[FR] What Scheme of Liability Applies to Google Vidéo?

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Google has suffered a serious setback, with the court of appeal in Paris delivering four judgments on 14 January 2011 ordering the major Internet player to pay more than EUR 500,000 in damages to various film production companies. These companies had complained that their films were being broadcast in their entirety free of charge via Google Vidéo (the films at issue were two documentaries on the Clearstream case, another on the Armenian genocide, and the feature-length film 'Mondovino'), even though their withdrawal had previously been requested. Although Google had withdrawn them, the films were accessible again a few days later, via new links. In the initial proceedings, the regional court in Paris had rejected the application of the rightsholders, finding that the activity of Google in the context of the operation of Google Vidéo constituted a storage activity with a view to making content available to the public within the meaning of Article 6.I.2 of the Act of 21 June 2004, that Google had taken the necessary steps for withdrawal promptly, and that its liability was therefore not incurred in its capacity as host. On the other hand, the court ordered Google to refrain from reproducing or communicating to the public all or part of the films and/or referencing the links allowing them to be viewed or downloaded. Google disagreed with this decision, which it considered to be impossible to apply in practice, and contested the requirement of an obligation of particular and future supervision of content already notified and withdrawn. For their part, on appeal, the rightsholders continued to refuse to qualify Google as a host, as they felt that the various services offered by Google Vidéo went far beyond those of a mere search engine and data storage facility. Recalling the provisions of Article 6.I.2 of the 2004 Act and Recital 42 of EC Directive 2000/31 on electronic commerce, the court of appeal sought to determine whether the role carried out by Google was neutral in relation to the information it stored. On completing an examination of the various technical resources and services proposed (commentaries, video classification tools, advertising links, etc.), the court confirmed the absence of active control on the part of Google over the accessible content. The court therefore concluded that both in its activities as a service provider storing videos received from third parties and in its referencing service (search engine), the role of Google met the requirements of neutrality set out in the European Directive: subject to limiting its activity as a technical intermediary to hosting services exclusively, it was able to benefit from the specific liability scheme resulting from Article 6.I.2 referred to above. The court then went on to confirm that as the beneficiaries had notified unlawful content to Google, it should have not only

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withdrawn the videos at issue but also implemented every possible technical means of preventing access to them. Having failed to prevent the films notified as unlawful being put on line again, Google's civil liability was invoked under common law in respect of infringement of copyright.

The court nevertheless dealt separately with the cases in which, by using the search engine function, Internet users could see links to other sites that made the disputed videos available - these could be viewed by clicking on Google Vidéo once a window had been opened. In this case, the court held that Google was implementing an active function enabling it to monopolise the content stored on third-party sites in order to represent them directly on its pages for use by its own customers, separate from those of the third-party sites. In doing so, Google was exceeding both its referencing service and the limits of the hosting activity, and its liability for such acts should be appreciated not in the light of Article 6.I.2 of the 2004 Act but on the basis of common law. The court held that copyright was indeed being infringed, and overturned the judgment that had not held Google liable in this respect. The Internet giant has announced that it has already appealed to the court of cassation to have these judgments overturned.

Cour d'appel de Paris (pôle 5, chambre 2), 14 janvier 2011 - Google Inc. c. Bac Films, The factory et Canal Plus (4 arrêts dans le même sens)

Court of appeal in Paris (Section 5, Chamber 2), 14 January 2011 - Google Inc. v Bac Films, The Factory, and Canal Plus (4 judgments on the same topic)

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