

[FR] Difficulty in Determining whether a Programme Concept Has Been Used by a Competitor

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The Court of Appeal in Paris has just delivered a judgment that illustrates just how difficult it is to appreciate whether or not the concept of a television programme has been used by a competitor, and how necessary it is to be subjective. In the case at issue, two journalists had created a concept for a programme entitled *Crise en direct*, consisting of a prospective political news magazine. After filing it with the SACD (Society of Dramatic Authors and Composers, a collecting society), they submitted their project to a number of production companies and broadcasters, including Canal+. Some months later, this channel - which had terminated the discussions on the project - broadcast a political programme entitled *2020 c'est déjà demain* which, according to the journalists who had conceived the original project, took up many features of their project virtually word for word. They therefore filed a case against the channel, the production company and the co-author journalist on the basis of unfair parasitic competition. On 7 September 2005, the regional court in Paris ordered the payment of EUR 150,000 in damages and banned the exploitation and broadcasting of the disputed programme, after establishing the offence, characterised by the deliberate use of major features of the programme concept. An appeal was lodged against the decision. In its judgment delivered on 21 February, the Court of appeal recalled firstly that the applicants were not invoking any intellectual property right, and were therefore acting solely and exclusively on the basis of civil liability (Article 1382 of the French Civil Code), in terms of unfair competition and parasitic activities. The Court referred to the principle according to which commercial freedom implied that a service, which was not, or no longer, subject to intellectual property rights could be reproduced freely, subject to certain conditions, in particular with regard to the observance of fair commercial practices. It therefore considered whether the appellants had acted unfairly, which was characteristic of misconduct, towards the originators of the programme concept and if they had caused them prejudice. In its analysis of the programme broadcast by Canal+, the Court noted that it was structured in four main parts and that its aim was to enable the politicians invited to take part in order to make proposals that could be criticised by a political opponent or contested by specialists and members of civil society, with a view to avoiding or at least foreseeing crisis situations. The Court held that the original programme idea, as lodged with the SACD, adopted a different approach, involving judgment of the behaviour of politicians facing a crisis situation, presented as if it were happening

live at the time that the programme was being broadcast. It was proposed in the form of a news broadcast with a definite rhythm, simulating the processing of information as it occurs during a period of crisis, with the intervention of outside correspondents alternating with the participation of people in the studio. The Court also noted that both the initial project and the programme broadcast were part of a more general trend of broadcasts aimed at dealing with contemporary questions and anxieties. The concept referred to by the respondents was therefore part of the current climate and the programme broadcast was different from this concept; the Court therefore held that the appellants could not be considered as having acted unfairly in such a manner as to characterise a misdemeanour constituting unfair competition or parasitic activity. The judgment was therefore overturned.

Cour d'appel de Paris (4e ch. sect. A), 21 février 2007, Sarl Pourquoi pas la lune, Ruth Elkrief et a. c/ Mme Saranga Drai, Canal+ et a.

Court of appeal in Paris (4th section A), 21 February 2007, Sarl 'Pourquoi pas la lune', Ruth Elkrief and others v. Ms Saranga Drai, Canal+ and others

