[FR] Scope of Legal Licence for Phonograms

IRIS 2002-3:1/33

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The Court of Appeal in Versailles and the Court of Cassation have in turn reached decisions on the very difficult question of the scope of the legal licence instituted by Article L. 214-1 of the French Intellectual Property Code (CPI). The first case was brought by the phonogram producer Universal Music against the television channel TF1; the complaint was that, without authorisation from the producer, TF1 used a number of phonograms as background music for the trailers for a television film and a variety programme. The case brought before the Court of Cassation was similar; the phonogram producer EMI complained that the television channel France 2 had, without its authorisation, used a famous phonogram by the Beatles to provide the music for the credits of one of its broadcasts. Both cases revolved around the interpretation of Article L. 214-1 of the CPI. This makes provision for waiving the principle of prior authorisation from the producer in the following terms: "Where a phonogram has been published for commercial purposes, neither the performer nor the producer may object to (...) 2) either its broadcasting or the simultaneous, integral distribution by cable of such a broadcast." Producers consider that the reproduction of phonograms - which is necessary before they can be broadcast - does not fall within the scope of Article L. 214-1, and they therefore claim that they are able to oppose such reproduction or at the very least must first be asked for their authorisation under Article L. 213-1 of the CPI, which provides that "the authorisation of the phonogram producer is required before its phonogram may be reproduced (...) or communicated to the public other than as provided for in Article L. 214-1". The television channels claimed that, on the contrary, there was no need for them to ask the producers for authorisation, by virtue of Article L. 214-1. The two courts were therefore called upon to deliberate on the scope of the latter provision, referred to as a "legal licence". Did this cover the reproduction that was necessary before broadcasting?

The Court of Appeal in Versailles, reversing earlier case law (see IRIS 2000-10: 12), began by stating clearly that Article L. 214-4 of the CPI - waiving the principle of prior authorisation from the producer - should be interpreted strictly. The exceptions provided for in the text therefore did not include - as in the case in question - the communication to the public of a reproduction of a phonogram by means of a videogram in which it was incorporated. In line with this, the Court of Cassation confirmed a few days later that the disputed recording, made by incorporating the commercial phonogram in the videogram, could not be included among the waivers provided for in Article L. 214-1 of the CPI to the principle of

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authorisation from the producer laid down in Article L. 213-1 of the same Code. The highest court in the land has thus clearly settled a matter that has been a source of fierce dispute for a number of years.

Cour d'appel de Versailles (12 ch. sect. 1), 17 janvier 2002 - TF1 c/ Universal Music et autres

Court of Appeal in Versailles (12th chamber, 1st section), 17 January 2002 - TF1 v. Universal Music et al

Cour de cassation (1 re c. civ.), 29 janvier 2002 Emi c/ France 2

Court of Cassation (1st chamber, civil), 29 January 2002 - EMI v. France 2

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