[FR] Court of Cassation rules on deep links and audiovisual communication company's neighbouring rights

IRIS 2019-9:1/14

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In a judgment of 4 July 2019, the Court of Cassation drew a line under the intellectual property element of the dispute between public broadcaster France Télévisions and Playmédia, a company that live-streams television programmes on its website (playtv.fr) and receives most of its income from advertising.

In 2016, Playmédia was ordered by the Paris Appeal Court to pay EUR 200 000 to France Télévisions for infringing its “neighbouring rights” and EUR 150 000 on the grounds of unfair competition for allowing access to its playtv.fr website to programmes broadcast by France Télévisions on its own Pluzz site using deep links and “transclusion” technology without the company’s authorisation. Transclusion involves dividing a web page into several frames and displaying in one of them, through so-called “inline linking”, an element of another site while concealing its original environment. The links that Playmédia created therefore did not direct the user to the Pluzz site (on which the programmes could be watched), but rather enabled viewers on the playtv.fr site to access specific works directly and to watch them on the site after viewing an advertisement inserted by Playmédia.

France Télévisions argued that, from 20 November 2014 onwards, it was its neighbouring rights as an audiovisual communication company (as protected by the second paragraph of Article 3 of Directive 2001/29/EC) that had been infringed, and not its copyright. As the Appeal Court had stated, Article 3(2) of the Directive did not prevent national regulations extending broadcasters’ exclusive right to cover acts of communication to the public, which could include the live transmission of sports events on the Internet through the insertion on a website of clickable links through which users could access the live transmission on another site.

Article L. 216-1 of the Intellectual Property Code gives audiovisual communication companies the right to authorise the reproduction and broadcasting of their programmes. The Court of Cassation therefore shared the Appeal Court’s view that France Télévisions, as an audiovisual communication company, had the exclusive right to authorise making its programmes and the works distributed on its Pluzz site available to the public online.

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It also ruled that the Appeal Court had identified acts of unfair competition that were distinct from those concerning the live broadcast of programmes that had been sanctioned for copyright infringement. The appeal was therefore dismissed and the Paris Appeal Court's ruling was upheld.

Cour de cassation (1re ch. civ.), 4 juillet 2019, France Télévisions c/ Playmédia

https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/640_4_43087.html

Court of Cassation (1st civil chamber), 4 July 2019, France Télévisions v Playmédia

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