[FR] Decision by the Court of Cassation in the “Mulholland Drive” Case

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The *Mulholland Drive* case, which came up regularly in the debate on the lawfulness of downloading as a private copy and turned the spotlight on the issues involved in this new type of behaviour, has reached its epilogue. The court of cassation delivered its decision on 19 June, putting an end to the quarrel over the nature of the private copy – it is not a right but a “lawful exception to the principle prohibiting any reproduction in full or in part of a protected work made without the consent of the copyright holder”. Thus the exception of the private copy may be claimed as defence in proceedings for infringement of copyright, but since it is not a right it cannot constitute grounds for bringing a case in the principal. The court added that the impossibility of making a private copy of a DVD because of a technical protective device did not constitute an essential feature of the good, on which the prior information by the producer/vendor was made compulsory by Article L. 111-1 of the Consumer Protection Code, and therefore turned down the appeal brought by the user of the DVD, who was backed in the initial proceedings by a consumer association.

Cour de Cassation, civ.1, 19 juin 2008, M. Perquin, UFC Que choisir c/ Soc. Universal Pictures Vidéo France et a.

Court of cassation, civil 1, 19 June 2008, Mr Perquin, consumer association UFC Que Choisir vs. the company Universal Pictures Vidéo France et al.

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