[FR] Licentious Programme Results in Judgment against France Télécom

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Canal France International (CFI) is a French television channel whose object is to spread French culture and the image of France abroad. Its programmes are broadcast in the countries of North Africa and the Near and France Télécom between the CFI control Middle East via the ARABSAT II satellite using a link provided by centre in Paris and the satellite.

On 19 July 1997, following a technical incident, the link between Paris and the CTS (satellite transmission centre) which broadcasts to ARABSAT II was interrupted and the France Télécom operator set up an alternative circuit to make it possible to resume broadcasting. This operator was then replaced by another agent which, ignoring the instructions of its predecessor or being unaware of them, carried out certain manipulations resulting in programmes being swapped. "Va Savoir", an educational programme for children, broadcast by ARABSAT II at a peak time, was replaced for about twenty minutes by a pornographic film intended for viewers in French Polynesia, broadcast after midnight local time. In a letter dated 20 July 1997, the ARABSAT company terminated its contract with the channel CFI, which in turn instigated proceedings against France Télécom on the grounds of the prejudice suffered.

France Télécom argued however that its contract with CFI only required of it an obligation of means and not an obligation of result, and that only a failing in this obligation of means could be held against it if it constituted serious negligence. This was upheld by the Commercial Court in Paris, noting the various incidents which took place on the day of 19 July 1997, establishing that the swapping of programmes was the fault of France Télécom and also noting that `the particular (i.e., pornographic) nature of the programme substituted for that provided by CFI was obviously an aggravating factor, even in the absence of a specific clause in the contract drawing attention to the particular risks inherent in the area" of geographical cover of the ARABSAT II satellite. The Commercial Court hence recognised that this indeed constituted serious negligence and moreover established the causal link between such negligence and the alleged prejudice suffered by CFI, namely of a financial, commercial (programmes produced needlessly, loss of the caution money paid to ARABSAT), organisational and moral nature resulting from the said negligence and the termination of its contract with CFI.

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Deliberating therefore in the first instance, the Court ordered France Télécom to pay CFI FRF 24,186,000 in compensation, the sum referring only to the financial prejudice suffered since commercial and moral prejudice were excluded in the provisions of the contract between the two companies. No decision has yet been made by the parties as to any appeal which may be lodged. IRIS will report on any developments in the case.

Tribunal de commerce de Paris, 15e chambre, 30 janvier 1998

Commercial Court of Paris, 15th Chamber, 30 January 1998

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