

NEW TECHNOLOGIES

February 2008

Liability of companies that host file-sharing websites – “Wikipedia”, a web host found not liable

After the file-sharing websites “DailyMotion” and “MySpace”, it was the turn of the famous online, free and collectively-compiled encyclopaedia “Wikipedia” to be hauled before French courts.

The “Wikipedia” encyclopaedia is owned by the US-based Wikimedia Foundation and is entirely compiled and updated by the online community. It thus develops as and when Internet users – who are identified by their web address – make contributions.

The “Wikipedia” case illustrates the confrontation between Internet users’ freedom of expression, through their ability to put content online, and the enforcement of other parties’ rights on the web. Thus, the issue arose of the liability of a file-sharing website host as regards defamatory and/or insulting articles which were compiled and put online by Internet users.

In the present case, an Internet user put online on Wikipedia an article which notably revealed the sexual orientation of three people.

Since the identity of the Internet user responsible for the article was unknown, the Wikimedia Foundation was issued a writ of summons to appear in a summary proceeding in which it was accused of defamation and to withdraw the litigious text from Wikipedia’s past records and invasion of privacy.

The plaintiffs notably asked for €60,000 as a preliminary award of damages and for notification of the precise contact details of the Internet user responsible for the article under dispute.

By means of an order in judgment of the summary application, dated 29 October 2007, the President of the *Tribunal de Grande Instance* of Paris (TGI – higher district court of first instance in Paris) dismissed all of the plaintiffs’ claims.

The *Tribunal de Grande Instance* of Paris specified that under the terms of Article 6.I.2 of the Law of 21 June 2004, the Act to boost Confidence in the Digital Economy (known as “LCEN”):

“Hosting service providers cannot be held civilly liable for information stored by them if they are not actually aware of the illicit nature thereof or of acts and circumstances which indicate such a nature.”

Moreover, the Court noted that Article 6.I.5 of the LCEN Act provides that knowledge of the act under dispute is deemed to occur when all of the details required for full awareness of the hosting service provider have been notified thereto, viz. (i) a description of the facts under dispute and their precise location, (ii) the grounds upon which the content must be withdrawn, including details of legal provisions and (iii) the fact-based arguments therefore.

In the absence of such details, the host can neither verify the validity of the withdrawal request, nor quickly effect withdrawal of the litigious content, unless such content seems to it to be manifestly illicit.

Yet, in the case in point, these main elements had not been forwarded by the plaintiffs who, moreover, had not provided conclusive proof that the Wikimedia Foundation had received the notification.

Given such circumstances, since it was not deemed to have been aware of the illicit nature of the article in question, the Wikimedia Foundation was not obligated to remove the details under dispute.

Thus, in contrast to the “DailyMotion” case (Paris TGI, 13 July 2007) and the “MySpace” case (Paris TGI, 22 June 2007), the issue of the civil liability of web hosts was evaluated not from the perspective of the nature of the activity of the website under dispute (file-sharing websites) but in relation to the plaintiffs’ compliance with the host notification procedure.

Regarding withdrawal of the remarks under dispute, the Court noted that since the litigious passages had been removed on the day of the proceedings, the application to have the details removed from the Wikipedia website’s past records was no longer relevant.

Finally, on the ground that the Wikimedia Foundation’s capacity was that of a hosting service, the plaintiffs applied to the Paris TGI for the precise identity of the Internet user to be notified to them.

In reply, the Wikimedia Foundation argued that the plaintiffs already had several data, such as the IP address of the contributor, which corresponds to the personal computer used, and that only the Internet service provider was in a position to provide the data which would enable the user to be fully identified.

On this point, the President of the Paris TGI merely specified, without drawing any conclusions, that there was no doubt that the Internet service provider could identify the person in

question and that it had not been proved that the Wikimedia Foundation had any other identification data regarding that person.

We should wait and see how the case is decided on the merits, which should help us to better understand the legal provisions which apply to hosts of file-sharing websites.

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