

French Supreme Court on 5(2) BC: national law determines who is the copyright owner

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"The law of the country where protection is sought governs all matters relating to the exercise and enjoyment of copyright, including the determination of the rights holder."

Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works provides that "The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed."

This treaty rule means that the law of the signatory country where protection is sought has exclusive jurisdiction to determine the legal regime applicable to works of foreign origin. However, article 5(2) does not specify which national law applies when determining who is the copyright owner.

The facts of the present case are the following: a reporter-cameraman was hired in 1978 by the US company ABC News Intercontinental Inc, and was then sent to the French office from 1993, finally being made redundant for economic reasons in 2004. He brought his case before the Labour Law Court, before which he claimed that his employer had infringed on his copyright by exploiting his reports and documentaries without his authorization. With regard to his claims based on copyright, the Court of Appeal of Paris, in a judgement of 15 December 2010, ruled that since article 5(2) of the Berne Convention does not give any indication as to ownership, acquisition and assignment of copyright, it is necessary to apply the French conflict of law rules; therefore in this situation, the law of the country of origin of the work would apply in order to determine who is the copyright owner. The Court of Appeal consequently applied [17 USC § 201 A and B](#) of the US Copyright Code, which provide that in the case of a work made for hire, the employer owns all the rights comprised in the copyright, unless the parties have expressly agreed otherwise.

In its [ruling of 10 April 2013](#), the Cour de Cassation, the French Supreme Court, quashed the Court of Appeal's judgement and stated that the law of the country where protection is sought governs all matters relating to the exercise and enjoyment of copyright, including the determination of the rights holder. The Supreme Court therefore extends the principle of 'national treatment' to the determination of the copyright holder, thus making it easier for copyright infringement victims to seek protection and remedies in France, but maybe excessively dangerous for copyright assignees.

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A full summary of this case will be added to the *Kluwer IP Cases Database* (www.kluwerIPCases.com).