[FR] Catch-up TV and Deep Hyperlinks

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The group M6 operates the free catch-up TV services M6 Replay and W9 Replay, which can be accessed on dedicated Internet sites. The services allow on-demand viewing of certain programmes after they have been shown on the two channels without the possibility of recording them. Having noted that a company edited two sites that listed and made available to the public all the audiovisual programmes available as catch-up TV, including those of M6 and W9, using deep hyperlinks, the group had the company summoned on the grounds of violation of the general conditions for using the M6 Replay and W9 Replay services, infringement of their exploitation rights, infringement of the rights of the producer of a database, unfair competition and parasitic activities. M6's complaint included the fact that the sites at issue directed Internet users not to the home page of these catch-up TV sites but to a window for viewing the programme selected, which meant that the viewing request was sent by the Internet user not to the rightsholder but to the company editing the two disputed sites.

In a judgment delivered on 18 June 2010, the regional court of Paris noted that, according to Article L. 122-2 of the Intellectual Property Code, representation consists of the communication of the work to the public by any means. By making the programmes of the two catch-up TV services available to the public, the defendant party was in no way communicating the works itself, but was merely assisting the viewer by indicating a link for viewing the works directly on the television channels' Internet sites - it was the sites themselves that carried out the act of representation within the meaning of the text. M6's application on the grounds of infringement of copyright was therefore rejected. The group also claimed infringement of its rights in its capacity as producer of a database. The court acknowledged that catch-up television services did indeed constitute databases, but stated that although the M6 group had demonstrated that it had incurred expense in developing and maintaining the two sites, this did not justify allowing substantial investments for constituting, checking or presenting the databases. The applications on this point were therefore rejected. Lastly, the television group claimed that the defendant party had committed acts of unfair competition as well as parasitic activities. M6 and W9 were indeed suffering from the diversion of Internet users who were no longer visiting M6 Web's home page to watch the programmes, whereas they were alone in bearing the investment and other costs necessary for such showing. In dismissing the application, the court held that, in order to achieve entitlement to compensation, proceedings on the grounds of unfair competition or parasitic activity needed to be based on facts

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other than those invoked in respect of infringement of intellectual copyright, which was not the case here. All M6's applications were therefore rejected. The defendant company had in fact entered a cross-claim in order to obtain compensation for the prejudice it had suffered in terms of defamation. It claimed that M6 Web had sent a letter to media agencies, which were its main clients, in which it was stated that the defendant company was making television programmes available without the agreement of the channels broadcasting them. The court held that circulating such correspondence was wrongful as it discredited the company by casting doubt on the legality of its activity. M6 was therefore ordered to pay 30,000 EUR in compensation for the prejudice suffered.

Tgi de Paris (3e ch. 2e sect.), 18 juin 2010, M6 Web et a. c. SBDS

Regional court of Paris (3rd chamber, 2nd section), 18 June 2010, M6 Web et al. v SBDS

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