[FR] Legal Nature of a CD-ROM

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There is much debate, in terms of both case law and legal opinion, concerning the classification of a multimedia work for the purposes of copyright in France. A decision by the Court of Appeal in Versailles recently refused to classify a CD-ROM of an interactive video game as an audiovisual work, upholding a judgment delivered by the Regional Court in Nanterre on 26 November 1997 which attracted a lot of attention at the time.

Articles L112-2 6 and 113-7 of the Intellectual Property Code (CPI) define an audiovisual work as "any animated sequence of images" and assimilate it to a work of collaboration. The question is whether this term is intended to apply to multimedia works, which are understood to be the integration and interaction on a single digital support of texts, images (whether animated or not) and musical sequences. In the present case, a dispute had arisen between the editor of the game and the originator of the video images intended to illustrate the action of the game integrated on the CD-ROM, as the latter had realised that the editor had, without his/her agreement, inserted new sequences, turned a number of scenes around, and changed the editing. However, Article L 121-5 of the CPI requires the agreement of both the originator(s) and the producer before any change may be made by addition to, deletion from or change in the final version of an audiovisual work. The Court of Appeal in Versailles, to which the case was referred, held that the CD-ROM could not be classified as an audiovisual work, in particular because this classification took no account of the essential characteristic of the game, ie its interactivity. Moreover, because of the many technical difficulties which required a considerable amount of work in preparing filming as well as in processing the images and including them in the software of the game, the Court found that the audiovisual aspect of the work was secondary and was not sufficient reason to classify the whole as an audiovisual work.

Continuing in the same vein, the Court classified the CD-ROM as a collective work. It had indeed, as defined in Article L 113-2 of the CPI, been "created on the initiative of an actual or legal person who/which edits, publishes and distributes it under his/her/its direction and in his/her/its name". Secondly, the various contributions making up the game had been thought out, created, amended and supplemented in symbiosis in order to achieve the desired recreational aim. Because of this fusion, the Court found it impossible to allocate to each of the co-authors a separate right in respect of the whole.

Nevertheless, the producer continued to hold the moral rights concerning his/her contribution to the collective work. The right to respect of the work indeed prohibited any reworking of the work without the contributor's agreement, or at least with his/her being informed, which had been the case here. The Court found that the editor's argument that the work of the contributor could not be used as it stood had no effect on the obligation to obtain the author's agreement to amending his/her work. It therefore awarded the contributor FRF 75 000 in damages to compensate for the moral prejudice suffered.

Cour d'appel de Versailles (13e ch.), 18 novembre 1999 J. M. Vincent c/ SA Cuc Software international et autres.

Court of Appeal in Versailles (13th chamber), 18 November 1999 J. M. Vincent v. SA Cuc Software International et al.