[FR] Right of Reply Online Operational

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Although the right of reply “for any person named or designated in an online communication service” was instituted by Article 6 IV of the Act on Trust in the Digital Economy of 21 June 2004, the method for its application needed to be set out in a decree. This has only been adopted on 24 October 2007.

The text begins by defining the method whereby people can request to exercise their right of reply. Thus it is necessary for the applicant to indicate the references of the message, the conditions for public access to the online communication service, and - if it is mentioned - the name of the originator. The application must also indicate the contested passages and the content of the reply requested (Article 2). The text defines all the forms of online information to which the right of reply applies - texts, sounds and images. The reply requested may only take the form of a written document, however, whatever the type of message to which it relates. It may not be longer than the original message, and may not exceed 200 lines (Article 3). The decree specifies that the procedure may only be utilised if the users are able to express their observations directly because of the nature of the online service - chat, forum, etc (Article 1, paragraph 2). The text also sets out the methods for publishing the reply, “under conditions similar to those of the disputed message and presented as resulting from the exercise of the right of reply”. This must remain accessible for the same amount of time as the original article or message and be available to the public; the period of time may not be less than one day.

The decree has been awaited for some time, and has quickly made its appearance on the legal scene. For example, having been refused the right of reply further to the publication on the Internet site of UFC Que Choisir (an association for the defence of consumers’ rights) of two articles on insurance for property loans (one of which offered a link to another site in order to lodge a formal complaint), the two specifically named insurance companies referred the matter to the courts in Paris under the urgent procedure, on the basis of the decree of 24 October 2007. Arguing that the Internet site, which was the medium of the disputed publications, included a discussion forum that any Internet user could freely join, the defendants claimed that paragraph 2 of Article 1 of the decree prohibited the exercise of the right of reply. The judge sitting in the urgent procedure stated, however, that “this restriction should be interpreted very narrowly”. Thus if the disputed text appeared in the editorial part of the site, merely posting a message on the discussion forum did not, as far as the applicant was concerned, constitute

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a means of formulating the observations it wished to make about the text. Moreover, the defendants commented that neither the request to exercise the right of reply, nor the reply itself, contained an explicit indication of the disputed passages. The judge held that Article 2 of the decree required that anyone wanting to exercise the right of reply on the Internet should specify the original statements or give extracts from the disputed text, either by reproducing them in full or by identifying them with sufficient accuracy within the actual text. The judge concluded that, since the request for publication did not meet the requirements of the decree, failure to publish the reply contained in the request within three days of receipt therefore did not constitute a manifestly unlawful nuisance.

Décret n° 2007-1527 du 24 octobre 2007, Journal officiel du 26 octobre 2007

http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MCCT0758750D

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