[FR] Television over ADSL - Conflict of Exclusivity among Operators

IRIS 2007-10:1/20

Amélie Blocman
Légipresse

The current conflict between Canal+ and Neuf Cegetel highlights the sometimes tense relationship that exists between owners of encrypted channels and Internet access providers (IPs) concerning television broadcast over ADSL. On the one hand, the IPs would like to be able to market channels in the capacity of a digital television services distributor as they see fit. On the other hand, companies such as Canal+, a satellite television group that has a quasi-monopoly in the market for pay television, wish to retain their exclusivity for broadcasting their channels.

It is in this context that, in a marketing agreement the company Eurosport gave Canal+ France exclusivity for marketing its sports channel on satellite, ADSL and, non-exclusively, via terrestrial broadcasting. In a press release on 30 August 2007, Neuf Cegetel announced the conclusion of an agreement enabling it to distribute Eurosport solely over terrestrially broadcast digital television, but at the same time announced that it was going to offer this channel to its ADSL subscribers equipped with the "Neuf TV HD" decoder as part of a multi-theme package, which was to be launched in the near future. In a letter sent on the same date, Canal+ protested this, claiming that by making this channel available to its ADSL subscribers, even if it used a separate distribution medium, Neuf Cegetel was violating the exclusivity deal that Canal+ had been granted. Canal+ therefore called on Neuf Cegetel to cease marketing Eurosport under these conditions. Eurosport held that the marketing methods actually used by Neuf Cegetel did not correspond to agreed the level of capacity they had as a digital television distributor, and revealed on their part a desire to deliberately circumvent the exclusivity enjoyed by Canal+ for marketing the channel over ADSL. It therefore notified Neuf Cegetel that is was suspending the signal from the following day, 11 September 2007, and that it would be terminating the contract. Neuf Cegetel, considering that abruptly suspending the signal to its subscribers without prior notification caused it a nuisance that was manifestly unlawful, referred the matter to a court sitting to hear urgent applications so that Eurosport could be ordered to re-establish the signal in accordance with the contract, subject to a fine for each day of its delay in doing so. On 17 September 2007, the presiding judge of the regional court of Paris turned down the application and the IP launched an appeal.

© European Audiovisual Observatory (Council of Europe) 2026

In its decision delivered on 1 October 2007, the court of appeal noted that it was not for a judge sitting to hear urgent applications to say whether or not the complaints brought by Eurosport were founded, or whether or not Neuf Cegetel was indeed failing to observe its obligations, but rather to judge whether or not Eurosport could withdraw the signal with immediate effect and suspend performance of the contract without this causing a manifestly unlawful nuisance to the IP. The court held that, even if it used terrestrially broadcast digital technology, Neuf Cegetel was supplying Eurosport to its ADSL subscribers using the decoder and it was much to be feared that this infringed the exclusivity rights enjoyed by Canal+. Furthermore, inasmuch as Neuf Cegetel did not justify proposing to its subscribers any terrestrially broadcast digital television offer in which the channel was included, could the assumption could be made that they had concluded the contract without intending to develop a genuine activity as a distributor of terrestrially broadcast digital television on a paying basis, but rather to be able to include an attractive channel in the package aimed at their ADSL clients. The court could therefore only note the channel's debatable marketing conditions in terms of the letter of the contract. It concluded that the nuisance complained of by Neuf Cegetel was not by nature manifestly unlawful, and the order delivered in the urgent proceedings was upheld.

Neuf Cegetel had initiated these urgent proceedings in order to be able to re-establish the channel quickly in the middle of the rugby world cup. It will be the judicial proceedings on the merits of the matter that will establish whether the IP's action was lawful as regards the exclusive rights conceded to Canal+, and there will be no outcome on that for several months yet.

Cour d'appel de Paris, 14e ch., 1er octobre 2007, Neuf Cegetel c/ Canal + France

Court of appeal in Paris, 14th chamber, 1 October 2007, Neuf Cegetel v. Canal+ France

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026