[FR] Absence of Liability on the Part of an Internet Site Offering Access to Catch-up TV Programmes via Deep Hypertext Links

IRIS 2013-1:1/19

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In a decision delivered on 31 October 2012 the Court of Cassation rejected the appeal by the M6 group against the decision of the court of appeal rejecting all its applications in its dispute with the company that operates the TV-replay.fr site, which is an on-line guide to catch-up TV sites (see IRIS 2011-6/17). The M6 group, which operates a number of channels including M6 and W9 and their catch-up TV services M6replay and W9replay, complained that TV-replay.fr was giving direct access to its programmes by means of deep hypertext links without first directing viewers to the home pages of M6replay and W9replay. M6 claimed this violated the general conditions for using its catch-up TV services and infringed its rights as the originator and producer of a database, and felt that the behaviour of TV-replay.fr constituted unfair competition and free-riding.

The Court of Cassation firstly approved the court of appeal's acceptance that merely putting on-line the general conditions for using the M6 and W9 sites, which could be accessed by means of a half-concealed tab in the lower part of the screen, was not enough to place the users of the services offered under contractual obligation, and that the letter of formal notice the M6 group had sent to the defendant company, which edited the TV-replay.fr site, requiring it to observe the general conditions for use did not give rise to any contractual obligation on the part of the latter to comply with them.

The Court of Cassation also found that the court of appeal had been right to state that the M6 group's production companies, which held the rights for the programmes broadcast, could not collectively claim the infringement of undifferentiated rights, and that they did not establish which of them held the rights for the works the defendant company was making accessible on its TV-replay.fr site after they had been broadcast on television. The Court also rejected the argument of infringement of the rights of the M6 group in its capacity as producer of databases. Lastly, the decision notes that users of the disputed site were directed to the programme sought, which was presented in a navigation window on the channels' catch-up TV sites giving access to all the functions of the sites and to their advertising banners. The court of appeal found that the complaint, based on the circumvention of the normal navigation process, was unfounded and that no proof of any free-riding activity had been provided, and used this as the legal grounds for justifying its decision. The Court of Cassation's

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decision puts an end to the dispute, which nevertheless raises the question of the means available to rightsholders to oppose access to their content via hypertext links.

Cour de cassation (1re ch. civ.), 31 octobre 2012 - Société Métropole Télévision

Court of Cassation (1st civil chamber), 31 October 2012 - the company Métropole Télévision

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