

Kluwer Copyright Blog

Time limitation in French copyright infringement cases

Brad Spitz (REALEX) · Monday, November 4th, 2013



“Civil proceedings for infringement of copyright are barred after 5 years from the day the holder of a right knew or should have known of the facts necessary to exercise his right.”

In a judgement of [3 July 2013](#), the French Supreme Court clarifies the time limit for taking action to obtain damages for copyright infringement. Oddly enough, the French Intellectual Property Code provides that civil proceedings for infringement for designs and models ([article L.521-3](#)), patents ([article L.615-8](#)) and trade marks ([article L.716-5](#)) shall be barred after 3 years, but is silent about copyright and neighbouring rights actions.

In 1979, the singer of the song [Just Because Of You](#), recorded to be synchronised in the French film [Les Bronzés Font du Ski](#), which has become more than a cult film in France, received only 2000 French Francs for the recording. In 2003, the singer brought a case against the producer for the recognition of his rights and for compensation, claiming that his name did not appear either in the film or on the cover of the record published later, and claiming that he had never received any royalties for the exploitation of the recording.

The producer argued that the performer's action is time-barred under articles 2270-1 of the Civil Code and 110-4 of the Commercial Code, which, at the time the proceedings started, limited such actions to 10 years. For the producer, in the absence of specific rules in the Intellectual Property Code, the ordinary rules of the Civil Code and/or the Commercial Code had to apply to copyright and neighbouring rights actions.

It should be noted that pursuant to the [17 June 2008 Act](#), the ordinary limitation period is now 5 years ([2224 of the Civil Code](#) and [110-4 of the Commercial Code](#)): *“Les actions personnelles ou mobilières se prescrivent par cinq ans à compter du jour où le titulaire d'un droit a connu ou aurait dû connaître les faits lui permettant de l'exercer.”*

However, the Court of Appeal of Versailles ruled, on 29 September 2010, that since the duration of

the performer's economic rights is fifty years from January 1 of the calendar year following the performance of the artist ([article L.211-4-1° of the Intellectual Property Code](#)) and since there is no prescription for the moral right of the performer to have his name quoted ([L.212-2](#) of the same code), the limitation of 10 years, applicable under articles L.110-4 of the Commercial Code and 2270-1 of the Civil Code (in the version prior to the Act of 17 June 2008), does not apply to a performing artist. In other terms, the Court of Appeal found that there is no time limit for performers to claim damages for infringement.

The French Supreme Court, the [Cour de Cassation](#), in its judgement of [3 July 2013](#), quashed this very surprising judgement, stating that if the moral rights of performers are without prescription and their economic rights protected for fifty years, the claims for damages arising from infringements to moral rights or economic rights are nevertheless subject to the limitations set out in the ordinary rules of the Civil and Commercial Codes.

The case will now be heard again by the Court of Appeal of Paris and the singer should be able to claim compensation for the infringement of his rights, and in particular his right to paternity, going back 10 years from his writ of summons in 2003 (the limitation period is 10 years, and not 5, because proceedings started before the Act of 17 June 2008 came into force on 19 June 2008). Since the film *Les Bronzés Font du Ski* is regularly shown on French television, it would seem that the performer should be awarded some damages.

Even though the case concerns neighbouring rights, the rule set out by the Supreme Court also applies to copyright: civil proceedings for infringement of copyright and neighbouring rights are therefore barred after 5 years from the day the holder of a right knew or should have known of the facts necessary to exercise his right.

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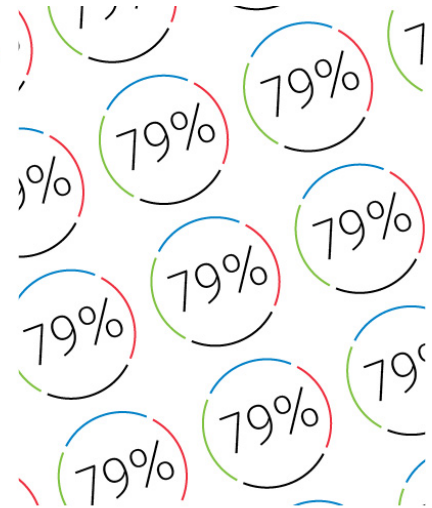
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