[BE] Access to Brussels Cable Networks for TNT/Cartoon Network

IRIS 1995-5:1/8

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By Ministerial Decree of 17 September 1993 "Coditel-Brabant", a Brussels cable operator, was prohibited to transmit the programme "TNT/Cartoon Network" on its cable network. In a court action against the Ministerial Decree and against the refusal of cable transmission by Coditel based on this Decree, it was argued by Turner's TNT/Cartoon Network that the Ministerial Decree was infringing the Directive on "Television without Frontiers" of 3 October 1989, which prohibits Member States to restrict retransmission on their territory of television broadcasts from other Member States of the European Union (Art. 2 par. 2). As a matter of fact, TNT/Cartoon Network broadcasts its programmes from the United Kingdom towards other European countries via the Astra satellite. On 29 November 1994, the President of the Tribunal de Commerce of Brussels decided to request a preliminary ruling from the Court of Justice (see IRIS 1995-1: 7). The tribunal inter alia asked if a Member State in which TV programmes broadcasted from the UK on the basis of a non-domestic satellite licence are received, can refuse to authorise retransmission by cable in case the programmes do not comply with Articles 4 and 5 of the TV Directive (quota-rules for European audio-visual works (50%) and European works created by producers that are independant of broadcasters (10%)). Turner International Sales did not wait for the judgment of the Court of Justice and meanwhile appealed against the judgment of the Tribunal de Commerce of 29 November 1994, with success. In its judgment of 6 april 1995 the Court of Appeal of Brussels decided that Article 2 par. 2 of the TV Directive is clear and does not need a preliminary interpretation by the Court of Justice. The Court of Appeal emphasized the obligation of the Member States not to restrict the retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by the TV Directive. The obligation for the Member States to ensure within the framework of their legislation that television broadcasters under their jurisdiction comply with the provisions of the Directive, implies that TNT/Cartoon Network ressorts under the responsibility and control of the ITC (Independent Television Commission) in the United Kingdom. The Belgian authorities are not competent to undertake a second control on this issue.

Décision de la Cour d'Appel de Bruxelles du 6 avril 1995.

Decision of the Court of Appeal of Brussels of 6 april 1995.

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