[FR] Play TV heavily penalised for infringing copyright held by France Télévisions

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In a judgment delivered on 9 October 2014, the Regional Court of Paris banned and heavily penalised the online broadcasting on the Playtv.fr site of television programmes belonging to the France Télévisions group (France TV). Since 2010, the company Playmédia has been offering a service free of charge and without subscription showing television channels, which are accessible on the Internet. In the face of the public-sector group's refusal to allow its programmes to be carried, PlayTV claimed that it ought to have the benefit of the must-carry scheme.

Article 34-2 of the Act of 30 September 1986 introduced an obligation, requiring distributors of terrestrially broadcast services to make their public-sector audiovisual channels "available to their subscribers free of charge". The dispute was referred to the audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) (see IRIS 2013-8), which noted that while Playmédia did have the status of distributor of services, it did not have any subscribers, since at the time its service was offered with unrestricted access and free of charge. However, having subscribers was a determining condition for being subject to the must-carry obligation. When Play TV announced its intention to set up a subscription system, which it went on to do, France TV announced its intention to "continue with the legal proceedings already instigated to achieve a judgment against this violation of [its] intellectual property rights", which it also went on to do; the judgment was delivered on 9 October 2014.

Playmédia had France TV summoned as it believed the public-sector group was at fault in refusing to contract with a view to allowing its programmes to be broadcast via the complainant's on-line service, while France TV, for its part, claimed compensation for the infringement of its copyright and neighbouring rights. It was therefore for the court to state how the must-carry provisions in the Act of 30 September 1986 should be combined with the provisions of the Intellectual Property Code, and more particularly whether the 1986 Act was able to diverge from the Code, as Playmédia was claiming. In its judgment, the court noted that the 1986 Act should be applied while scrupulously respecting the intellectual property rights of the creators and producers of audiovisual and cinematographic works and the rights of rightsholders for sports events. No divergence was possible, and it was important to ensure that each party's property rights were upheld. Thus the court clearly stated that "must-carry is not

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a scheme set up to allow access by final users without ensuring the preservation of intellectual property rights". It then went on to recall that setting up must-carry was subject to a number of conditions. Firstly, it was necessary for "a significant number of final users of these networks to use them as their principal means of receiving radio and television broadcasts". Playmédia did not provide evidence that this condition was met. Secondly, Playmédia was still not in a position to claim it was a subscription service, since the company's offer of access to Internet users from 1 January 2014 did not meet this condition.

The final condition is set out in Article 34-2 of the 1986 Act, which requires the "full, simultaneous" take-up of programmes. This condition was included in France TV's list of specifications. However, certain rightsholders (American cinema studios and holders of sports rights) have not authorised France TV to broadcast their programmes on services such as those operated by Playmédia or, in the case of the statutory must-carry obligation, have limited their authorisation to mobile telephone networks. Take-up limited just to those programmes authorised by third-party producers (with certain programmes being blacked out), as Playmédia proposed to France TV, was found incompatible with the latter's public-service missions. France TV had therefore been right in concluding that the Playmédia offer did not enable it to fulfil the obligation of full, simultaneous take-up. The court therefore found that France TV had not acted abusively by refusing to enter into a contract with Playmédia authorising the latter to broadcast its programmes on its Internet site at playtv.fr. Playmédia claims in this respect were rejected.

Regarding the counter-claims made by France TV, the court recalled that broadcasting the company's programmes without its authorisation constituted infringement of copyright. It noted that the company enjoyed neighbouring rights regarding the communication of its television programmes to the public in the same way that it held copyright and producer's rights in respect of the broadcasts it produced or co-produced and its purchases of various works (news programmes, documentaries, magazines, TV films, and cinema films). By broadcasting these programmes without France TV's authorisation, Playmédia had infringed copyright and neighbouring rights, as it had also done by reproducing the community and French brand names owned by the public-sector television group. Taking into account Playmédia's turnover and the audience share of the channels it operates (75%), the court decided that France TV should be awarded €1 million to compensate for the prejudice suffered and €25,000 as compensation for the infringement of its rights in respect of brand names. Playmédia was ordered to refrain from taking up and broadcasting programmes from the public group's channels, and would be fined for any delay in complying with the judgment.

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TGI de Paris (3e ch. 1Re sect.), 9 octobre 2014 - Playmédia c. France Télévisions

Regional court in Paris (3rd chamber, 1st section), 9 October 2014 - Playmédia v. France Télévisions

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