[FR] Liability of Video-sharing Platforms - First Judgement of Court of Cassation

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In a judgment of 17 February 2010, the Court of Cassation ruled on the issue of the liability of video-sharing platforms for the first time. The case is well known: the director and producer of the film “Joyeux Noël” had taken legal action against Dailymotion, accusing the platform of allowing the film to be viewed using streaming technology despite having been sent formal notice to withdraw the film. The regional court in 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 (see IRIS 2007-8/17). The Paris court of appeal had confirmed the categorisation of the site as a host, which meant it should benefit from the limited liability described in Article 6 of the Act of 21 June 2004, but had overturned the decision on its liability (see IRIS 2009-6/18). The rightsholders therefore took their case to the Court of Cassation.

They began by arguing that only technical providers of data storage services were entitled to claim limited liability and that, contrary to the appeal court’s ruling, companies such as Dailymotion, which managed, organised and operated an on-line public communication service and made money by selling advertising space, had no right to such special dispensation. The Court of Cassation rejected this argument, stating that, on the contrary, the operations carried out by Dailymotion (re-encoding videos in order to make them compatible with the viewing interface, and formatting them in order to make optimal use of the server’s storage capacity by limiting the size of uploaded files) were technical operations that formed part of the role of a host and in no way enabled the host to select the content that was published online. Furthermore, Dailymotion’s setting up of presentation frames and tools for classifying content were justified by the need, also forming part of a host’s function, to rationalise the organisation of the service and to facilitate user access to it, without imposing any particular choice in terms of the content to be uploaded. Finally, the Court added that the use of the site to generate income through the sale of advertising space did not mean that the service had any influence on uploaded content. The Court of Cassation therefore held that the appeal court had correctly concluded that Dailymotion had been entitled to claim the status of a technical intermediary within the meaning of Article 6-I-2 of the Act of 21 June 2004. In their second argument, the rightsholders disputed the appeal court’s judgment that the formal notice that they had sent to Dailymotion, informing it that their film had been posted on the platform, had not provided all the information necessary for it to withdraw the film. The Court of Cassation

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pointed out that the notice should include all the elements described in Article 6.I.5 of the Act of 21 June 2004. The appeal court had noted that the rightsholders had omitted to attach the process-server's reports that they had drawn up and which would have provided Dailymotion with all the elements necessary for identifying the disputed content. The Court of Cassation ruled that the appeal court had therefore been entitled to conclude that Dailymotion could not be accused of failing to meet its obligation to withdraw or block access to the unlawful content immediately, since it had not truly had knowledge of the disputed content until the summons had been served. This ruling appears to have settled the debate on video platform hosts and editors once and for all.

Cour de cassation (1re chambre civile), 17 février 2011, Nord-Ouest Production, C. Carion et UGC Images c. Dailymotion

http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/165_17_19033.html

Court of Cassation (1st civil chamber), 17 February 2011, Nord-Ouest Production, C. Carion and UGC Images v Dailymotion

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