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# BAILIFFS ON THE INTERNET AND THE VALIDITY OF THEIR CERTIFIED REPORTS: LESSONS LEARNED FROM THE FRENCH AND BELGIAN COURTS

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## Introduction<sup>1</sup>

The internet has given rise to interesting considerations about proof in a legal context. The principles governing the burden of proof and the different kinds of evidence are well established, but must now take into account the specific issues relating to evidence in electronic format, including electronic evidence from the specific source of the internet. The burden of proof has therefore been modified in some jurisdictions, because it must now take into account elements that continue to change. This article is specifically designed to address two types of evidence: bailiff's certified reports and the use of judicial experts. Having recalled the principles related to the burden of proof, the incidence between those two types of evidence and the internet will be examined.

## The burden of proof

In his treatise on civil law, Professor Ghestin noted that the verb 'to prove', in its usual meaning, is about establishing that something is true. It is the same in the legal world, except that the judge must be convinced of the truth of an allegation: the legal evidence is therefore a judicial evidence.<sup>2</sup> The burden of proof traditionally rests upon the applicant. Under Belgian law, article 1315

of the Belgian Civil Code states that whomever seeks enforcement of an obligation must prove it.<sup>3</sup> The probative value of evidence presented by the applicant must carry the judge's conviction. F. Dumon stated that the probative value refers to the intensity of the evidence as recognized by the law, and which is binding upon the courts.<sup>4</sup>

The Belgian Supreme Court (Cour de Cassation/Hof van Cassatie) has held that a judge cannot limit himself to take into consideration allegations, probabilities or likelihoods to consider as established a fact the claimant has to prove.<sup>5</sup>

On the internet, the general principles of the law of evidence remain applicable.<sup>6</sup> However, the nature of the internet has required the applicant to ensure the sustainability of the evidence he intends to submit to the court. A bailiff's certified report is a solution that is frequently used.<sup>7</sup> However, besides the limitations related to its reception into national law, which is outside the scope of this article,<sup>8</sup> the bailiff's report itself can be challenged. In this regard, some lessons can be learned from the French courts.

## Challenging a bailiff's certified report

In the continental countries that have been influenced by the Napoleonic codifications, the use of witness

<sup>1</sup> This article is based upon an article originally published by the authors as 'La validité des constats d'huissier relatifs à des sites internet', *RDTI* 2009, afl. 34, 47-57.

<sup>2</sup> J. GHESTIN, *Traité de droit civil. Introduction générale*, 4ème éd., Paris, L.G.D.J., 1994; Joachim Meese and Johan Vandendriessche, 'Belgium' pp 76 – 77 in Stephen Mason, general editor, *International Electronic Evidence* (British Institute of International and Comparative Law, 2008).

<sup>3</sup> See in this regard, H. DE PAGE, *Traité élémentaire*

*de droit civil belge*, t. III, Bruxelles, Bruylant, 1967, p. 370; N. VERHEYDEN-JEANMART, *Droit de la preuve*, Bruxelles, Larcier 1991, pp. 37 and following.

<sup>4</sup> F. DUMON, « De la motivation des jugements et arrêts et de la foi due aux actes », *J.T.*, 1978, p. 486.

<sup>5</sup> *Cass.* 19 décembre 1963, *Pas.* 1964, p. 759 ; *Cass.* 3 mars 1978, *Pas.* 1978, p. 759 ; *Cass.* 14 novembre 1985, *Bull.* 1986, p. 307.

<sup>6</sup> *Voy. not. D.* MOUGENOT, « Droit de la preuve et technologies nouvelles. Synthèse et perspectives

», *Droit de la preuve*, coll. CUP, vol. 19, 1997, pp. 45 and following.

<sup>7</sup> See M. ISGOUR, « Le délit de presse sur Internet a-t-il un caractère continu? », note sous *Civ. Brux.* (réf.), 2 mars 2000, *A.M.*, 2001/4, p. 151, spéc. p. 154.

<sup>8</sup> Under Belgian Law, see T. VAN CANNEYT & C. VERDURE, « La validité des constats d'huissier relatifs à des sites Internet », *R.D.T.I.*, 2009, n°34, p. 47.

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statements is rather uncommon, and procedures in civil and commercial matters are in general based on written evidence, such as contracts and correspondence. There are, of course, numerous situations where there is no written evidence available to prove the existence of a certain fact. It is in these situations that the bailiff has been granted an important role. Under Belgian law, the court or a party to a proceedings may instruct him to report on purely material facts, it being understood that he may not issue any advice on the factual or legal consequences of the reported facts.<sup>9</sup>

Aside from the value attached to the quality of its author, the statements contained within a bailiff's certified report do not bind either the judge or the adversary who opposes it. More specifically, the opponent is permitted to challenge the report by all legal means, including presumptions and evidence, in order to contradict the bailiff's statement.<sup>10</sup> Aside from disputing the content of the report or its legal formalities, the report may also be challenged by focusing on the preliminary stage of the factual findings of the content on internet web sites. Indeed, findings on the internet require equipment (computer, modem, internet connection, etc), which all may give rise to technical difficulties and therefore have an effect on the probative value of the statement itself.

In this regard, French case law offers the possibility of highlighting the various pitfalls that a bailiff may face when he makes a statement about a web site. For instance, the judgment of 7 February 2007 of the Court of first instance of Mulhouse illustrates the challenges that a bailiff may face when drafting a certified report about a web site. In this case, the SA Group Philippe Bosc, newly named Viadom SAS Group, had sued its competitor MMT, owner of the website Shiva.fr, for unfair trade practices on the basis that the latter would

have included the names 'Philippe Bosc' and 'Bosc Office' in the source code of its web site. The record indicated that a bailiff searched the internet with the help of the search engine Google, using the search term 'Bosc Office', which brought up a number of terms including 'SHIVA, ménage, repassage à domicile, personnel de maison, femme de' and others such as 'Bosc jardinage bosc ménage bosc ménage bosc office bricolage domicile'. But the result referred to a search that led to the site [www.voileadventure.net](http://www.voileadventure.net) – a site that had no connection with the web site of the company MMT. Besides, the fact that the bailiff did not click the link and print the web page made the internet search incomplete and failed to appreciate the reality of the objections raised. Finally, the bailiff had not indicated whether he had emptied the cache, nor did he indicate whether he obtained access to the internet via a proxy server. Taking the above into account, the court considered that the lack of rigour in the preparation of the report denied it its probative value.<sup>11</sup>

Belgian case law is, in turn, silent on the subject. However, a preliminary decision of the Brussels' attachment judgment of 12 December 2007,<sup>12</sup> followed by a second final decision of 23 July 2009, deserves mentioning. The background of the case was as follows: a party had obtained a cessation order, which obliged the defendant to remove certain information from its web site by a certain date, and applied penalties if the removal was not effected. As the defendant had not removed the information on expiry of the deadline, the claimant brought the case before the court in order to obtain the right to execute the penalties. To demonstrate the failure of the defendant to comply with the order, the claimant had instructed a bailiff to draft a certified report in which he stated that the information was still available on the web site after the deadline had

<sup>9</sup> Article 516 of the Belgian Judicial Code.

<sup>10</sup> J. VAN COMPERNOLLE, « Astreinte », *Rép. not.*, t. XIII, liv. IV, Bruxelles, Larcier, 2006, n°92 and references quoted.

<sup>11</sup> T.G.I. Mulhouse, 7 février 2007, Groupe Philippe

Bosc / SARL MMT, R.G. n°05/00019, available on <http://www.legalis.net>. In this regard, see also G. TEISSONNIERE, « Etablir la preuve d'un fait sur Internet. Ou le délicat passage du virtuel au réel », *Revue Lamy droit de l'immatériel*, 2007, n°26, pp.

32 - 35.

<sup>12</sup> Civ. Brux. (saisies), 12 décembre 2007 et 23 juillet 2009, R.G. n°07/4112/A et 07/5308/A, not reported.

expired. The attachment judge was therefore confronted with the question of the validity of the statements made by a bailiff. In his original ruling of 12 December 2007, the attachment judge recognized that it was essential to be able to rely on the bailiff's findings, and stated that French case law, even if it could not simply be applied under Belgian law, raised a series of questions that could be relevant to the outcome of the litigation. The principles established by French case law may indeed find an echo not only in Belgian law, but also in other jurisdictions, due to the fact that the issues relate to the technical elements of the certified report, and not points of law.

Various technical elements related to obtaining access to web sites on the internet may allow the judge to assess the probative value of the bailiff's findings. The fact that one or more of these technical elements may not be covered in the certified report does not automatically annul the validity of the certified report. It may, however, cause a discussion about the context in which the findings were made and consequently raise doubts concerning the probative value of the report.<sup>13</sup>

For the purpose of this article, the technical elements that should be verified by the bailiff are considered in chronological order. Three categories have emerged: first, the hardware and software that will be used to obtain access to the internet; second, the internet connection itself and third, the use of the browser and the printing of the viewed pages. These are discussed below.

### The hardware and software

It is essential that the bailiff precisely describes the hardware she uses. It is necessary to mention the category and make of computer, and the type and version of operating system (Windows, Mac OS, Linux, etc). The bailiff will then launch an internet browser to view the disputed internet pages. Again, she must indicate the type of browser used and its version. This is essential, because some browsers may contain bugs when viewing web pages, particularly in the sites using Javascript codes. Depending on the browser and its version, it is possible that when viewing a page, only a blank page appears, or certain features may be unusable because the page code was misinterpreted by the browser, when, actually, the site was working

perfectly. The bailiff should also indicate the type and versions of the plug-ins used, such as developed by Adobe Flash. In order to limit the chances of encountering technical issues, it is appropriate that the bailiff uses a relatively recent computer with a regularly updated browser and up-to-date plug-ins. Finally, the bailiff should only proceed with findings from her own computer equipment, preferably located in her office, because it is the only way to guarantee that she is in sole control of the equipment and consequently the work environment. It also ensures independence of results and guarantees the fact that the equipment has not been interfered with by any other party.<sup>14</sup>

### The internet connection

The bailiff must connect to the internet. This requirement is essential if the bailiff is to carry out the investigation outside his office, on a computer that does not belong to him, even though this is not recommended in principle. Indeed, it is technically possible (see below, the issue of cache) to give the impression to the bailiff that he is viewing a live web site when, in fact, he is viewing a local, offline version. This would decrease the probative value of the statement to the extent that the content of sites visited in this way could be manipulated in advance. The bailiff must also pay attention to the presence of a proxy server and to his IP address in the content of his report.

### Proxy server

A proxy server is an intermediary server that carries out operations on behalf of a client seeking requests and resources from other servers. It often allows a user to accelerate the download time by acting as buffer memory and by storing frequently requested web pages. However, the web page that is viewed will not necessarily be the most recent version. As a result, if using a proxy server, the bailiff cannot be sure that he will actually obtain access to the current version of the web page he actually wishes to consult. In its judgment of 4 March 2003, the court of first instance of Paris has rightly underlined that the consultation of a web site via a proxy server may allow access to web pages which no longer exist on the web site at the date they are consulted.<sup>15</sup> It should be noted, however, that a proxy server will not allow access to web pages that have

<sup>13</sup> Some case law has already decided that a certified report will have no probative value if the technical elements are lacking (Comm. Nanterre (3ème ch.), 2 octobre 2007, Editions spéciales / Abo presse.

<sup>14</sup> While using his own equipment should allow the bailiff to be sure that no one interfered with his

computer locally (i.e. by physically obtaining access to the computer), it does of course not exclude that the computer has been interfered with via the internet.

<sup>15</sup> T.G.I. Paris, 4 mars 2003, Frédéric M. / Ziff Davis, ZDNET and others, available on

<http://www.legalis.net>. On this judgment, see P. KAMINA, « Où l' on précise les diligences techniques que droit satisfaire l' huissier à l' occasion d' un constat sur l' Internet », *Propriété industrielle*, 2007/7, comm. 66.

never existed, as the court of first instance of Paris wrongly stated.<sup>16</sup>

As a result, the reliability of a bailiff's certified report demonstrating the existence of certain content on a web site at a defined moment of time (for instance a report pursuant to a cessation claim, which aims at demonstrating the failure to comply with the order of cessation, thus enabling the right to penalty payments) may be questioned if the bailiff consulted the web site by way of a proxy server. In this respect, the court of first instance of Meaux noted in its judgment of 9 December 2004<sup>17</sup> that the bailiff had not mentioned whether the computer was connected to a proxy server or, more precisely, to a proxy server that did not contain a cache of the web pages. According to the court, this omission was essential, because it was now impossible to state categorically that when the bailiff consulted the web site, the information he saw was not a copy of a past version and was the current version of the web site. This judgment was confirmed by the Court of Appeal of Paris on 17 November 2006.<sup>18</sup> As this case illustrates, it is important to be able to establish exactly when information was collected by the bailiff. Net-Ultra, an internet access provider operating under the brand Netpratique, had noticed that when using the keyword « Netpratique » in the search engine Google, a commercial link (called « AdWords<sup>19</sup>») invited web surfers to visit a web site controlled by its competitor in France. To the extent that the Google AdWords service is a paid for commercial service, by which a party can link its web site to certain determined keywords,<sup>20</sup> Net-Ultra blamed its competitor AOL France of having committed counterfeit acts and unfair trade practices. The bailiff's report contained numerous screen shots of the search results on Google. The court decided that in the absence of any explanation about the circumstances of how they were taken, the screen shots were not sufficient to demonstrate the existence of counterfeit acts or unfair trade practices. As a result, the court concluded that the report lacked any probative value. This case law has since been confirmed in other similar cases.<sup>21</sup>

## IP address

On connecting to the internet, an internet service provider<sup>22</sup> will allocate the computer an IP address, a unique digital identification address of the computer. French case law has highlighted that it is essential to mention the IP address of the computer that was used to carry out the investigations of web sites. It is of fundamental importance in order to establish that at a certain moment in time, the computer using a certain IP address was actually connected to the web site in question. The court of first instance of Paris specified in its judgment of 4 March 2003 that the IP address permits the verification of the pages that have been consulted by means of the log-file of the server hosting the web site. This verification is impossible in the absence of a known IP address. According to the Celog expert's centre, it is an essential measure to assure the probative value of the certified report as well as the rights of defense.<sup>23</sup>

Bailiff's certified reports which did not mention the IP address have been dismissed as evidence by courts where the defendant was not able to verify whether the IP address of the computer used by the bailiff was indeed listed in the log-file of the server hosting the web site. They were therefore unable to demonstrate that the bailiff had indeed consulted the relevant web site. Certain authors are of the opinion that this requirement is redundant<sup>24</sup> because it would be sufficient that a bailiff makes a declaration within the certified report that he had visited a certain web site. Further, there is an argument to say that the log-files can easily be manipulated. The risk of manipulation is even higher when the server belongs to the adverse party and not to an independent party. This assertion should, however, be put in perspective. Although the bailiff can indeed declare in his certified report that he consulted a certain web site, the defendant must demonstrate that the bailiff had consulted the web site locally (off-line). This has nothing to do with questioning the good faith character of the bailiff's

<sup>16</sup> R. CARRAL & F. GUENIN, « Assurer l'efficacité des constats d'huissier sur le web : recommandations pratiques et juridiques », *Gaz. Pal.*, 2004/4, *doctr.*, p. 6.

<sup>17</sup> T.G.I. Meaux, 9 décembre 2004, *Net-Ultra / AOL France*.

<sup>18</sup> C.A. Paris (4<sup>ème</sup> ch.), 17 novembre 2006, *Net Ultra / AOL France*, *Juris-Data* n° 2006-317554 ; *Comm. com. électr.*, 2007, *comm.* 31, with a commentary by E. CAPRIOLI.

<sup>19</sup> For recent case law on the use of trademarks as AdWord by competitors, see *European Court of Justice*, 23 March 2010, *Google France Sarl and*

*others / Louis Vuitton Malletier SA and others* c-236/08 to c-238/08, available on <http://www.curia.europa.eu>.

<sup>20</sup> See also, T.G.I. Paris (réf.), 10 décembre 2009, *IM Production and others / E-Trend*.

<sup>21</sup> See also T.G.I. Mulhouse, 7 février 2007, *Revue Lamy droit de l'immatériel*, février 2007, n°794, *obs.* J.-B. Auroux.

<sup>22</sup> For an analysis of the different internet service providers, see C. VERDURE, « Les hébergeurs de sites Internet: victimes ou régulateurs de la société de l'information? », *D.C.C.R.*, 2005, n°68, p. 31, *spéc.*, pp. 34-37.

<sup>23</sup> T.G.I. Paris, 4 mars 2003, *Frédéric M. / Ziff Davis, ZDNET and others*.

<sup>24</sup> R. CARRAL & F. GUENIN, « Assurer l'efficacité des constats d'huissier sur le web : recommandations pratiques et juridiques », *Gaz. Pal.*, 2004/4, *doctr.*, p. 4. In relation to the functioning and importance of the IP address, see H. PESCHAUD, « Cyberpreuve de l'identité de l'auteur d'un courriel antisémite », *Travail et Protection sociale*, 2004/8, *étude* n°17.

declaration, but is aimed at demonstrating that the report is not based on an incorrect premise. The IP address is the only way of verifying with the internet service provider that the computer to which the address was attributed was indeed connected to the internet. It should be noted that the information relating to the IP address may also serve the interest of the claimant who instructed the bailiff, because it will, in principle, increase the probative value of the certified report he requested, as the IP address will be listed in the log-file.

### The internet browser

It is recommended that the bailiff indicates which internet browser was used to report the facts set out in the certified report. However, in addition, the bailiff must carry out a series of technical operations in relation to the internet browser so as to ensure the reliability of the reported facts.

### Cache memory, cookies and temporary files

First, it is important that the bailiff empties the cache memory of the browser. The cache memory is a temporary memory in which the computer locally saves Internet pages that the user has consulted during a session. When a user returns to those web pages, the computer will load them from the cache memory rather than from the original web site. As with the proxy server, the cache memory allows improved browsing speeds. Case law often refers to emptying « the cache », <sup>25</sup> thus this definition includes cookies and temporary files, which also need to be deleted.

The obligation to empty the cache memory and to delete cookies and other temporary files is essential in order for the bailiff's certified report to have probative value. Indeed, if the cache memory is not emptied, it is possible that a page containing the information which is the subject of the dispute still appears, whereas in fact it has already been removed from the live web site itself. Alternatively, to the extent that the cache memory is stored on the hard disk of the computer, there is a risk that a person could modify the content of the information that is stored there, then appeal to a bailiff in order to obtain a certified report of an infringement that does not exist. In that instance, the bailiff may assume that he is connected to the web site, whereas in reality he is actually viewing the manipulated cache

memory stored on the hard disk of the computer.<sup>26</sup> In this regard, in its judgment of 7 February 2007, the court of first instance of Mulhouse rejected the probative value of a certified report, among other reasons, because the bailiff did not specify whether he had emptied the cache memory of the computer used to establish the certified report.<sup>27</sup>

A further question in relation to the cache arises: whether the bailiff is required to empty the cache memory (and delete the cookies and temporary files) only once when he starts the session, or whether he is required to empty it after each web site he consults. In a judgment of 4 March 2003, the court of first instance of Paris decided that the bailiff's certified report had no probative value because, whilst the bailiff had mentioned emptying the cache, he had first consulted certain content on the pages of the web site <http://www.zdnet.fr>, and then had not specified whether he had emptied the cache again before viewing content on the web sites <http://www.cyberscope.tm.fr>, <http://www.quotidien.nouvelobs.com> and <http://www.wstore.fr>. As a result, the court held that it could not be excluded that the bailiff consulted the web pages of the first web site, <http://www.zdnet.fr> located in the cache of the computer, and not the last three web sites, which could explain why they were identical.<sup>28</sup> With respect, this reasoning cannot be followed. This is because it is based on a misunderstanding of how the cache memory operates.<sup>29</sup>

In a further case, the author of an article had issued a writ of summons against the holders of several web sites for reproducing copies of articles he had written without his consent on their web sites. According to the court, the possibility could not be excluded that the article of the author which the bailiff had consulted on the first web site, had not also been shown on the other web sites by the cache memory, if the latter had not been emptied after the consultation of the first web site. It is important to note, however, that the activation of the cache memory is linked to a web site (and its URL) and not to its content. Consequently, the cache function will only be activated if a user visits the same address again. If, on the other hand, the user visits a different web site, the cache function will not be activated, even if the content both web sites is identical.<sup>30</sup>

In a judgment of 14 November 2008, the court of first

<sup>25</sup> T.G.I. Paris, 4 mars 2003, Frédéric M. / Ziff Davis, ZDNET and others; T.G.I. Paris (réf.), 2 juillet 2007, R.G. n°07/54956, available on <http://www.juriscor.net/>.

<sup>26</sup> R. CARRAL & F. GUENIN, « Assurer l'efficacité des constats d'huissier sur le web : recommandations pratiques et juridiques », *Gaz. Pal.*, 2004/4, doctr.,

p. 5.

<sup>27</sup> T.G.I. Mulhouse, 7 février 2007, Groupe Philippe Bosc / SARL MMT, R.G. n°05/00019.

<sup>28</sup> T.G.I. Paris, 4 mars 2003, Frédéric M. / Ziff Davis, ZDNET and others.

<sup>29</sup> R. CARRAL & F. GUENIN, « Assurer l'efficacité des constats d'huissier sur le web : recommandations

pratiques et juridiques », *Gaz. Pal.*, 2004/4, doctr., p. 5.

<sup>30</sup> R. CARRAL & F. GUENIN, « Assurer l'efficacité des constats d'huissier sur le web : recommandations pratiques et juridiques », *Gaz. Pal.*, 2004/4, doctr., p. 5.

instance of Paris indicated that if screen shots annexed to a certified report revealed that a web page had been consulted during that session, then that did not contradict the bailiff's assertion that he had emptied the cache memory at the beginning of the session. As a result, the probative value of the content of the certified report was not affected, which, in this case, related to web pages that existed on the web site Youtube at the time the certified report was actually drafted, and not to versions of those pages from before the session, which would have been stored in the cache memory of the computer.<sup>31</sup> In relation to certified reports dealing with only one web site, the court decided that during the session a user does not have to empty the cache memory each time the web site has been consulted. The same reasoning can be used in the case mentioned above, where multiple web sites were consulted during one session. Even in such cases, emptying the cache memory once at the beginning of the session would suffice.

#### Screen shots, date and time

The nature of a web site means that it is difficult for a bailiff to precisely describe the entire content of a single web page. As a result, it is often better to print the pages which are the object of the certified report and include them as an annex to the certified report. In order to ensure the probative value of the print-outs, the bailiff will, however, need to take the following considerations into account.

First, following a judgment of the court of appeal of Paris dated 25 October 2006, it should be noted that only printing the web pages in question is acceptable.<sup>32</sup> According to the court, copying the web site and saving its content on a durable support,<sup>33</sup> would constitute the crime of « descriptive counterfeit ».

Secondly, in its judgment of 4 March 2003, the court of first instance of Paris indicated that in the absence of a print-out of the web page on the day the certified report was drafted, the origin and the date of the web pages in question cannot be determined with certainty. In the absence of such print-out, the court indicated that there was a high chance that the web pages that were consulted, in reality, on the proxy following consultations of the web site that predated the day the certified report was drafted.<sup>34</sup> In order to avoid any discussion about the documents printed, it is advisable to configure the web browser in such way that it also prints the URL and the date and time at the bottom of

the page.<sup>35</sup>

Finally, it is essential that the person who took the screen shots can be identified, ideally it should be the bailiff himself. In its judgment of 16 October 2009, the court of first instance of Paris indicated that besides the fact that certain technical elements had not been described in the certified report (absence of a description of the IT equipment used, absence of the date and time of use, etc), the screen shots were not confirmed by the bailiff as he had only described an e-mail that had been received by the person who had instructed him.<sup>36</sup>

#### Conclusion

Recourse to a bailiff's certified report often constitutes an adequate means to obtain the proof of a certain fact. This assertion is even more accurate when obtaining facts perpetrated on the internet, a fast moving and easily adaptable medium. The French case law has set out some clear beacons a bailiff should comply with when making statements about web sites to ensure the probative value of his certified report is maintained. These principles do not in themselves alter the law of evidence, as they relate to the technical environment in which the bailiff reports on certain facts, but bailiffs should take them into account to avoid being held liable. Finally, it is important to note that failing to comply with one or more of these principles will not automatically result in certified report having no probative value. It is for the court to determine, in its discretion, and in general on the basis of the conclusions of a judicial expert's report, the probative validity of the certified reports. To a certain extent, from a legal perspective, questions relating to the immaterial world are therefore « humanised ».

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<sup>31</sup> T.G.I. Paris (3ème ch.), 14 novembre 2008, Jean-Yves L. and others / Youtube and others.

<sup>32</sup> C.A. Paris (4ème ch.), 25 octobre 2006, Paul Marc H. / Léo J., Association française de généalogie.

<sup>33</sup> For criticism on this notion see H. JACQUEMIN, *Le*

*formalisme contractuel. Mécanisme de protection de la partie faible*, Brussels, Larcier, 2010, n° 300.

<sup>34</sup> T.G.I. Paris, 4 mars 2003, Frédéric M. / Ziff Davis, ZDNET and others.

<sup>35</sup> See in this respect T.G.I. Paris (3ème ch.), 14

novembre 2008, Jean-Yves L. and others / Youtube and others.

<sup>36</sup> T.G.I. Paris (3ème ch.), 16 octobre 2009, Keepshool / KP Media.