand of players, as is the case with iTunes Music Store and Apple's iPod. Pending the upcoming commencement of the proceedings that the association is bringing against the Californian company, it has just won a victory in this battle by obtaining a conviction at the regional court in Nanterre on 15 December 2006 against Sony for misrepresentation and tied selling (“tying in”).

The files downloaded from Connect Europe, sold by Sony UK, cannot in fact be played on anything other than compatible Sony players, which, conversely, cannot be used to play works downloaded from any other platform. UFC Que Choisir principally claimed that Sony had refrained from clearly explaining this two-fold restriction on use, on either the Connect Internet site or its players, thereby misleading the consumer about the substantial qualities of the service and the product being purchased. The court recalled the legal framework applicable in the field of copyright, and more particularly the new Article L. 331-5 of the Intellectual Property Code (arising out of the Act of 1 August 2006 transposing into national legislation the Directive on copyright and related rights in the information society), according to which technical measures should not have the effect of preventing the effective implementation of interoperability, while observing copyright, and that the suppliers of technical devices must provide access to the information essential for interoperability. The court noted, however, that "no provision of legislation or regulation imposes total interoperability between music files and digital players". Nevertheless, the court based its judgment solely on consumer law, and more particularly on Article L. 213-1 of the Consumer Code, which considers that “anyone deceiving or attempting to deceive the contracting party in any manner whatsoever in respect of (...) the substantial qualities (...) of any goods, (or) suitability for use ..." commits the offence of misrepresentation. After a careful analysis of the general conditions governing the final user's licence for Connect and the instructions for

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using the players in question, the court held that Sony did not inform consumers clearly and explicitly of the two-fold restriction, thereby establishing the offence of misrepresentation. Similarly, since the use of the music files made available on the site in question was necessarily conditional on the purchase of a Sony digital player in order to be able to play them, the company was found guilty of tied selling under Article L. 122-1 of the Consumer Code. The electronics group has therefore been ordered to pay UFC Que Choisir EUR 10,000 in damages, to inform its clients of the exclusive compatibility of their players with the platform in question, and to post a legal communiqué on its Internet site.

Virgin and FNAC, France's two largest distributors of music online, announced on 15 January, that for their part, they had deleted the DRM devices on more than 200,000 titles available on their sites, thereby allowing maximum interoperability.

TGI de Nanterre (6e chambre), 15 décembre 2006, UFC Que Choisir c/ Sony France et Sony UK Ltd

http://www.juriscom.net/documents/tginanterre20061215.pdf

Regional court in Nanterre (6th chamber, 15 December 2006, UFC Que Choisir v. Sony France and Sony UK Ltd.

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