[FR] Unauthorised Reproduction and Representation of Protected Works on Internet

IRIS 1997-6:1/2

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After much discussion of doctrine, it would appear that judges are now to be responsible for the tricky task of deciding on the terms of application of copyright on Internet in France. To recap, it was first decided on 14 August 1996 in a widely-covered case on infringement of musical copyright that copyright applied on networks. In the present case, the commercial court judge, also deliberating in an urgent matter, prohibits and penalises the unauthorised reproduction and representation on an Internet site of a computer programme protected by copyright. The present decision becomes particularly interesting when it is set alongside this original land-mark judgment. Two aspects deserve some consideration: an author's economic rights on Internet, and the penalties for infringing such rights. We will deal with them in turn.

As regards economic rights, it is hardly surprising that the judge accepted that the right of reproduction had been infringed. The logic is now understood and undeniable: it is obvious that the digitalisation of a work on a site - in this case a computer programme - constitutes a reproduction within the meaning of copyright. However, we must look more closely at the question of infringement of the right of representation which is accepted here. The order in an urgent matter of 14 August 1996 was rather disappointing, as it remained very discreet on the infringement of the right of representation, merely referring to a "positive act of broadcasting". Yet the right of representation is indeed concerned as soon as a work protected by copyright is presented on Internet, as the work is communicated to a worldwide public of Internauts, without the active or passive role of the person who had the initiative of proposing the work making any difference to the actual fact of infringement of copyright.

Lastly, this order is also interesting for the penalty it applies to infringement of copyright on Internet. Although infringement of copyright is not specifically mentioned in the decision, that is indeed what it is about and in passing we should emphasise the active role of the Agence pour la Protection des Programmes (Programme Protection Agency) in reporting infringements. And, apart from the use of coercion to end the infringement of monopoly, it is interesting to note that the judge decided a type of model penalty by recommending a cybernetic legal announcement - the offender has been ordered to present a text on the first page of its server and to offer a hyperlink text on its site enabling visitors to explore the Agency's site, where the application of

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copyright on Internet is explained.

Tribunal de commerce de Paris, réf. 3 mars 1997 - SARL Ordinateur Expresse c/SARL Accès et solutions Internet

Paris Commercial Court (Tribunal de Commerce de Paris), sitting in urgent matters on 3 March 1997, SARL Ordinateur Expresse v. SARL Accès et solutions Internet

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