

Kluwer Copyright Blog

France: Google can be ordered to filter words linking to online piracy websites

Catherine Jasserand (Institute for Information Law (IViR)) · Monday, September 3rd, 2012



'According to the Supreme Court, through its service of Google Suggest, Google had not infringed any copyright but had provided the means to infringe copyright.'

In 2010 Google was sued by the French recording industry trade association (SNEP) for copyright and neighbouring right infringements via its service Google Suggest. The Court of First Instance and the Court of Appeal **both rejected** the claims. They found that Google had not infringed any copyright by suggesting websites to Internet users when they were typing their requests. Only the use of the files available on the suggested websites could have been infringing. The plaintiff had originally requested the Court of First Instance to issue an order against Google to stop and prevent further copyright infringements by filtering key words such as « Torrent », « Megaupload » and « Rapidshare ». On 12 July 2012, the Court of Cassation **overruled** the decision of the Court of Appeal and sent back the case to a different Court of Appeal (Versailles) to issue a new judgment in conformity with its ruling.

The Court of Cassation grounded its decision on Articles **L. 335-4** and **L. 336-2** of the French Intellectual Property Code (IPC). The first article defines the criminal offence of copyright infringement and the applicable penalties; the second article provides copyright holders with the possibility to request an injunction from the Court of First Instance to stop or prevent any copyright infringement. The injunction can be addressed against anyone (person, entity) likely to contribute to remedy it. The Court of Cassation considered that the Court of Appeal had not properly applied the provisions to the case. According to the Supreme Court, through its service of Google Suggest, Google had not infringed any copyright but had provided the means to infringe copyright. The Court also considered that the injunction was intended to avoid or put an end to the infringements by deletion of the automatic association of keywords with the words of a request. Google was able to contribute to solve the issue by making it more difficult for Internet users to find infringing websites.

The ruling of the Court stands in the last paragraph of the decision: it is concise but rather surprising. The Court first assesses the involvement of Google regarding copyright infringements:

logically and as the Court of Appeal had already established it, Google did not infringe copyright. However the Court of Cassation goes a step further in its reasoning and states that Google was offering the means to infringe copyright (implying that Google was facilitating copyright infringement). It is hard to understand how the Court of Cassation can base its ruling on Article L. 335-4 of the IPC. That article only covers cases of copyright infringement and not other situations such as the provisions of means that can be used to commit copyright infringement. The Court of Cassation then considers that the request of injunction against Google was justified since Google was able to contribute to stop or prevent the infringements by filtering litigious words. The Court adds that the system of filtering does not need to be completely efficient! It is worthwhile to remind here (and again) that Article L. 336-5 has been highly **criticized** for being too imprecise. The provision is not only badly written (what does the expression “someone likely to contribute to remedy” mean?) but also potentially dangerous (because of its large spectrum). Last but not least, since the Court of Cassation **recognized** on the same day that online providers could not be subject to a general obligation of monitoring (and thus filtering) on the basis of the law implementing the e-commerce Directive, there is a risk that copyright holders will try to obtain broad filtering orders on the ground of copyright infringement.

In any event, it will be interesting to see which consequences the Versailles Court of Appeal will draw from the Court of Cassation’s ruling and especially whether the judges will sentence Google for the provision of means to infringe copyright on the basis of Article L. 335-4 and if so, which reasoning they will follow...

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