

Kluwer Copyright Blog

The French police attempt to censor Yellow Vest protestors with Dirty Dancing's soundtrack

Luc Desaunettes (UCLouvain) · Thursday, April 8th, 2021

Until recently, the French police's handling of the yellow vest (*gilets jaunes*) demonstrations was 'only' criticized for excessive use of force (notably by the [UN Human Rights Council](#)). The "disproportionate" police behaviour was substantiated by extensive [video footage](#) recorded by protesters. To avoid videos of their agents' interventions being shared on social networks, however, the French police came up with an ingenious new weapon: upload filter censorship.

The story was originally reported in an [article](#) published by French newspaper *Liberation*. Last Saturday, a few yellow vest protestors gathered on the Champs-Élysées and the police intervened to scatter them, on the ground that it is forbidden to demonstrate in this location. When the police noticed that one of the demonstration participants was live broadcasting the scene via his cell phone, one of the officers started to share from his own phone the famous Dirty Dancing song 'Time of my Life' (at 1:10 in the video). An attempt to fight against the French police's reputation for toxic masculinity, you might wonder? The following dialogue however points to a completely different reality "Do you use music to soften the blow?" asks the person filming, "No. If you put this on social networks, you're going to have a little problem with the SACEM[1]" replies the police officer.

3 personnes verbalisées dont 1 juste pr un masque jaune ? On nage en plein délire !
Va-t-on être verbalisé aussi pour la couleur de notre slip! Les policiers lancent la musique pendant le live afin de le signaler pour le retirer! Ils ne savent plus quoi inventer! (Paris hier) pic.twitter.com/4X3NAnUnei

— Le Général? (@LE_GENERAL_FR) March 28, 2021

Even if not well understood or explained by the police officer, the underpinning idea is that the music captured and then diffused by the protester via social networks can be recognised by the platforms' upload filters, leading the video to be identified as content that infringes copyright law. As a result, the video might be blocked, or the live diffusion stopped. As the very fact that the

video is still available on Twitter demonstrates, however, this censorship practice is not entirely effective. This might be due to factual elements: the music shared by the policeman was not loud enough and is almost inaudible in the video, or it may be a result of the protestor doing the filming moving away from the scene – which was ultimately what the police were hoping for.

However, examples do exist where livestream diffusion of public events on platforms was interrupted because of music being played in the background and these highlight the danger that the deployment of these upload filter algorithms pose for freedom of expression. These algorithms could in fact end up blocking the diffusion of content which, even if it includes some IP protected elements (that are easy for the algorithm to recognise), is legitimate because it is covered by copyright limitations (which are very hard for algorithms to identify, since they require a contextual evaluation). Cases were reported of protesters' interviews from the Black Lives Matter movement being blocked because Marvin Gaye's 'let's get it on' song was playing in the background.

The use of music by the police to achieve this effect is alarming since, in this case, the blocking is not only an undesirable result of the algorithms' weakness to identify legitimate uses but is precisely targeted by state agents as a mean of censorship. This practice does not appear to be a novum – let's not give undue credit to the French police – since the fatherhood of this innovative approach belongs to the US police forces. However, as noted by Liberation's journalist, it is the first time that a police agent explicitly claims this link with copyright.

The risk of seeing these types of behaviour multiplying in the future can only increase with the implementation of Art. 17 DSM Directive. As a reminder, Art. 17 introduces a change of paradigm concerning platforms' liability by rendering 'online content-sharing providers' liable for copyright violation unless they can demonstrate that they "made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter" (Art. 17§4(b) DSM). This strengthening of liability, which is highly questionable due to the fundamental rights implication it entails and the legality of which is currently challenged before the Court of Justice, goes hand in hand with the risk of seeing platforms increasingly relying on upload filters to avoid liability. Consequently, the number of over-blocking cases could rise in the near future.

In an attempt to limit these adverse effects, Art. 17 DSM includes a specific provision aimed at securing the interest of users by stating that "the cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of works which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation" and that "Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services: (a) quotation, criticism, review; (b) use for the purpose of caricature, parody or pastiche". Member States are therefore called upon to play a role in avoiding the blocking of legitimate content. It is clear that the European legislator did not imagine that the Member States (or their agents) could themselves seek to use these over-blocking issues as a means of state censorship. If Art. 17 does not turn out to be annulled by the CJEU, it is to be hoped that the European Commission will be particularly attentive to this abuse of power and will put Member States under pressure to prohibit it. When contacted by the newspaper Liberation, the French police refused to make any comment concerning the video.

[1] The French collective rights management organisation for authors, composers and publishers of music.

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please subscribe [here](#).

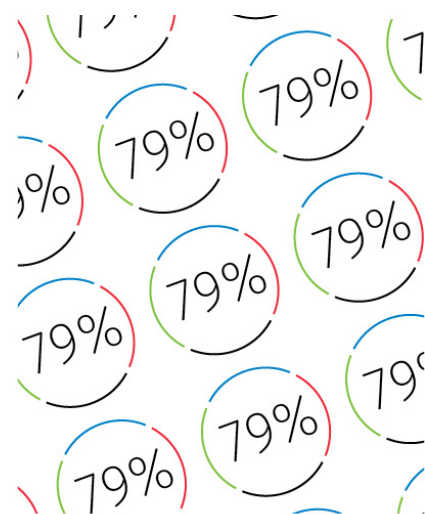
Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.
The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Thursday, April 8th, 2021 at 1:38 pm and is filed under [CDSM Directive](#), [Exceptions and Limitations](#), [France](#), [Infringement](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

