[FR] Field of Application of the Legal Licence for the Use of Phonograms

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On a number of occasions in January 1997, the national television company France 2 broadcast excerpts from two hit records by a well-known pop group as background music for trailers promoting the broadcasting of films it intended to show. The producer of the phonograms considered that use of this kind without special authorisation was unlawful and, after the failure of an attempt to reach a settlement, brought proceedings before the commercial court in Paris. The court delivered its decision on 17 December 1999. The situation is very tense between the various parties involved, and a number of cases have been brought before the civil or commercial courts over the past few years. The debate centres mainly on whether this kind of use of excerpts falls within the ambit of the legal licence which provides (Article L214-1 of the French Code of Intellectual Property - CPI) that where a phonogram has been published for commercial purposes, its producer cannot oppose its being broadcast; in turn, this gives entitlement to remuneration in favour of the producer. This provision of the Code constitutes an exception to the principle of specific, special authorisation required by Article L213-1 of the CPI.

The commercial court in Paris, before which the present case was brought, has replied most clearly that the partial use of phonograms under such circumstances cannot be assimilated to their ordinary broadcasting, which is indeed covered by the legal licence. Broadcasting as in the present case is not carried out as part of the channels' programmes with a view to presenting the works to the public, but on the contrary to benefit from the power of attraction which previous broadcasting has enabled them to acquire.

The use made of them by France 2 could therefore be considered infringement of copyright, and the prejudice suffered evaluated at FRF 100 000.

Tribunal de commerce de Paris, 15e ch, 17 décembre 1999 Sté Emi music et autres c/ Sté France 2.

Commercial court of Paris, 15th chamber, on 17 December 1999, in the case between the company EMI Music et al and the company France 2.

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