[FR] Private Copying versus Technical Protection Measures - the End of the Dispute?

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Amélie Blocman
Légipresse

In the same week in which the setting up of a new regulatory authority on technical protection measures took place (see below), the court of appeal in Paris, deliberating on appeal, confirmed the validity of placing an anti-copying protection measure on a DVD (see IRIS 2006-4: 12). In doing so the court reiterated its position on the legality of making a private copy, which "did not constitute a right, but a lawful exception to the principle of prohibiting any total or partial copying of a protected work made without the consent of the copyright holder". In this case, the applicant, who had bought the DVD of the film "Mulholland Drive" claimed this "right" in order to prevent Studio Canal and Universal Pictures Vidéo France, respectively the producer and distributor of the DVD, from using a technical protection measure that prevented the film from being copied onto a video cassette. The court began by rejecting the first grounds for the inadmissibility of the case as claimed by the defendants, namely that the use of the DVD would have exceeded the limit of the private copy as laid down in Article L. 122-5 (2) of the Intellectual Property Code. According to this text, "the author may not prevent the making of copies or reproductions strictly reserved for the private use of the person making the copy …". The purchaser of the DVD had wanted to record it onto a cassette so that he would be able to watch it at the home of his parents, who did not have a DVD player, and such use, according to the defendants, would exceed the limits laid down for private copying. However, the court recalled the well-established principle that "private use" should not be understood as referring solely to strictly solitary use but rather as being to the benefit of the person's circle of close family and friends, understood as being a limited group of persons linked by the ties of family or friendship. On the other hand, the court accepted the second argument for the inadmissibility of the proceedings, based on the non-existence of interest on the part of the plaintiffs to take legal action. The court held that because of the lawful nature of the private copy, this could not be invoked as constituting any entitlement in support, as in the present case, of the main proceedings. Thus the exception could only be invoked in legal proceedings as a defence - in a case of infringement of copyright, for example. Additionally, the court added, it made little difference, with regard to the principle of "no right, no action", whether or not the users paid for the private copy. The judgment also states clearly that the Act of 1 August 2006 - and particularly Article 16 therein which incorporated Article L. 331-12 of the Intellectual Property Code, requiring users to be informed of the limitations that

might be put on private copying by the use of technical protection measures, was “not applicable in the present case”. Thus the judgment was upheld in that it considered that the absence of such an indication could not constitute an essential feature of the product, within the meaning of Article L. 111-1 of the Consumer Protection Code. It remains to be seen whether the UFC-Que Choisir, the consumer rights association who instigated the proceedings, will take this judgment to the Court of Cassation.

Cour d’appel de Paris (4e ch. A), 4 avril 2007, UFC Que Choisir et S. Perquin c/ Universal Pictures Video France et autres

http://www.juriscom.net/documents/caparis20070404.pdf