[BE] the Definition of «Producer»

IRIS 1999-7:1/14

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In a decision on 10 November 1998, the court of appeal in Brussels considered the concept of «the producer». On 8 May 1996, Kladaradatsch! and the Dutch group First Floor Features (FFF) concluded a co-production agreement for the production of a full-length film entitled "Karakter".

In serious disagreement as to the exploitation and distribution of the film (the rights for which had been made over by FFF to Walt Disney Studios Belgium), Kladaradatsch! decided to take FFF to court. It claimed violation of its exclusive exploitation rights and of its exclusive distribution rights over the work. Kladaradatsch! maintained that it was able to benefit from the legal presumption of the transfer of copyright and neighbouring rights in its favour. In order to uphold its case, Kladaradatsch! needed to prove that it was the producer, as it claimed to be on the basis of the co-production agreement of 8 May 1996.

The court laid down the principle that the «producer» should be understood as being the party which creates the audio-visual work, abiding by the agreed conditions and within the time stipulated. The court deduced from this that the producer was the person who bore responsibility, either alone or with others, for the final cinematographic result.

In the case in hand it was true that the co-production agreement stipulated that Kladaradatsch! was jointly responsible for the film being made from the creative and technical viewpoints of production. However, in the light of the correspondence exchanged, the court felt that Kladaradatsch! had in fact explicitly admitted that its intervention was restricted to the part-financing of the film. Moreover, the agreement of 8 May 1996 indicated that Kladaradatsch! was not in a position to offer any licence to exploit the film without the consent of the group FFF whereas, the court held, a producer would normally be able to do so.

It was thus established that Kladaradatsch! had acted principally as a limited partner, that it had in no way been committed as a (co-) producer on an equal footing with the actual producer and that it had not in fact been responsible for the creation of the film.

In consequence, considering that Kladaradatsch! could not really qualify as a producer, the court upheld the appeal to declare the proceedings brought by Kladaradatsch! without foundation as regards the violation of its rights.

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Brussels court of appeal, 10 November 1998; Walt Disney Studios Belgium v. Kladaradatsch! and First Floor Features.

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