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France: Do members of collecting societies retain the right to sue?

Brad Spitz (REALEX) · Tuesday, January 20th, 2015

Article L.321-1 paragraph 2 of the French Intellectual Property Code ('IPC') provides that collecting societies are entitled to take legal action to defend the rights for which they are responsible under their articles of association (by-laws). Collecting societies may therefore take legal action to defend their repertoires and those of foreign collecting societies that they manage, whether before the civil courts (Supreme Court, 22 March 1988, 86-11874) or the criminal courts (Supreme Court, 25 October 1988, 86-91720). In its judgment of 13 November 2014 (13-22401), the French Supreme Court answered a very important question: do authors who are members of collecting societies retain the right to take action in infringement cases to protect their economic rights?

The facts of the case are as follows: the French television channel TF1 co-produced a television series called 'Zodiaque' and commissioned a composer to write the music. The composer assigned his rights to the publishing company Une Music. Two authors wrote the lyrics for the song 'Angel' written by the composer. The song was used in the series broadcast on television by TF1. The authors of the lyrics brought an infringement case against TF1. The Court of Appeal of Paris, in a judgment of 22 May 2013, declared the authors inadmissible in their claims for damages based on the infringement of their economic rights contributed to a collecting society. They lodged an appeal before the Supreme Court ('Cour de cassation'), arguing that authors and publishers who are members of a collecting society (in this case SACEM) have locus standi to claim for the protection of their rights, and in particular to instigate infringement proceedings.

In its judgment of 13 November 2014 (13-22401), the Supreme Court dismissed the authors' arguments, stating that, given Article 1 of the Articles of Association of SACEM, the authors have, through their membership, made a contribution of their economic rights, which are therefore exercised by the collecting society. Therefore, the authors may not defend their rights personally, except if the collecting society fails to take action.

This means that authors may not take action to claim payments that should be made to the collecting society and/or that are based on licences that are or should be entered into between the collecting society and the user. In the present case, the exploitation of the right of communication to the public via television broadcasting is managed directly by the collecting society SACEM. This society negotiates licences with the television channels. In order to be entitled to take action for such payments, the authors must prove not only that the collecting society has not negotiated

such licences and/or has not collected the corresponding royalties, but also that said collecting society had not taken appropriate action once the author had formally asked it to do so. This ruling is therefore logical: in this type of situation the authors simply need to claim from the collecting society their share of the royalties that have been collected from the television channel.

This also means that authors retain the right to take action for the defence of their economic rights that are not directly managed by the collecting society (Supreme Court, 24 February 1998, 95-22282), e.g. the right to synchronise a musical work with a series or a TV trailer before its broadcast (Court of Appeal of Paris, 23 October 2009: see our article on the case). Thus, authors who wish to take action to defend their economic rights have to choose the grounds for their claims with care. Moreover, collecting societies may not take action to defend the moral rights of authors, since such rights are personal and attached to the author (Supreme Court, 16 April 1975, 72-14298).

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