[RU] Social Network VKontakte Fined for Piracy

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On 25 May 2012, the Thirteen Arbitrage Appeal Court of St. Petersburg (commercial court of second instance) upheld a ruling of the court of first instance that found the popular social network VKontakte liable for a violation of the intellectual property rights of two record label companies (S.B.A. Music Publishing and S.B.A. Production). A fine of RUB 210,000 (approximately EUR 5,000) was imposed upon VKontakte for the act of placing on the social network's website and making available to the public the music and phonograms of 17 songs of the Russian pop groups "Maksim" and "Infinity".

The act of posting content without the permission of the rightsholders (i.e., illegally) on the website vkontakte.ru was not denied by either the plaintiffs or the defendant, however the Court did not get a clear answer as to whether it was VKontakte's administration or a user of the social network who technically posted the counterfeit content. So far the central question of the court proceedings has become whether VKontakte's administration was liable for making illegal content available to the public (according to the Russian Civil Code's definitions, was it VKontakte's fault) or not.

The Court of Appeal reasoned its decision according to the guiding principles of the highest arbitrage instance - the Presidium of the Supreme Arbitrage Court - that were formulated in its Resolution of 1 November 2011. The latter decision introduced key points to be taken into consideration by the ordinary arbitrage courts when making decisions concerning the liability of Internet video hosting websites.

The Court of Appeal put forward several basic positions in favour of finding the VKontakte administration at fault in this case. Firstly, the Court stated that the content was available to the general public, but not to specified groups of persons, as the defendant pleaded. The paid registration procedure, which is mandatory for vkontakte.ru users, is available and accessible to any representative of the general public and does not establish any specific target audiences or closed groups as being consumers of the content. Secondly, the Court dealt with the content uploading policy of the VKontakte website. Although due to user agreement provisions the participants of the online community vkontakte.ru are duly informed about their obligation to ensure the legality of the content that they upload, VKontakte provides a number of technical facilities that

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allow the uploading of counterfeit content. The existence of such facilities was considered to be proof of VKontakte's fault. The court also ruled that the existence of the above-mentioned facilities makes the website vkontakte.ru more preferable for advertising companies posting advertising materials on the World Wide Web and so far provides potential growth for Vkontakte's profits. The court emphasised that the existence of benefits (even potential ones) arising from the illegal use of intellectual property was to be considered as evidence of Vkontakte's fault.

Finally, the Court of Appeal underlined that VKontakte's reaction to the plaintiffs' demands to cease unlawful activities was passive and not effective. The defendant claimed that no information confirming that the plaintiffs were genuine rightsholders was provided in their official claims as delivered to VKontakte. The Court rejected this position and argued that the defendant had had opportunities to check the legal status of the plaintiffs (for instance, by requesting copies of license agreements and other necessary documents). Moreover, the defendant could not be uninformed of the illegality of the content, because the issue of dissemination of the counterfeit content on the VKontakte social network became a sufficient part of public discussion, including in the mass media.

The Decision of Thirteen Arbitrage Appeal Court of St. Petersburg may be appealed in the courts of higher instance.

Постановление Тринадцатого арбитражного апелляционного суда 25 мая 2012 года по делу № А56-57884/2010

http://13aas.arbitr.ru/cases/cdoc?docnd=783707480&nd=783010190&prefix=&numdeal=&yeardeal=&fld_12=&fld_14=&fld_16=&fld_140=&pagedoc=1

Decision of 25 May 2012 Thirteen Arbitrage Appeal Court of 25 May 2012 (Case No A56-57884/2010)

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