[FR] Illicit Use of Protected Musical Works on Trailer Soundtracks

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The Court of Appeal in Paris delivered an interesting decision on 24 September 1997 on musical pirating on television. The public-sector channel France 2 had used extracts from three musical works by the group Daft Punk to provide a musical background to the presentation of its programmes. The co-authors of the pirated songs and their beneficiaries, considering that such broadcasting constituted a serious infringement of their copyright protection, took the dispute to the courts under the urgent procedure, but their demand for such broadcasting to cease was thrown out. They appealed against the decision. The Court, in finding against France 2, held firstly that the disputed trailers should of course be considered as advertising, and more specifically as self-promotion, and case-law has already had numerous occasions to point out that use of a work for publicity purposes may constitute a diversion of its destination and thereby contravene the author's moral rights. This was obviously the case here, as the music had moreover been remixed with children's voices or dialogue taken from a film. The Court of Appeal developed a second argument, considering that although there was no proof that the author musicians or their company belonged to the SACEM, the channel could not consider that the broadcasts were made within the framework of its annual contract with the SACEM and the SDRM, which authorises it to use all the works in their catalogue. France 2 was therefore not entitled to dispense with the authorisation of the co-authors.

Considering as a result that such broadcasting unquestionably contravened the rights of the co-authors, the Court set aside the order, ordered France 2 to stop such broadcasting on pain of financial penalty, and above all - and it is a sufficiently rare measure for it to be mentioned specifically - ordered the channel to broadcast a message of apology.

France 2 decided to appeal against the decision.

In the same context, see also the judgement of the Regional Court of Nanterre on 5 November 1997 against the company TF1 for violating copyright in using musical works by Johnny Clegg for the soundtrack of trailers for the World Cup rugby championships.

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Cour d'appel de Paris, 24 septembre 1997, Bangalter, de Homem Christo, Daft Punk c/ France 2

Court of Appeal of Paris, 24 September 1997: Bangalter, de Homem Christo, Daft Punk v. France 2

Tribunal de grande instance de Nanterre, 5 novembre 1997, Johnny Clegg, HR MUSIC BV et autres c/ TF1

Regional Court of Nanterre, 5 November 1997, Johnny Clegg, HR MUSIC BV and others v. TF1

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