[FR] Court of Cassation Upholds Acquittal of Advertisers on Peer-to-peer Sites

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In a judgment delivered on 11 January 2011, the court of cassation rejected the appeal brought by the director and producers of the successful film Les Choristes ('The Choir') against the judgment of the Paris court of appeal delivered on 25 March 2009. In doing so the court of cassation upheld the acquittal of the advertisers (Free, SFR, Voyages-SNCF, etc.,) on a number of peer-to-peer sites which had been taken to court by the rightsholders on the grounds of complicity in infringement of copyright. The rightsholders accused them of participating in the financing of illegal sites (see IRIS 2006-8/21). In its judgment delivered on 25 March 2009, the court of appeal had noted that the advertisers were not in any way Internet advertising professionals, and indeed had had to call on the services of advertising agencies, which in turn had had to call on the services of sub-contractors (see IRIS 2009-5/22). A media agency that calls on the services of a multimedia advertising agency buys "a volume of space" on dozens and hundreds of sites in a package, although the advertiser is never given a list of the sites on which its advertising appears. The court of appeal had emphasised that the use of adware could not be excluded; this allowed the random, automatic posting of advertising messages according to the profile of the Internet user, with no intervention and more specifically no deliberate human action, regardless of the site on which they appeared. Article 121-7 of the Criminal Code sanctions deliberate complicity and the intentional element has to be proven for the offence of complicity (in infringing copyright in the present case) to be constituted.

The court of cassation therefore found that the court of appeal had "with neither insufficiency nor contradiction (…) set out the reasons for considering that there was no proof that the accused had committed the alleged offences on the basis of the elements submitted for its examination".

Cour de cassation (chambre criminelle), 11 janvier 2011, Galatée Films et a. c. AOL France et a.

http://www.legalis.net/spip.php?article3094

Court of cassation (criminal chamber), 11 January 2011, Galatée Films et al. v. AOL France et al.

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