

Intellectual Property - France

Setting the criteria for jurisdiction in online infringement cases

Contributed by [Hogan Lovells](#)

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On December 14 2010 the Criminal Chamber of the Supreme Court rendered a decision regarding the criteria to determine the jurisdiction of French courts in case of online infringement of IP rights.

In the case at issue, a French rapper became aware that the German subsidiary of his former producer, Universal Music Entertainment GmbH, was still offering his songs for sale on its German website.

After requesting reports by the French Agency for the Protection of Programmes, he instituted infringement proceedings before the French courts based on his author rights.

The Paris Court of Appeal upheld the claim, confirming the decision of the court of first instance. It held that it had jurisdiction in cases of claimed online infringement if the online activities have been reported by the Agency of the Protection of Programmes. The rapper's songs belonged to the French music directory; further, on the website the song titles were not translated into German and it was not necessary to understand German to use the icons displayed. Therefore, the appeal court concluded that even if the website was written in German, it targeted the French public and consequently infringed the author's rights.

However, the Criminal Chamber of the Supreme Court disagreed with the Paris Court of Appeal. It said that the criteria mentioned did not show that the website run by Universal Music Entertainment GmbH was "oriented towards the French public". As a result, the Criminal Chamber annulled the decision.

Although the other chambers of the Supreme Court, in particular the Commercial Court, had previously considered the relevant public as being the sector of the public that is "attracted" by a website, this new decision seems to consider that the relevant public is the targeted public (ie, the public chosen by the editor of the website). However, the notion of "orientation" of the website was not defined by the Supreme Court.

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