[FR] Court of Cassation Considers “Google Suggest” Could Facilitate Infringement of Music Producers’ Rights

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In an important judgment delivered on 12 July 2012, the Court of Cassation found that the Google Suggest semi-automatic search tool made it possible to infringe copyright and/or neighbouring rights, by directing Internet users’ searches towards services that offer illegal downloading. In the case at issue, the French national syndicate of music producers (Syndicat National des Producteurs de Musique - SNEP) had noted that when an Internet user entered the name of a performer or an album in Google, the browser’s “Suggest” tool systematically associated the name with on-line services allowing piracy, such as Torrent, Megaupload and Rapidshare. Under the terms of Article L 336-2 of the Intellectual Property Code resulting from the HADOPI Act of 12 June 2009, “Where an infringement of copyright or a neighbouring right is caused by the content of an on-line service of communication to the public,… the regional court may order any measures such as to prevent or put an end to an infringement of the copyright or neighbouring right in respect of any person likely to contribute to remedying the situation” without taking into account any liability and without demanding that the measure should be totally effective. Deliberating under the urgent procedure, the initial court and the court of appeal in Paris had dismissed the applications for Google Suggest to be ordered to delete the terms Torrent, Megaupload and Rapidshare from its proposed suggestions. The court of appeal had noted that the illegal content was not accessible on the browser’s own site and held that the browser could not be held responsible for illegal downloading by Internet users. It had also found that deleting the suggestion would not in fact prevent illegal downloading. In a judgment delivered on 12 July, the Court of Cassation overturned the appeal judgment. It noted that the court of appeal had not drawn the correct conclusions from its findings. Firstly, by flagging key words that were suggested according to the number of searches, Google Suggest systematically directed Internet users towards illegal downloading sites, which meant that the tool provided the means of infringing copyright and neighbouring rights. The Court of Cassation also found that “the measures requested were aimed at preventing or putting an end to such infringement by stopping Google’s companies from automatically associating key words with the terms used in searches; the companies could thereby contribute to remedying the situation by making it more difficult to find illegal sites, although it was not possible to achieve total effectiveness.”

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In its decision, the Court of Cassation considered that the browser's function facilitated the infringement of music producers' rights, and that the measure requested was such as to prevent or put a stop to such infringements, even if it was only partially effective. It should be recalled that Google has been filtering terms linked with piracy on its Suggest tool since the beginning of 2011.

Cour de cassation (1re ch. civ.), 12 juillet 2012 - SNEP c. Google

Court of Cassation (1st civil chamber), 12 July 2012 - SNEP v. Google

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