[FR] Court of Cassation upholds court decision against creator of illegal eMule downloading site

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The founder of the Internet site eMule Paradise, one of the most popular downloading sites in France at the time, was prosecuted for having proposed and managed a catalogue of counterfeited films, television series and cartoons between 2005 and 2007, and - having provided access to its site via links and indications - making it possible to install and parameter eMule's illegal downloading software. Presentations of the films available for downloading were also available on the Internet site at issue; these were updated constantly. Over a period of two years, these activities generated at least EUR 416,638 of undeclared income. The site's founder was found guilty by the criminal court in 2015 of infringement of copyright in respect of 7,713 creative works and videograms and complicity in infringing copyright. He was also found guilty of making available to the public software that was manifestly intended to make protected works available to the public without authorisation, an offence covered by Article L. 335-2-1 of the French intellectual property code (Code de la Propriété Intellectuelle - CPI). Upholding the judgment, the court of appeal sentenced the site's founder to fourteen months' imprisonment (suspended) and payment of damages to the other parties, and confiscated the material at issue, whereupon the party concerned lodged an appeal with the Court of Cassation.

By a decision delivered on 27 February 2018, the Court of Cassation firstly upheld the court of appeal's finding the party guilty of infringing copyright by reproducing a set of film covers without authorisation. Having noted that the facts had been established by means of a search, during which the police had found a large number of files containing the covers on a CD-ROM bearing as its title the name of the disputed site, the court of appeal was thus able to determine that it was not possible to consider that the covers were merely for personal use. The court of appeal had already been right in finding that the party concerned was guilty of infringing copyright in respect of more than 7,000 protected works and videograms. Exercising its sovereign power, the court had been able to appreciate the original nature of the creative works in the light of the elements of proof debated in court in the presence of the parties.

The Court of Cassation also noted that the court of appeal, in upholding the offence covered by Article L. 335-2-1 of the CPI, had stated that the access available to the public on the disputed eMule software site was manifestly

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intended to make protected works and objects selected by the site available to the public. Although it did not store the eMule software, the site included an e-Mule sub-file on its homepage, providing public access to the equivalent of a guide for parametering and using the software. This was manifestly intended to be used for the unauthorised downloading of protected films and software. The Court of Cassation held that any service communicating protected works to the public on-line without having obtained the required authorisations or making available any software intended for the purpose was covered by the provisions of Article L. 335-2-1 of the CPI. The court of appeal had justified its decision by holding that the defendant should be convicted on the charge of complicity in counterfeiting works and related rights and that the interested party, by making the litigious site available to the public, both by inciting and providing aid and assistance, facilitated the infringement of copyright in the form of unlawful downloads by Internet users.

On the other hand, regarding the applications made by the SACEM (the collective rights management company which was also party to the case), the Court of Cassation found that the court of appeal had been wrong to dismiss the method for assessing the material prejudice that the SACEM was claiming, on the grounds that the figures used by the various parties to the case were uncertain and contradictory. The court of appeal had given no explanations as to the criteria that ought to be taken into consideration and had not assessed the compensation due to a party whose moral rights in respect of a creative work had been infringed. Because there was no justification of the decision on this point, the appeal judgment was overturned on this point only. All the remaining provisions were upheld.

Cour de cassation (ch. crim.), 27 février 2018 - Vincent X. c/ SACEM

Court of Cassation (criminal chamber), 27 February 2018 - Vincent X. v. SACEM

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