

[FR] Journalists' Copyright and Internet (continued)

IRIS 1998-10:1/1

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The Court of Appeal in Colmar has overturned the order in an urgent matter delivered on 3 February 1998 by the Regional Court (Tribunal de Grande Instance - TGI) of Strasbourg, under which the journalists of the daily newspaper "Dernières Nouvelles d'Alsace" (DNA) and the television channel France 3 had obtained the closure, on pain of a fine, of a web-site offering extracts from the DNA and the television channel's news programme which infringed the journalists' copyright (see IRIS 1998-2: 5). Meanwhile, an agreement defining the conditions for using the DNA on-line had been reached between the company which publishes the newspaper and the main unions of journalists, as a result of which the journalists' unions have withdrawn from the court proceedings.

The dispute nevertheless still remained ongoing in full in respect of the journalists at France 3, who considered that neither their employment contracts nor the collective agreement covering the audiovisual sector included any transfer of their rights of use to the channel.

It was therefore for the Court in Colmar, under the urgent procedure and by virtue of Article 807 of the new Code of Civil Proceedings, to determine whether the reproduction on Internet of television broadcasts produced by France 3 constituted a manifestly unlawful nuisance or imminent prejudice to the channel's journalists. The Court adopted the argument developed by the presiding judge in the initial urgent proceedings. An audiovisual work is a collaborative work protected by Article L 113-7 of the intellectual property code (Code de propriété intellectuelle - CPI), with ownership being in the hands of the co-originators. In the case at hand, concerning the methods of transferring rights, as the employment contracts between France 3 and the journalists contained no relevant provisions, only the provisions of the 1983 collective agreement for journalists were applicable. However, at the time broadcasting or reproduction on Internet could not have been foreseen, and there was therefore no specific agreement, as required by Article L 131-6 of the CPI, covering the transfer of the journalists' rights to use the work on Internet. As a result, France 3 was not able, as it had in the agreement protocol signed with the Internet operator, to declare itself the holder of the intellectual property rights for its broadcasts.

The Court nevertheless overturned the original order, as it was not apparent that the Internet operator had committed a manifestly unlawful nuisance or imminent prejudice. The Court therefore found that the company editing the web-site

should not be forbidden to reproduce the disputed items, particularly as the contract with France 3 had expired at the end of May and as the channel had since ended the experiment. It was therefore up to the petitioners to continue the legal debate on the merits of the case before the appropriate court.

