

## Media & Entertainment - France

### Is audiovisual production an exception to termination of contractual relations?

Contributed by **Nomos**

December 13 2012

#### Background Supreme Court decision

French law provides that a contracting party must comply with a notice period to terminate, even partially, an established business relationship. The application of this principle to the relationship between a producer and a broadcaster has led to much litigation. Broadcasters argue that by their nature, programme orders constitute a stream of specific, individual transactions, and do not create an ongoing contractual relationship.

#### Background

In a judgment of May 18 2010 the Commercial Division of the Supreme Court appeared to affirm the individuality of such dealings between broadcasters and producers. The Supreme Court overturned an appeal court judgment which had ordered France Télévision to pay damages for terminating a contractual relationship without giving notice. The Supreme Court criticised the appeal court for not having considered whether, "having regard to the nature of providing developmental and production services for television programmes", producers could legitimately expect their relationship with the broadcaster to be stable.

The producers pointed to a steady stream of business from 1998 to 2006 and a significant number of television production contracts for various kinds of programme, including magazines, documentaries and scripted programmes.

The appeal court had held that the absence of written notice indicated fault. The court had stated that analysis of the market revealed that "every major broadcaster has formed its own network of production companies" and that, given the "role played by star presenters" and the seasonal nature of programming, the notice period should be fixed at 18 months.

The appeal court again resisted the Supreme Court's argument and, issuing a second ruling on July 1 2011, ordered France Télévision to pay €1.8 million in damages for suddenly terminating the contractual relationship.

In a judgment delivered on January 31 2012 in another matter, the Supreme Court reaffirmed its position by stating that:

*"production activity is characterised by precarious trade relationships between producers and broadcasters, such fragility originating in the impossibility of predicting the audience for a given programme and the need to regularly review and adjust the broadcast schedule to make it attractive."*

It was therefore expected that the appeal court's new decision would be quashed.

The appeal court had held that there was no reason to exclude audiovisual production contracts from the scope of the provisions relating to breach of any other contractual relationships. The court effectively stated that the "unique and irreplaceable" nature of audiovisual productions – whether documentary, scripted or streaming programmes – did not rule out the development of regular business contact with the same production company.

In this case, the appeal court judgment had characterised the regularity of the parties' business dealings as an established contractual relationship, despite the diversity of projects involved (eg, mini-series, documentaries, magazines and talk shows) and the range of contractual forms (eg, pre-purchase, option rights and co-production).

Despite the diversity of programmes and the independence of each contract (often

Author

Eric Lauvaux



including audience clauses), the appeal court had held that the amount, regularity and relative stability of the revenue, and the producer's growing dependence on orders from France Télévision, meant that it was impossible to bring this steady stream of business to a close without observing a notice period.

The court had held that the cancellation of a programme owing to the defection of a presenter was not enough to end this contractual relationship, given that France Télévision had instructed the producer to commence development of replacement projects.

Accordingly, the court had set at 12 months the notice period which should have been respected and assessed damages according to the amount of gross profit that could have been generated during that period.

The court had dismissed the indemnity claim based on the depreciation of goodwill in holding that it was the duty of France Télévision to avoid "suddenly terminating established relationships rather than ceasing to contract."

### **Latest Supreme Court decision**

In a decision rendered on September 25 2012, the Supreme Court rejected the appeal and affirmed the appeal court's judgment, stating that the lower court had legitimately determined that there was an established contractual relationship from which the producers could expect stability.

In so holding, the Supreme Court held that audiovisual production is not a sector in which commercial relationships are necessarily precarious. The audiovisual production industry is often considered to be a prototype industry, but this assumption ignores the fact that producers develop a steady stream of orders with the same broadcaster through a variety of programmes and formats.

This decision focused on the conditions laid down by law. Rather than considering the specificity of each audiovisual programme, it assessed the consequences of the breakdown of relationships. The decision should encourage professionals to review their contracting practices and remind lawyers that under French law, no binding precedent exists.

*For further information on this topic please contact [Eric Lauvaux](#) at Nomos by telephone (+33 01 43 18 55 00), fax (+33 01 43 18 55 55) or email ([elauvaux@nomosparis.com](mailto:elauvaux@nomosparis.com)).*

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at [www.iloinfo.com](http://www.iloinfo.com).

---

### **Online Media Partners**



© Copyright 1997-2013 Globe Business Publishing Ltd