[FR] Journalists' Copyright and the Internet (continued)

IRIS 2000-6:1/22

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The Court of Appeal in Paris has recently upheld the judgment (see IRIS 1999-5: 3) prohibiting the company which produces the newspaper Le Figaro from making on-line use of articles written by journalists when such use is not provided for in their employment contracts and therefore constitutes infringement of copyright.

Initially, the Court stated that by virtue of Article L 131-6 of the CPI (intellectual property code), the transfer clause - which is intended to confer the right to make use of the work in a form not foreseeable or not provided for at the time of the contract being agreedmust be specific and stipulate participation in the profits arising from use of the works. This provision applies to journalists who, despite their subordinate relationship with the press company, alone hold the rights in respect of their published in the newspaper. The Court rejected the claims put forward by Le Figaro, which held that the newspaper was a collective work and that the company producing it therefore held the copyright. The Court replied that it was "not important whether the newspaper was or was not a collective work", since Article L 761-9 of the Labour Code subordinated the right to publish an article or other literary or artistic work by a journalist in more than one newspaper or magazine to a specific agreement setting out the conditions under which reproduction was authorised. The question raised in the present case, moreover, was whether the transfer of rights from journalists to the company producing the newspaper was limited to initial publication on paper, with no other rights for the newspaper, or included the possibility of a number of editions of the newspaper, including an on-line edition, which Le Figaro claimed in the alternative.

The Court of Appeal in Paris replied clearly to this, stating that "the edition of a newspaper on the Minitel and archiving on a server cannot be assimilated to an extension of circulation on paper, as this involves new technology not envisaged at the time of concluding the employment contract and use by the company producing the newspaper in return for a fee according to the duration of consultation. Moreover, what is published in this way is not the entire newspaper but contributions, ie the works of journalists". The judges in the initial proceedings had therefore been right to hold that the right of reproduction transferred to the publishing company was exhausted once articles had been published in the agreed form (on paper) and that any further reproduction required the prior agreement of the contracting parties in return for fair remuneration. The court in the initial proceedings had prohibited the use of articles on-line, and the Court of Appeal went one step further, extending the prohibition to include their use on the

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Internet.

Cour d'appel de Paris (1re ch., sect. A), 10 mai 2000 □ S.A Gestion du Figaro c/ SNJ et autres.

Court of Appeal in Paris (1st chamber, section A), 10 May 2000 □ S.A. Gestion du Figaro v. SNJ (national syndicate of journalists) et al.

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