[ES] Telecinco v. YouTube

IRIS 2010-10:1/27

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In June 2008, the private Spanish television broadcaster, Telecinco, filed a lawsuit before the courts in Madrid against YouTube for illegally and without authorisation communicating to the public content produced by Telecinco.

YouTube retorted that it merely acts as an intermediary between users uploading videos and users receiving them and does not control the content.

On 20 September 2010, Madrid's Mercantile Court number 7 rejected the lawsuit filed by Telecinco against the Internet video service provider YouTube, in which it was held that the content included on the latter's website did not infringe any third party copyrights.

In this way, the court decision recognised that, legally speaking, YouTube is a content hosting intermediary and, therefore, cannot be forced to exert ex ante control over videos uploaded by users. In practice, the court decision presumes that the rightsholders are the ones who must identify their content on the site and individually notify YouTube about videos that infringe their copyrights, in order to allow YouTube to withdraw such material.

In addition, YouTube pointed out during the proceedings that it offers copyright holders "Content ID", a tool that allows them to protect their content automatically by blocking videos from being uploaded to the platform, if they so wish. It is worth highlighting that more than a thousand communications groups around the world use this tool in an effective way, including major television broadcasters on a global level.

The decision states that from now on it will be Telecinco's responsibility to track the content uploaded onto YouTube. This procedure/selection, shall not be "massive or unconditioned", but will occur on a case by case basis as it is possible that many videos may be just "fragments of information not protected by copyright law or mere parodies of Telecinco's programmes, which are not protected either".

This is not the first victory for YouTube against television broadcasters trying to protect their content. In June 2010 YouTube emerged unscathed from another claim by Viacom-Paramount and MTV for infringement of copyright (see IRIS 2010-8: 1/46).

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http://www.elpais.com/elpaismedia/ultimahora/media/201009/23/tecnologia/20100923elpeputec_1_Pes_PDF.pdf

Decision 289/2010 of Mercantile Court of Madrid no. 7, 20 September 2010

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