[FR] Decision of the Paris Court of Appeal on the Liability of Video-sharing Platforms

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On 6 May 2009 the court of appeal in Paris delivered a notable decision on the first dispute to be submitted to the French courts on the liability of video-sharing platforms. The director and the producer of the film “Joyeux Noël” claimed that the company Dailymotion allowed the film to be viewed using streaming technology despite having been sent formal notice to withdraw the film. The regional court of Paris had found in favour of the rightsholders on 13 July 2007 and held the company Dailymotion, categorised as a host service provider, guilty of infringement of copyright in respect of the film (see IRIS 2007-8: 10). The company appealed, claiming that - as a technical service provider - it had properly complied with its obligations under the Act of 21 June 2004 on confidence in the digital economy (LCEN) and that it had not been able to actually view the disputed content before the case was brought. The court of appeal of Paris, in a closely argued judgment, upheld the categorisation of the site as a host, but overturned the issue of its liability.

The court began by analysing the nature of the service offered by Dailymotion, as the rightsholders of the film held that the company’s activity in fact constituted content editing and that in consequence its liability was fully and automatically incurred. However, the court held that neither Dailymotion’s re-encoding of videos to make them compatible with their viewing interface, nor the setting up of presentation frames and tools for classifying content, nor even the operation of the site by selling advertising space justified its categorisation as an editor of an on-line public communication service within the meaning of the LCEN. The company was therefore right in claiming the status of a technical intermediary within the meaning of Article 6-I-2 of the LCEN, which gives rise to limited liability. According to this text, the civil liability of technical service providers cannot be invoked if they “did not have actual knowledge of the unlawful nature of the content or if, once they did have such knowledge, they took prompt action to withdraw the data or render access to it impossible”. The judgment was therefore upheld on this point. The court went on to examine the matter of the liability incurred by Dailymotion, recalling the terms of Article 6-I-5 of the LCEN, which lists the elements that must be notified to technical service providers for them to be presumed to have knowledge of the disputed facts. In the present case, the rightsholders had sent the company formal notice for the immediate withdrawal of the film available on the platform in disregard of their copyright entitlement, which Dailymotion had said it had done, although it was not able to guarantee the

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total deletion of the content since it had not been informed of the URL address of the Internet page in question; the company invited the rightsholders to use the speedy procedure available on the site using the “This video may cause offence” link. The court found that the information contained in the formal notice did not fully meet the demands of Article 6-I-5 of the LCEN in terms of the obligation to describe and locate the disputed facts held against the other party. The rightsholders had in fact omitted to attach the process-server’s reports that they had had drawn up and which would have provided the operator with all the elements necessary for identifying the disputed content. Nor had they used the description procedure that Dailymotion had proposed. The court found that the company had not truly had knowledge of the disputed content until the summons was served and that thereafter it was not established that the film had been hosted on the site. Therefore its civil liability could not be invoked, and in consequence the applications on the grounds of infringement of copyright and unfair competition were dismissed. The judgment was therefore overturned on this point and the rightsholders’ application rejected. They have announced their intention to apply to the court of cassation, whose position on all these matters is keenly awaited.

Cour d’appel de Paris (4 e ch. Sect. A), 6 mai 2009, Dailymotion c. C. Carion, Sté Nord-Ouest production et autre

Court of appeal of Paris (4 th chamber, section A), 6 May 2009, Dailymotion vs. C. Carion, the company Nord-Ouest Production et al.

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