

China – IFPI succeeds in 'illegal music download' case against China Yahoo!

In a recent decision in favour of the International Federation of Phonographic Industries (IFPI), the Beijing No. 2 Intermediate People's Court found China Yahoo! liable for copyright infringement because it provided links to sites it knew were permitting illegal music downloads. IFPI was represented by Lu Sheng, Rouse's associated law firm in China.

background

IFPI is an international industry body representing record companies, including many of the world's largest. China Yahoo! is a search engine operated by Alibaba, China's largest online commerce company, under licence from Yahoo! Inc. It allows users to locate and download deep-linked music files without payment.

IFPI notified China Yahoo! of its members' rights in hundreds of songs being illegally downloaded via links provided by China Yahoo!. China Yahoo! refused to remove the links from its site and IFPI commenced proceedings for copyright infringement on behalf of its members.

decision

The Court held China Yahoo! liable for copyright infringement on the ground that it had failed to remove the links in question following appropriate notification.

In reaching its decision, the Court broke new ground by relaxing the notice requirements that are imposed on rights owners by Art. 14 of the *Regulation for the Protection of Information Network Distribution Rights*. This Article obliges rights

owners to provide URLs in respect of all alleged infringements.

In relation to some of the illegal downloading brought to China Yahoo!'s attention, IFPI did provide URLs. In relation to other illegal downloading, however, it only provided details of the song concerned and proof of copyright ownership.

The Court held that in these cases too, appropriate notice had been given, and that China Yahoo! was obliged to take action. In reaching this conclusion, it relied on Art. 23 of the Regulation, which obliges search engines to take action where they 'know or ought to know' that infringing activity is taking place.

China Yahoo! has appealed the Court's decision.

comment

This decision will be welcomed by copyright owners in China. It sends a clear message to search engines that, once put on notice, they must take steps to remove links to offending material. The liberal approach taken by the Court to notice requirements should make it easier, in future, to gain the co-operation of search engines and have links to infringing material removed.

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