[ES] Civil Provincial Court of Madrid Clears YouTube of Liability

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The *Audiencia Provincial Civil* (Civil Provincial Court) of Madrid ruled on 31 January 2014 that YouTube was not liable for content uploaded by users that infringed copyright (case no. 11/2014). In the first instance, the Madrid *Juzgado de lo Mercantil* (Commercial Court) had, on 20 September 2010, rejected an action for damages against YouTube brought by TV broadcaster Telecinco, which had claimed that its copyright had been breached when its film material had been illegally posted on YouTube (see IRIS 2010-10/27). The broadcaster's appeal against this decision has now been rejected by the Civil Provincial Court.

The first-instance court had ruled that YouTube was not liable because the Google subsidiary was acting as a hosting provider and had no control over the content that users placed online via its sites. According to the case law of the Court of Justice of the European Union, the applicability of the E-Commerce Directive (2000/31/EC) depended on whether the Internet Service Provider (ISP) only played a passive role by offering its service exclusively for use by its users. Telecinco considered that YouTube was operating as a content provider and was therefore playing more than a passive role. The plaintiff argued that this was demonstrated, for example, by the fact that YouTube had acquired various copyright licences and had actively intervened by publishing terms and conditions that all users had to accept. Its classification of the most popular videos in different categories also pointed to its active involvement in the content it provided. However, the court rejected these arguments and ruled that none of these factors represented active participation by YouTube. In particular, the acquisition of the licences mentioned did nothing to suggest that the portal operator was a sufficiently active participant in its service.

The plaintiff argued, in the alternative, that even if it was a passive service provider, the exceptions provided for in Articles 12 *et seq*. of the E-Commerce Directive regarding the liability of service providers did not apply to YouTube if it was actually aware that copyright infringements were being committed. Since YouTube had been informed of the infringements, it could no longer plead ignorance. The court also dismissed this argument. The existence of some kind of notification to a portal operator did not, on its own, prove that the latter was aware of infringements, since it could be inaccurate or incomplete. YouTube could not permanently monitor all uploaded videos. In this case, Telecinco's letters to

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YouTube did not contain sufficiently detailed information to enable YouTube to identify the content that had infringed the broadcaster's rights.

The plaintiff can make a final appeal against the ruling to the Supreme Court.

Sentencia n° 11/2014, Audiencia Provincial Civil de Madrid, 14 de enero de 2014

http://blog.garrigues.com/wp-content/uploads/2014/02/Sentencia-YouTube-Telecinco.pdf

Judgment n° 11/2014, Civil Provincial Court of Madrid, 14 January 2014

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