

Intellectual Property - France

Online TV replay and author rights

Contributed by [Hogan Lovells](#)

October 11 2010

A June 18 2010 decision of the Paris Court of First Instance has provided further guidance on the enforcement of performance and database rights under French law.

The French companies of the M6 Group run French television channels M6 and W9 and the television replay websites www.m6replay.fr and www.w9replay.fr, among others. M6 instituted proceedings for author rights infringement and unfair competition against SDBS Active, which had made available to the public on its websites www.totalvod.com and www.tv-replay.fr the programmes available on the two replay websites through deep hyperlinks.⁽¹⁾

In particular, M6 considered that the commercial use of the services of www.m6replay.fr and www.w9replay.fr by SDBS Active infringed its author rights (ie, its exclusive performance right) since SDBS Active was making available to the public M6's programmes without its authorisation.

The Paris Court of First Instance ruled that the redirection of an internet user to a window showing a television programme did not constitute performance of that television programme.

The court stated that a 'performance' consisted of the communication of a work to the public through any process. By making the M6 and W9 replay programmes available to the public, SBDS Active did not itself perform the works, but rather helped the public by providing a link to view them directly on the original websites, and not on its own websites. According to the court, performance was thus carried out by the websites www.m6replay.fr and www.w9replay.fr, and SDBS Active does not infringe M6's performance right.

Furthermore, the court ruled that by providing such links, SBDS Active did not breach M6's rights as a database producer. Indeed, it considered that the content of the two websites constituted a collection of audiovisual independent works. It agreed that M6 might have spent money on the development of such collection; however, it held that M6 had not provided evidence of making substantial investment in order to establish, verify and present the databases at issue. Hence, it could not enforce any rights therein.

Finally, the court ordered M6 to pay €30,000 in damages for disparagement, as during the proceedings M6 sent a letter to media agencies stating that "TVReplay is a website which redirects the websites of catch-up TV by using, often without the agreement of the TV channels, information about the programmes".

Thus, the court adopted a strict position regarding the enforcement of the performance and database rights under French law. Moreover, the decision serves as a reminder that parties to pending proceedings should not communicate during them, or should do so with the utmost care, as such communication can give rise to a successful claim for disparagement.

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Endnotes

(1) Deep hyperlinks redirect the internet user to one specific page of a website and not to its homepage, unlike normal hyperlinks

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