[FR] LFP has broadcasting of Leagues 1 and 2 matches on a streaming site stopped

IRIS 2015-5:1/12

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On 19 March 2015, the regional court (tribunal de grande instance - TGI) of Paris delivered a judgment, which is a promising development for holders of rights involving sports events in their battle against on-line video platforms and streaming sites. The case involved the French professional football league (Ligue de Football Professionnel - LFP) which had granted exclusive live audiovisual rights for the League 1 and 2 championships (in return for 748.5 million euros per season for the period from 2016 to 2020) to the pay channels Canal Plus and beIN Sport, and for subsequent availability on the YouTube, Dailymotion and L'Equipe internet sites. The LFP, noting that the Spanish internet site ‘rojadirecta’ was making it possible to view live broadcasts of sports events free of charge, offering a calendar with a series of hypertext links allowing live or slightly delayed viewing of matches, including those organised by the LFP, had contacted the site, calling on it to remove the disputed links and to do its utmost to prevent their being put on-line. In the absence of any reaction from site, the LFP summoned ‘rojadirecta’ to appear in court. Its main argument was that the site’s operator had the capacity of editor with an active role in providing internet users with the means of fraudulently viewing the rightsholders’ protected content, using the ‘transclusion’ technique which gave internet users the impression that the video was being broadcast from its own site. In its defence, the operator claimed it was merely a host, and therefore covered by the limited liability scheme provided for in Article 6 of the LCEN. Accordingly, it argued that it could not be held responsible for internet users posting hypertext links that made it possible to view the matches and that it was therefore not at fault under Article 1382 of the Civil Code.

The court, however, found that the League was entitled to take action on the basis of Article 1382 of the Civil Code, since it had a substantial pecuniary interest in preserving the exclusive nature of the sale of its rights to its commercial partners at a high price, without unfair competition from free-of-charge broadcasting. It also recalled that Article 6-1-2 of the LCEN of 21 June 2014 defined ‘host’ as being the opposite of an ‘editor’ which, by analogy with the editor of an audiovisual media service, was defined as the party with “editorial control” over content which made original content available. The court pointed out that a single site could be covered by two separate qualifications, and observed that technically the company ‘rojadirecta’ appeared to be a host, particularly since it operated a “forum” which did no more than list a number of links to short videos (match summaries) sent in by internet users. Beyond this

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technical aspect, however, the company operating the disputed site was in fact (knowingly, intentionally and as its main activity) making a selection or editorial choice on a specific theme, namely topical sport events in target areas that were constantly updated, with a programme and an appropriate search engine, in such a way that anyone could - easily and free of charge - have access to protected content (in this case the current LFP matches, live and in their entirety) which normally is reserved for a limited audience of pay-TV subscribers. It therefore could not claim the benefit of the limited liability granted to hosts by the LCEN. The court therefore upheld the LFP's application for the site to be made to delete and stop any hypertext links on its site that made it possible to view LFP competition matches live or with a slight delay (except for links providing access to earlier matches which had already been broadcast) and any page listing such links, subject to payment of a fine in the event of any delay. The court also ordered internet users to be notified of the ban on showing LFP matches live or with a slight delay by means of an insert visible when they accessed the site, to be shown for a period of fifteen days. As regards the prejudice suffered, whereas the LFP claimed this amounted to more than 8 million euros for the six matches the disputed site had broadcast live in 2014, the court noted that the LFP had not furnished proof of any loss in respect of the amount charged to its commercial partners for assigning live broadcasting rights as a result of the links making it possible to watch certain matches free of charge being put on-line; neither had it furnished proof of any complaint made by these partners that there had been a drop in the number of paying subscribers as a result of the links being put on-line. The court awarded the LFP 100 000 euros for the moral prejudice suffered, i.e. loss of credibility in the eyes of its partners.

TGI de Paris (5e ch. 2e sect.), 19 mars 2015 - Ligue de football professionnel c/ Puerto 80 Project

Paris regional court (TGI) (5th chamber, 2nd section), 19 March 2015 - Ligue de Football Professionnel v. Puerto 80 Project

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