[FR] A Multimedia Work Is Not An Audiovisual Work

IRIS 2000-5:1/17

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Following on from the Court of Appeal in Versailles last November (see IRIS 2000-1: 13), the Court of Appeal in Paris has recently pronounced in its turn on the legal status of a multimedia work, in this case a number of CD-ROMs on painting and literature.

The dispute was between a company that edits CD-ROMs (Havas Interactive) and the designer and producer of seven CD-ROMs edited by the company (Mr Casaril). According to the contracts concluded by the parties, only the editing company held copyright. The producer was classified as an "independent service provider" and received a lump-sum remuneration as payment. Mr Casaril felt that he was in fact the author of the CD-ROMs and that the contracts signed referred to audiovisual works; he therefore had Havas Interactive summoned since the contracts signed did not allow for the proportionate remuneration required by Article L 132-25 of the French intellectual property code (CPI). The company Havas maintained in particular that one of the seven CD-ROMs was a collective work by its nature, as it was an encyclopaedia.

The Court of Appeal in Paris, to which the dispute was referred, began by noting that these were multimedia works, which it defined as being "works comprising texts, sounds and images interlinked by computerised means on a single support for the purpose of simultaneous, interactive restitution". The Court went on to state clearly that these works could not qualify as audiovisual works, which are defined in Article L 11-2-2 6 of the CPI as "consisting of animated sequences of images, with or without a soundtrack". The Court indeed held that "the multimedia work does not present a linear progression of sequences since the user may intervene and alter the order of the sequences; it is, moreover, a succession not of animated sequences of images but rather fixed sequences which may contain animated images". The Court then recalled that although most multimedia works were indeed collective works, it was necessary, to determine its legal status, to consider each case separately to see who was the initiator and who was in charge of the creative side of the work. Thus for the encyclopaedia CD-ROM, the Court noted that Mr Casaril was, according to the contract, responsible for designing and producing the CD-ROM. He had drafted the scenario, supplied an editing manager, chosen the graphic work and music and produced the disputed CD-ROM. The Court found that neither the title of "encyclopaedia" chosen by the producer nor the mere distribution of the CD-ROM under the name of Havas as editor were sufficient to qualify the CD-ROM as a

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collective work. This was therefore rejected and the Court found that Mr Casaril alone was the author of the CD-ROM. This is only the second decision delivered on this point by a Court of Appeal, and would appear to confirm the trend initiated by the Court of Appeal in Versailles, according to which a multimedia work cannot be regarded as an audiovisual work. Each case should nevertheless be considered separately, and in accordance with the criteria set out in Article L 113-2 of the CPI, to determine whether or not it is a collective work.

Cour d'appel de Paris (4e ch. B), 28 avril 2000 Sté Havas Interactive c/ Mme Casaril.

Court of Appeal in Paris (4th chamber B), 28 April 2000 Société Havas Interactive v. Mrs Casaril.

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