# [FR] All TF1's Complaints against YouTube Rejected

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On 29 May 2012, in a judgment running to 34 pages, the regional court in Paris rejected the claims brought by TF1 and its subsidiaries (the channel LCI, TF1 Vidéo and TF1 International, responsible for video editing and acquiring and distributing rights) against YouTube on the grounds of infringement of copyright, unfair competition and parasitic use. In addition to requesting a ban, the channel was also claiming damages - calculated at EUR 150 million - for the prejudice caused by YouTube putting on-line a whole range of films, series, sports events and broadcasts it felt it had rights to, including some prior to any broadcasting or commercial use in France.

The first stage in the proceedings involved the court examining whether the applicant companies had sufficiently and correctly identified the content at issue. It deliberated on this according to the qualities of the said companies and according to the grounds invoked (copyright and neighbouring rights) for each item of content at issue. It found that the applicant parties had not produced proof of the rights they invoked. Thus, contrary to its claims, TF1 Vidéo was not the economic beneficiary of the producers of the videograms at issue since it had only acquired the right to use them and failed to provide proof of the exclusivity it claimed. Similarly, the company TF1 Droits Audiovisuels, depending on the works involved, either did not establish its qualification as the producer of an audiovisual work or a videogram, or did not provide proof that it had reached an agreement with the other co-producers or had their authorisation to act alone. The applications brought by these two companies were therefore inadmissible. Concerning the channels TF1 and LCI themselves, as they were audiovisual communication companies, reproducing their programmes and making them available to the public were subject to their authorisation, in accordance with Article 216-1 of the Intellectual Property Code (CPI). The court recalled however that there was no presumption of ownership of rights as required in order to be able to benefit from this protection. It was for the party claiming it to demonstrate the existence of the programme and the proof that it had been broadcast before it was allegedly shown again on YouTube. In the present case, the court deemed the documents produced in favour of the channels (programme schedules, press files, etc.) insufficient, and the claims brought by the channels on the basis of Article L. 216-1 of the CPI were declared inadmissible except for seven sports events for which the required elements of proof had been produced. Similarly, on the grounds of copyright, the channels did not provide proof of the originality of the

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programmes (including the television news) they claimed YouTube should not have put on-line.

Once the ownership of the rights had been examined, the court turned to the status of the video sharing platform. In a manner that has now become classic, the applicant parties claimed that the status of editor should apply to the platform, since it played an active part in users putting content on-line. YouTube claimed the status of host, within the meaning of Article 6-1-2 of the Act of 21 June 2004 (LCEN). In rejecting the claims brought by TF1 and LCI, and upholding YouTube's status as a host, the court recalled the provisions of the LCEN and the position adopted by the Court of Cassation in line with that of the CJEU, examined the conditions for using the service that were in force at the time proceedings were initiated, and recalled that hosts were within their rights to make use of advertising; doing so did not deprive them of their status. In application of Articles 6 and 7 of the LCEN, the court went on to examine the case brought against YouTube in its capacity as host and recalled the requirement to withdraw disputed content promptly once this has been notified. In the present case, the court found that YouTube had taken too long, taking five days "at best" to remove the videos of the seven sports events at issue, which "could not be qualified as reasonable" and was therefore at fault. In a final observation on this point, however, the court noted that in any event the conditions set out in Article L. 216-1 of the CPI were not met for noting fault on the part of YouTube, since the condition regarding payment of an entrance charge was not met, because no charge was made for accessing the site. In conclusion, the court observed that YouTube had concluded an agreement with TF1 on 16 December 2011 that permitted it access to the "Content ID" service which allowed rightsholders, once content had been notified, to achieve the definitive withdrawal of a video notified as being disputed. The applicants had not noted any infringement since that date. Did that mean the dispute was actually over? There is still the possibility of an appeal…

***TGI de Paris (3e ch. 1re sect.), 29 mai 2012 - TF1, LCI et autres c/ Youtube***

http://www.juriscom.net/jpt/visu.php?ID=1371

*Regional court in Paris (3rd chamber, 1st section), 29 May 2012 - TF1, LCI et al. v. YouTube*

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