# [FR] Penalty for Film on Video Platform Infringing Copyright

**IRIS 2012-6:1/17**

*Amélie Blocman*
*Légipresse*

On 9 May 2012, the court of appeal in Paris delivered its decision in the dispute between the producers of the film *Sheitan* and the video-sharing platform Dailymotion regarding five videos, corresponding to the entire film divided into five parts, that could be viewed on the platform using streaming despite an order issued by the regional court in Paris demanding communication of data allowing identification of the person who had broken the law by putting the videos on-line.

On 11 June 2010, the regional court in Paris had found the platform guilty of infringing copyright and had fined it EUR 15,000 in damages (see IRIS 2010-7/19), after noting its status as a host, which the film's producers refused to accept. The court did not however accept the company's argument that it was covered by the limited liability scheme instituted by Article 6-I-2 of the Act of 21 June 2004 (LCEN), since it had not "promptly" withdrawn the disputed content when it was reported by the producers. It should be recalled that according to this text the liability of natural or legal persons whose activity includes storing content may only be invoked "if (...) as soon as they have knowledge of the unlawful nature of stored content they take prompt action to withdraw the data or bar access to it". The platform had appealed against the conviction. In its decision on 9 May 2012, the court noted that, contrary to the initial proceedings, and in the light of jurisprudence that was now well established, the parties were agreed in considering that Dailymotion met this definition of a host, since it provided the public with a service for storing audiovisual content (in the present case, personal programmes) supplied by the persons using the service, without being able to select the content. The parties therefore agreed that Dailymotion's liability was indeed incurred in the light of the provisions laid down specifically in the LCEN regarding the place where storage was provided. They did not agree, however, on whether the platform had fulfilled its obligations with regard to its status. Recalling these obligations, the court was to deal with the case in two stages. Firstly, in accordance with Art. 6-I-2 of the LCEN, it examined whether the platform had been "prompt" in withdrawing the content that infringed intellectual property rights as soon as it had been made aware of its existence. On this point, the court noted that the platform had written to the lawyers of one of the plaintiff production companies on the day the order was notified, providing all the data and statistics concerning the five videos at issue (date they were put on-line, IP address of their initiator and statistics). The decision added that there was

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therefore no justification in claiming “not without bad faith” that the elements of the order were insufficient to allow it to identify and locate the disputed content. Indeed it had allowed more than three months to pass after the date on which it had knowledge of the disputed content before withdrawing it, thereby failing in the obligation of prompt withdrawal incumbent on a storage provider.

Secondly, the court demonstrated that the platform had failed in its obligation under the LCEN to prevent further access on the host platform to content previously withdrawn. Contrary to Dailymotion’s defence claims, the excerpts of the film available on the site after the initial withdrawal could not be considered as different content from the content that had been withdrawn. They therefore constituted a repeat infringement of the intellectual property rights in the same work.

Although the court confirmed Dailymotion’s liability, it found that the prejudice suffered by the applicant production companies had been under-estimated in the initial proceedings. Noting that the unlawful content had not been withdrawn until three months after notification, that it had been reinstated after having been withdrawn, and that it had been viewed more than 12,000 times by the time it was withdrawn, the court ordered Dailymotion to pay each of the production companies EUR 30,000 in damages (compared with EUR 15,000 ordered in the initial proceedings).

### *Cour d’appel de Paris (pôle 5, ch. 1), 9 mai 2012 - Dailymotion c. SARL 120 Films et La chauve-souris*

*Paris court of appeal (section 5, chamber 1), 9 May 2012 - Dailymotion v. 120 Films Sàrl and La Chauve-Souris*

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