[FR] The Right to Sports News in Multicasting

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In 1992, in accordance with the terms of a code of good conduct drawn up by the CSA (Conseil supérieur de

l'audiovisuel audiovisual regulatory body) provisions were integrated into the Act of 16 July 1984 with a view to better reconciling the public's right to information and the television channels' exclusive holding of rights to broadcast sport events. Thus Article 18-2 of the amended Act provides that the vendor or acquirer of the right to exploit a sports event may not oppose the broadcasting by other audiovisual communication services of brief extracts taken free of charge from the images produced by the rights-holding service(s) and freely chosen by the non-rights-holding service broadcasting them. When broadcasting free of charge during news programmes in this way, there must at all times be sufficient identification of the audiovisual communication service that holds the rights for the event in question.

In practice, in the absence of implementing regulations for these provisions, the question arises of the extent of the notion of "brief extracts". This was the case in the dispute before the Court of Appeal in Paris between the continuous sports news channel L'Equipe TV, broadcast by cable and satellite, and the private terrestrially-broadcast general channel TF1. TF1 had bought for EUR 168 million exclusive rights to broadcast in France 64 matches in the football World Cup series. L'Equipe TV had broadcast numerous extracts, the total duration of which exceeded one-and-a-half minutes per day of the competition and thirty seconds per match, and the source of the images was not indicated. More specifically, the Court was being called upon to consider the matter of adapting the notion of "brief extracts" to the context of multicasting.

The Court recalled initially that the CSA's code of good conduct and parliamentary work indicated that one-and-a-half minutes was commonly accepted as the exception to exclusivity. This amount of time applied to each day of the competition, and each match extract should be limited to thirty seconds. However, while this double limitation was appropriate for general channels with a limited number of news programmes each day, the Court felt it was not appropriate to the way the continuous news channels operated as, in view of the frequency of broadcasting news programmes, this resulted in the de facto multicasting of the extracts. For multicast channels, which included L'Equipe TV,

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the Court felt that information rights would be protected by limiting the broadcast of a "brief extract" as it had already been defined to one showing every four hours per period of twenty-four hours.

The Court also felt that by broadcasting more than two hours of exclusive TF1 images without the least indication of their origin the sports channel had acted wrongfully and its liability was incurred. The same also applied to the circulation of leaflets referring to full coverage of the World Cup to promote the sale of advertising space. L'Equipe TV was therefore ordered to pay TF1, in compensation for the prejudice suffered, the sums of EUR 400,000 for the multicasts, EUR 50,000 for the lack of acknowledgement of source, and EUR 30,000 for the commercial advertising.

The anticipated forthcoming adoption of the decree containing the list of events of major importance does not affect this dispute, as TF1 is not a restricted-access channel. As a result, there is nothing to prevent the opening match, the semi-finals and the final of the World Cup being shown to the entire population of France.

Cour d'appel de Paris (4 chambre, section A), 28 janvier 2004, l'Equipe TV c/ TF1

Court of Appeal of Paris (4th chamber, section A), 28 January 2004, L'Equipe TV v. TF1

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