[FR] Court of Cassation Recalls that there is no General Obligation to Supervise the Network

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Amélie Blocman
Légipresse

On 12 July 2012, the first civil chamber of the Court of Cassation delivered three important judgments, overturning the judgment of the court of appeal in Paris which had found that Google Images and Google Vidéo had not taken the necessary steps to make it impossible to put images and films that infringed copyright back on line. The Court of Cassation held that this was tantamount to requiring Google to observe a general obligation of supervision and demanding, out of proportion to the desired aim, the setting up of a blocking arrangement for an unlimited period of time.

The Court of Cassation was being called upon to deliberate in disputes between rightsholders (producers of the documentary films *Les Dissimulateurs* and *L'Affaire Clearstream*, and a photographer) and Google, after it had been noted that there were links on a number of sites accessible via Google Images and Google Vidéo that gave Internet users access free of charge to both the full version of the films, either as streaming or to download, and the disputed photograph. The court of appeal had found that, by enabling Internet users to view the disputed videos and photograph that had been put on-line on third-party sites directly on the pages of the sites Google Vidéo France and Google Images, Google was guilty of infringing copyright, for which reparation was required. The court also held that Google had not taken the necessary steps to ensure that it was not possible to put the films and photograph that had already been flagged as illegal back on-line. The company could not therefore claim the limitation of liability provided for in Article 6. I. 2 of the Act of 21 June 2004 and had therefore incurred its liability in this respect. Google contested the court of appeal's decisions, and applied to the Court of Cassation. The Court began by emphasising that Google was using links to the other sites to offer Internet users the possibility of viewing the films on its own Google Vidéo site and the photograph on Google Images. The court of appeal had been right in deducing from this that Google was using an active function that enabled it to capture content stored on third-party sites so that it could be represented directly on its own site, for the use of its own clients. The court of appeal, noting that Google was reproducing the film on its sites in this way without the authorisation of the rightsholders, which was characteristic of infringement of copyright, found that Google was going beyond the implementation of a straightforward technical function, legally justifying its decision.

The Court of Cassation however then went on to overturn and cancel, in application of provisions I.2, I.5 and I.7 of Article 6 of the LCEN of 21 June 2004, the appeal judgments inasmuch as they refused the benefit of these provisions and stated that the applicant companies had not “adopted the necessary measures for preventing the items being put on line again”, regardless of whether the films and the photograph had been accessible from addresses that were different to those indicated in the initial reports. The Court of Cassation held that imposing this decision on Google as the referencing service provider in order to prevent the disputed films and photograph being put on line again, without the company having been sent another proper notification, even though this was required by the Act, was tantamount to subjecting the company “to a general obligation of supervision of the images and films it stored, and an obligation to seek out illegal reproductions, and demanding, out of proportion to the desired aim, that it set up a blocking arrangement for an unlimited period of time.”