[FR] Liability on the Part of Video Sharing Sites - First Instances of Precedent

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Amélie Blocman
Légipresse

In France, a large-scale offensive has been launched by various financial beneficiaries against video sharing sites on the Internet (YouTube, Dailymotion, Myspace, etc) because they have been allowing the circulation of the works of the beneficiaries (films, series, etc) on their sites with neither authorisation nor remuneration.

The platforms have been sheltering behind the “immunity” granted to hosts under the Act for Confidence in the Digital Economy (LCEN) of 21 June 2004. Under Article 6-I-2 of the Act, the latter’s liability may not be invoked if they “did not have effective knowledge of the unlawful activity or information or if, as soon as they did have such knowledge, they took prompt action to withdraw the information or to render access to it impossible”. For their part, the beneficiaries hold that these sites take on the role of editors and should assume the corresponding liability. Deliberating under the urgent procedure on 22 June, the regional court of Paris found against Myspace, and it is now the turn of Dailymotion to suffer the wrath of the 3rd chamber of the regional court of Paris. This judgment is the first to be delivered on the merits of the issue. In this case, the producer of the film “Happy Christmas”, first shown in cinemas at the end of 2005, and marketed in DVD form and to be shown on Ciné Cinéma at the end of the year, complained that the site made it possible to view the film using streaming. The site claimed the protection of Article 6-I-2 of the LCEN, as it considers itself to be merely a technical provider, and maintained that it was up to those Internet users who offered videograms online to make sure that they observed the law in respect of copyright. Contrary to the arguments put forward by the applicants, which had been allowed by the judge in the urgent procedure in the Myspace case, the court held initially that the marketing of advertising space did not permit the qualification of Dailymotion as a content editor, since the advertising was supplied by the users themselves. The court recalled nevertheless that, in its capacity as content host, Dailymotion’s liability was nevertheless involved, since Article 6-I-2 did not lay down any limitation on liability other than in those cases where the service providers “do not in fact have knowledge of the unlawful nature or of facts and circumstances indicating this nature”. The court held that the site should be considered as “having had knowledge of facts and circumstances allowing it to believe that unlawful videos were being put online. It therefore had to assume its liability without being able to place the blame on the users alone, since it deliberately provided them with the means of committing

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these acts". Thus "by accepting that a user of its service places a film online, the company Dailymotion made a mistake that incurred its civil liability by providing the said user with the means of infringing copyright", "where it was incumbent on the service to carry out an *a priori* check". The site was ordered to pay EUR 13,000 in damages to the producer and EUR 10,000 to the exclusive distributor of the film, and to post the operative part of the decision on its site. Thus this judgment, which has attracted a lot of attention, obliges video sharing sites to check in advance the content they offer. On the day following the court's decision, Dailymotion announced that it was setting up a filter system to prevent the broadcasting of videos infringing copyright, but the question remains as to whether this will be effective.

TGI de Paris (3e ch. sect. 2), 13 juillet 2007, C. Carion et Nord-Ouest Production c/ Dailymotion

Regional court of Paris (3rd chamber, 2nd section), 13 July 2007; C. Carion and Nord-Ouest Production v. Dailymotion

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