[FR] Liability of Video Share Sites – More Definite Jurisprudence

IRIS 2008-4:1/20

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The commercial court recently confirmed the trend in jurisprudence (see IRIS 2007-8: 10) in favour of qualifying video share sites as hosts, although it continued to find that they were liable if they put protected works on-line with no filtering, despite having received notification from the economic beneficiaries.

In the case at issue, Google Vidéo had been summoned in counterfeit proceedings by the producers of the film “Le monde selon Bush”, following the presence on the site of three links allowing the film to be downloaded or viewed (streaming). Despite a notification from the economic beneficiaries on 6 October 2006 of the unlawful nature of the links, the film could still be accessed on the disputed site, as proved by certified reports drawn up in November 2006 and March, April and May 2007.

Initially, the court did not qualify Google as an editor. The fact that the company organises the presentation of the site, offers Internet users the means of listing and presenting their videos, and makes storage conditional on acceptance of general terms and conditions does not confer on it control over the content and the Internet users. Moreover, Google does not take any initiative in the choice and presentation of the works – by operating the Google Vidéo service the company is therefore acting as a host, according to the court. Under Article 6-1-2 of the Act of 21 June 2004 on confidence in the digital economy, the host’s civil liability cannot be invoked because of the activities of, or the information stored at the request of a party using its services if the host did not actually have knowledge of their unlawful nature or of facts or circumstances indicating this nature or if, as soon as they had such knowledge, they took prompt action to withdraw the data or make it impossible to access. However, in the opinion of the court, this limitation of the host’s liability, which only applies in the cases specifically listed, should be interpreted restrictively so that, more particularly, there is no infringement of third-party rights. Thus “while the host is not bound by an obligation of general supervision, it is bound by an obligation of “special” supervision once it becomes aware of the unlawful nature of content”. And, since Google had been informed by letter on 6 October 2006 of the unlawfulness of showing the film on its Google Vidéo site, the court found that it should have barred access to the film from that date, which evidently it did not do, thereby infringing third-party rights. Furthermore, the court held that Google could not claim that it was technically impossible to carry out such supervision, since it had increasingly sophisticated

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means at its disposal for identifying content that was declared unlawful; these were used more particularly to eliminate content of a paedophile nature and content supporting crimes against humanity or inciting hatred. The company was found guilty of counterfeiting and consequently ordered to pay EUR 150,000 in damages to the beneficiaries.

Tribunal de commerce de Paris (8e ch.), 20 février 2008, Flach Film et autres c/ Google France, Google Inc.

Commercial court of Paris (8th chamber), 20 February 2008, Flach Film et al. vs. Google France, Google Inc.

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