[FR] Rights of a Phonogram Producer in Connection with a Virtual Duet Broadcast by Radio

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The scope of the statutory licence instituted by Article L. 214-1 of the Code de la propriété intellectuelle (French intellectual property code - CPI) still requires interpretation by the courts. It provides that "where a phonogram has been produced for commercial purposes, the performer and the producer may not oppose (...) its being broadcast (...)". In the present case, the radio station Europe 2 had produced and broadcast a duet that it had dubbed a "virtual duet", comprising excerpts from the phonogram of the performance of a song by Serge Gainsbourg (Je suis venu te dire que je m'en vais) and from a phonogram of the same song sung by another performer, the singer Jean-Louis Aubert. The company Polygram - which holds the rights in respect of the Serge Gainsbourg phonogram - maintained that this virtual duet, produced without its authorisation, infringed its producer's rights, and took the matter to court. The commercial court in Paris found in its favour and ordered the radio station to pay damages and to stop using the disputed duet. The radio station, which felt that the duet fell within the scope of the statutory licence and contested that it had infringed either Polygram's broadcasting rights or its reproduction rights, appealed. In a decision on 16 January 2002, the court of appeal in Paris upheld the original decision, holding that by not having any authorisation to reproduce the phonogram of Serge Gainsbourg's performance on the hard disk of a computer

- a necessary part of producing the virtual duetEurope 2 had infringed the reproduction rights of the producer, Polygram. As for broadcasting rights, the radio station claimed that the duet, as broadcast, had not been fixed on any support and fell within the statutory licence scheme. But the court of appeal found that the disputed duet constituted the broadcasting of a sequence of sounds that - however it was categorised - would necessarily be perceived by the final listener as being separate from the commercial phonograms used to produce it. Such broadcasting, which did not correspond to the straightforward broadcasting of the commercial phonograms that comprised the virtual duet but was the product of manipulations and modifications carried out by the radio station's employee in order to produce the duet, could not be covered by the scheme set up under Article L. 214-1 of the CPI, as the statutory licence only covered the unadulterated broadcasting of commercial phonograms. The radio station was therefore ordered to stop using the disputed duet, on pain of a penalty, and to pay Polygram EUR 15 244 in damages.

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Cour d'appel de Paris (4 chambre A), 16 janvier 2002 - Sté Europe 2 Communication c/ Sté Universal Music anciennement dénommée Polygram et SCPP

Court of appeal in Paris (4th chamber, A), 16 January 2002 - Société Europe 2 Communication v. Société Universal Music, formerly known as Polygram and SCPP

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