[FR] Regional Court in Paris Confirms Host Status of Dailymotion

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On 15 April 2008, the 3rd chamber of the Regional Court in Paris delivered two noted decisions in two very similar disputes (even down to the wording of the judgments), between comedians (Jean-Yves Lafesse; Omar et Fred) and Dailymotion, on the grounds that extracts from videos of their sketches had been made available on its video-sharing platform. Once again (see IRIS 2008-4: 13 and IRIS plus 2008-5) the question arose concerning the uncertainty of the border between editor and host and of the scheme of liability of video-sharing sites in the event of the unlawful exploitation of audiovisual works.

In the present case, the court held that Dailymotion was not an editor and acknowledged its liability as host, on the basis of Article 6-3-1 of the Act on Confidence in the Digital Economy (LCEN) of 21 June 2004, which states that "an editorial choice is only constituted by the choice of the content of files put on line". It was therefore of no importance that Dailymotion imposed technical limitations on posting videos or offering downloading, organised the site (with a classification in categories), and even sold advertising space. Indeed – and contrary to the position adopted by other courts – the judges found in the cases in question that "the LCEN does not prohibit hosts earning money by selling advertising space". As a result, "it has not been demonstrated that the content of the videos sent by Internet users had been monitored according to choices laid down by the site's own editing committee", and Dailymotion therefore had the status of a host. The Internet users alone were *a priori* responsible for the content of the videos offered on its site and it had absolutely no obligation to exert prior control. Recalling the wording of Article 6-5 of the LCEN, the Court nevertheless stated in the Lafesse judgment that, to appreciate the "manifestly unlawful" nature of the videos put on line, Dailymotion needed to analyse the "likelihood of infringement of copyright and the ownership of the rights" in the light of the documents submitted by the applicants. This submission of documents by the beneficiaries, who considered themselves to be the victims of copyright infringement, under Article 6-5, "has the effect of creating to the hosts' advantage a new obligation to check content against which infringement of copyright is claimed". They must therefore take prompt action to have the infringement stopped, without waiting for a court decision. Because this had not been done for 20 sequences of the disputed Jean-Yves Lafesse DVD, the platform was ordered to pay him EUR 5000 for infringement of his moral rights. On the other hand, the Court stayed judgment in respect of his pecuniary rights because of a dispute

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between economic beneficiaries on their ownership of the rights. In the case of “Omar et Fred”, as the comedians had refused to provide a detailed list of the disputed videos before the summons was issued, the Court held that they could not claim that Dailymotion was liable because they had not taken prompt action, and had not given Dailymotion effective means by which to appreciate the manifestly unlawful nature of the videos; their application was therefore rejected.

TGI de Paris (3e ch. 1re sect.), 15 avril 2008, Jean-Yves Lambert dit Lafesse et a. c/ Dailymotion

http://www.juriscom.net/documents/tgiparis20080415-Lafesse.pdf

Regional Court of Paris (3rd chamber, 1st section), 15 April 2008, Jean-Yves Lambert, known as “Lafesse” et al. v. Dailymotion

TGI de Paris (3e ch. 1re sect.), M. Omar X. et M. Fred Y. c/ Dailymotion

Regional Court of Paris (3rd chamber, 1st section), Mr X. Omar and Mr Y. Fred v. Dailymotion

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