[FR] On-line Digital Video Recorder Forced to Suspend its Activity

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Aurélie Courtinat

Wizzgo, the service for recording television programmes on-line, has suffered a number of legal blows, the most recent of which has been financially fatal. With successive cases brought against it by M6 and W9 (see IRIS 2008-9: 9), France Télévisions (6 and 14 November 2008), NT1 (10 November 2008) and TF1 (14 November 2008), the service was first refused the benefit of the exception for making a private copy and prohibited from reproducing or making available the programmes of the channels in question, before the court held that the reproduction of the channels' logos constituted brand counterfeiting and unfair competition, as the channels concerned also offer similar television-on-demand services. Right from the first case, Wizzgo felt that such decisions could compromise the viability of its service, and had M6 and W9 summoned to appear so that a court could acknowledge the lawfulness of its activity. TF1 and NT1 joined forces with the other channels in calling on the courts to order Wizzgo to pay them compensation for the prejudice they had suffered as a result of the service Wizzgo provided to their viewers. The regional court in Paris adopted the arguments developed by the judge in the urgent proceedings and held that the service was unlawful, and went on to find against Wizzgo on the grounds of infringement of copyright. On the basis of Article L. 331-1-3 of the *Code de la Propriété Intellectuelle* (Intellectual Property Code- CPI) resulting from the Act of 29 October 1977 intended to combat counterfeiting, which allows an estimate of damages awarded in compensation for the infringement of copyright on the basis of the amount of the fee that the rightsholder would have received if the counterfeiter had applied for authorisation to use the work (in the present case, the equivalent of EUR 1.60 euro per programme recorded), the court ordered the on-line recording service to pay such a punitive amount of compensation that it would be forced to close down. Wizzgo will in fact have to pay M6 and W9 compensation of 240,478 euros each, and has been obliged by the court to supply the necessary elements for determining any compensation that may be due to the parties joined to the case (TF1 and NT1). As a result, Wizzgo announced that it was suspending its site pending possible appeal against the judgment.

TGI de Paris (3e ch. 1e sect.), 25 novembre 2008, Wizzgo c. M6, W9, TF1 et NT1

http://www.juriscom.net/documents/tgiparis20081125-Wizzgo.pdf

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Regional Court of Paris (1st section of 3rd chamber), 25 November 2008: Wizzgo v M6, W9, TF1 and NT1

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