[FR] No Exception for Private Copying for Peer-to-peer Users

IRIS 2007-10:1/19

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The court of appeal in Aix en Provence, designated as the court for referral following cassation in the “Aurélien D.” case, has recently delivered its decision. Aurélien D., a student, was being prosecuted for having downloaded and copied 488 films from CD-ROMs that he had borrowed from friends. He had been discharged after judgements on the merits of the case (regional court in Rodez - see IRIS 2004-10: 10, and court of appeal in Montpellier - see IRIS 2005-4: 10) on the grounds that “the films at issue had only been for the private use of the defendant, and were not intended for collective use”. On 30 May 2006 the Court of Cassation overturned the appeal judgment, criticising the lack of response to the submissions of the plaintiffs that were claiming damages, claiming that, in order to be taken into account, the exception allowed for making a private copy assumed that the source was lawful (see IRIS 2006-7: 11). This question thus remained unanswered, particularly as the attempt by the legislator to make the downloading of protected works a minor offence has been censured by the Constitutional Council (see IRIS 2006-8: 13).

In the decision it delivered on 5 September 2007, the court for referral reached the following conclusion - the defendant could not exempt himself from liability by claiming the exception allowed for making a private copy provided for by Articles L. 122-5 1 and 2 of the Intellectual Property Code. Thus, by borrowing CD-ROMs from friends in order to copy them, the defendant "manifestly placed himself outside the family circle and the private use of the copy provided for in the legislation". The Court also clearly stated that the same applied to works that were copied and then made available to a wide public using peer-to-peer type software. In establishing the defendant's guilt, the court noted that he was a student in computer studies and was therefore bound to be particularly aware of the issues regarding royalties for intellectual works raised by making copies of these works onto media such as CD-ROMs, particularly by downloading them from the Internet. In addition to the payment of almost EUR 5,000 in damages to the plaintiff companies that were claiming damages, the court fined the defendant EUR 15,000 (of which EUR 12,000 was suspended) and ordered the confiscation of the disputed 488 CD-ROMs. The position adopted by the court was in line with the circular on 3 January 2007 from the Minister of Justice on the implementation of the criminal provisions of the DADVSI Act, a document addressed to judges, according to which “the exception allowed for making a private copy should not be permitted” in cases of unlawful downloading.

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Cour d'appel d'Aix en Provence, (5e ch.), 5 septembre 2007, Buena Vista Home entertainment et a. c/ Aurélien D .

http://www.juriscom.net/documents/caaixenprovence20070905.pdf

Court of appeal in Aix-en-Provence, (5th chamber), 5 September 2007, Buena Vista Home entertainment et al. v. Aurélien D.

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