[FR] Difficulties in the Interpretation of a Contract for Distributing TV by Satellite

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The theme channel Fox Life, launched in France in 2005 with programming focused on films, fiction programmes and series, is, since the end of 2007 and the conclusion of a legal battle, no longer being distributed by CanalSatellite, the only French satellite package since its merger with TPS in early 2007. The dispute mainly concerned the duration of the channel's distribution contract, because of the contracting parties' diverging interpretations of a letter appended to the contract. According to the contract, it was to be valid for an initial period of two years, i.e. until 30 April 2007, and could be extended, subject to advance notice being sent at least six months before the expiry of the initial period. On this basis, CanalSatellite, noting that Fox Life had not taken up the option, stopped broadcasting it on 20 December 2006. The channel applied to the courts under the urgent procedure, and the judge ordered broadcasting to continue, maintaining the status quo, pending a decision on the merits of the case. According to a letter appended to the contract, the contract was in fact valid initially until 30 April 2012 and that the option for Fox, exercised by written notification no later than six months before the end of the initial period of validity, could extend the duration of the contract for a further five years. Fox held that this letter could not be considered as anything other than a codicil to the distribution contract, and therefore considered that the initial period would end on 30 April 2017. CanalSatellite, for its part, held that the appended letter did not waive the provisions of the contract and that the option open to Fox to extend the contract further until 2017 was specifically conditional on the continuation of a licence contract initially concluded between Twentieth Century Fox and Canal+.

In a judgment delivered on 11 July 2007, the commercial court found in favour of the channel, holding that the content of the appended letter "should take precedence over the contract". Accordingly, the contract would end on 30 April 2012 unless Fox exercised its option six months prior to this, and distribution should therefore continue until 30 April 2017. CanalSatellite appealed against the decision and the court, after a very careful analysis of two translations of the contract (drafted in English), one proposed by each of the parties, found in favour of the satellite platform, holding that the channel's distribution contract had indeed reached its termination date on 30 April 2007.

In reaction to the decision, the Chairman of Fox International Channels (FIC), the French subsidiary of one of the divisions of the Rupert Murdoch group, noted that

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“if we lose our distribution on CanalSat, which represents 85% of the channel’s turnover of EUR 12 million, the survival of the channel will be at stake”.

Cour d’appel de Paris (1re ch. A), 13 novembre 2007, Canal Satellite SA c/ Fox International Channel

Court of appeal of Paris (1st chamber, A), 13 November 2007, Canal Satellite SA v. Fox International Channel

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