

# Kluwer Copyright Blog

## France: Presumption of ownership extended to neighbouring rights

Brad Spitz (REALEX) · Tuesday, February 5th, 2013



*“In the absence of any claim from the phonogram producer, or its assigns, the natural or legal person who publicly, peacefully and unambiguously exploits recordings, is deemed to be the holder of the rights in the recordings as regards third parties against whom an infringement case is brought.”*

The French Intellectual Property Code deals with copyright and neighbouring rights separately. As regards copyright, the French case law has long established a presumption of ownership to facilitate infringement proceedings initiated by natural or legal persons who exploit copyrighted works against alleged infringers.

On the grounds of [article L.113-5](#) of the Intellectual Property Code, which provides that “A collective work shall be the property, unless proved otherwise, of the natural or legal person under whose name it has been disclosed”, the French Supreme Court has ruled that in the absence of any adverse claim by the author of the work, the exploitation of the work by a natural or legal person under its name creates a presumption that the said person is the owner of the work, with respect to third parties against whom an infringement case is brought (Cour de cassation, 24 March 1993, [91-16543](#) and 22 February 2000, [97-21098](#)). Case law has also based this presumption on the grounds of [article L.113-1](#) of the Intellectual Property Code which provides that “Authorship shall belong, unless proved otherwise, to the person or persons under whose name the work has been disclosed” (Court of Appeal of Paris 6 February 2004, JCP G 2005, I, 101, note Ch. Caron). On 28 November 2012, the Supreme Court **ruled** that the claims made by an author over his work before a foreign court do not prevent the application of the presumption for the benefit of a legal person before the French courts.

In a [ruling](#) of 14 November 2012, the Supreme Court extends this presumption for the first time to the field of neighbouring rights.

In this case, the Court of Appeal of Paris dismissed three companies exploiting jazz and pop music recordings that had brought an infringement case against a company that had reproduced and sold

these recordings without any authorisation. The plaintiffs, who proved that they had been exploiting the recordings for some time, declared that they were the producers of the recording in the meaning of [article L.213-1](#) of the Intellectual Property Code, which provides that “The natural or legal person who takes the initiative and responsibility for the initial fixation of a sequence of sounds shall be deemed the phonogram producer” (this means that the producer has to prove that he invested in the creation of the recording, in order to be granted rights in the recording). Moreover, the plaintiffs were unable to produce evidence that the performing artists had assigned their rights to them.

In its judgement of 14 November 2012, the Supreme Court annuls the ruling of the Court of Appeal and implements the presumption in the field of neighbouring rights: in the absence of any claim from the phonogram producer, or its assigns, the natural or legal person who publicly, peacefully and unambiguously exploits recordings, is deemed to be the holder of the rights in the recordings as regards third parties against whom an infringement case is brought.

This presumption will benefit not only to the phonogram producers, but also to the other beneficiaries of neighbouring rights in their infringement cases: [performing artists](#), [videogram producers](#), [audiovisual communication companies](#) and [broadcasters](#).

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A full Summary of this case will be added to the Kluwer IP Cases Database (<http://www.kluweripcases.com/>).

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This entry was posted on Tuesday, February 5th, 2013 at 12:05 pm and is filed under [Case Law](#), [France](#), [Infringement](#), [Jurisdiction](#), [Neighbouring rights](#), [Ownership](#)

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