[FR] Royalties for Journalists and the Internet - New Case-Law

IRIS 1999-9:1/4

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Disputes continue between journalists and their employers concerning the posting of their articles on the Internet (IRIS 1999-5: 3). This summer, journalists from the newspaper Le Progrès , supported by the French national union of journalists (SNJ) in defence of the collective interests of the profession, brought a case before the regional court in Lyon against the company which publishes the newspaper. The company was posting articles previously or concurrently published in the paper version of the newspaper on the Minitel and the Internet, without paying the journalists any royalties.

In its defence, the Groupe Progrès company maintained that a newspaper was a collective work and that in its capacity as its editing company - in application of Article L 113-5 of the intellectual property code (CPI) - it held copyright for that work. The court looked at the definition of a collective work contained in the CPI, and found that the articles in question were perfectly identifiable (as a photograph would be, for example) and were not merely part of the work designated as the newspaper Le Progrès . The editing company could not therefore hold the corresponding copyright. For their part, the journalists claimed that, in the absence of a specific agreement negotiated with their employer, the latter held only the right to the initial publication of the articles, i.e., the paper version of the newspaper. Indeed, according to Article 761-9, para.2 of the Employment Code, "the right to have articles appear in more than one newspaper or magazine (...) must be expressed in a specific agreement stating the conditions authorised for reproducing the articles". However, in the present case, the articles could be called up by theme or by key words; not all the articles contained in the paper version of the newspaper could be consulted on the Internet, and its readership extended beyond the normal area for distribution of the paper version of the newspaper. The court deduced from this that the product available by telematic means should be considered a different newspaper for the purposes of the Employment Code and that there ought therefore to be a specific agreement defining the conditions under which authors would allow the reproduction of their articles. The court therefore found that making articles available on the Minitel and on the Internet without authorisation constituted an "infringement of the journalists' copyright ". The editing company has therefore been ordered to refrain from operating the disputed sites, subject to a fine of FRF 5 000 per day should it continue to do so. The court appointed an expert to determine the amount of compensation for the prejudice suffered by the journalists. It should be

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recalled that a think-tank is currently at work under the instructions of the Minister for Culture to consider the concept of collective work; its conclusions are due to be submitted by the end of the year.

Tribunal de grande instance de Lyon (10e ch.), 21 juillet 1999 – Syndicat national des journalistes et autres c/ la SA Groupe Progrès.

Regional Court in Lyon (10th chamber), 21 July 1999 – French national union of journalists (SNJ) et al. v. the company Groupe Progrès.

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