[FR] Collective Aerials Are Subject to Copyright Royalties

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In two notable decisions, the Court of Cassation has now clearly stated that the installation by a syndicate of co-owners of a collective aerial in a residential building constitutes an act of exploiting protected works separate from their broadcasting and as such gives rise to the payment of royalties.

The disputes arose between a syndicate of co-owners of a block of flats and various societies for the collective management of rights (SACEM, SCAM, SACD, ADAGP and ANGOA) whose catalogues included the works being circulated. The syndicate of co-owners felt that by installing the collective aerial allowing the reception of terrestrially broadcast and satellite channels it was merely enabling the co-owners to receive the programmes in their respective homes; the collective aerial was merely an extension of the individual aerial to which they were entitled, and the residents could not be considered as constituting "the public" within the meaning of Article L. 122-2 of the Code de la propriété intellectuelle (French intellectual property code - CPI). According to this text, "representation consists of the communication of a work to the public using any process, and more specifically (...) 2) by broadcasting". Broadcasting a work, if it permits contact with a new audience, requires further authorisation and the payment of a further fee. The individual user of a television set, however, is not a priori required to pay anything since he/she is within the "family circle". The syndicate claimed application of the exception set out in Article L. 122-5 of the CPI, according to which "where the work has been made public, the originator may not prohibit: 1) private representations for which no charge is made and which take place exclusively within the family circle". The Court of Cassation, however, settled the matter by noting that, unlike the individual aerial, the collective aerial allowed the circulation of protected works to as many homes as the building in question contained. It concluded that the syndicate was thus effecting a representation of audiovisual works by communication to an audience comprising all the residents, who formed a group that reached beyond "the family circle"; it was irrelevant that there was no intention to make a profit and that the aerial was owned indivisibly.

Under paragraph 2 of Article L. 132-20 of the CPI, "authorisation to broadcast the work is not tantamount to authorisation to communicate the broadcasting of the work in a place to which the public has access". As used in hotels, lifts, shopping malls, shops, etc, collective aerials now clearly entitle rightsholders to receive

remuneration.

Cour de cassation (1re chambre civile), 1er mars 2005, Syndicat des copropriétaires de la résidence Parly II c/ SACEM, SCAM, SACD et ADAGP

http://www.legifrance.gouv.fr/

Court of Cassation (1st civil chamber), 1 March 2005, Syndicate of co-owners of the residential building Parly II vs. SACEM, SCAM, SACD and ADAGP

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Cour de cassation (1re chambre civile), 1er mars 2005, Syndicat des copropriétaires de la résidence Parly II c/ ANGOA

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