[FR] Copyright Rights of Journalists and Publication on Internet

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On 9 December last year the Court of Appeal in Lyon upheld the judgment delivered by the Regional Court (TGI) in Lyon last summer which declared the company editing the daily newspaper Le Progrès guilty of forgery for having, without the specific prior agreement of its salaried journalists, additionally published their articles on Internet (see IRIS 1999-9: 4). This was the first time an appeal court deliberated on the merits of the widely-discussed subject of the copyright rights of journalists in the event of the publication of their works on Internet. The company Groupe Progrès, considering itself the producer of a collective work, therefore claimed absolute entitlement to use the articles of its salaried journalists. The Court of Appeal took the opposite view to the lower court as regards classification of the newspaper. Whereas the lower court had refused to designate the daily newspaper Le Progrès as a collective work, the Court of Appeal held that in putting together a newspaper in several editions, selected and presented at the sole discretion of its management, the editing company was thus the origin of an autonomous collective work. Thus, further use of the work would be subject to an agreement transferring rights. According to the Court, a journalist who has undertaken to contribute to the collective work in return for lump-sum payment does not thereby lose his/her moral right in respect of his/her personal participation, but reserves those rights of use which he/she has not specifically transferred to another party. In the present case, the journalists had only contractually agreed to the editing company using their articles, with no specific mention of how they would be used. The Court concluded that the right of reproduction thus transferred to the company Groupe Progrès was exhausted once the articles had been published once in the agreed form (here, the original paper version of the newspaper), and that any further reproduction on a support of the same or a different kind required the prior agreement of the contracting parties. More generally, the Court emphasised that "telematic publication and archiving on a server could not be considered as an extension of publication on paper since, specifically, the typographic layout and the presentation of an article in a publication corresponding to a current of ideas upheld by its author at the time of concluding the contract disappears, readership is extended and the duration of publication is different".

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Cour d'appel de Lyon (1re ch.), 9 décembre 1999 SA Groupe Progrès c/ Syndicat national des journalistes et autres.

Court of Appeal in Lyon (1st chamber), 9 December 1999 SA Groupe Progrès v. Syndicat national des journalistes (French national union of journalists) et al.

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