[FR] Ownership of Rights Concerning Agency Photographs

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The number of disputes concerning the re-exploitation of agency photographs is on the increase. The regional court in Nanterre recently had to reach a decision in a case concerning the ownership of rights in respect of photographs. On the termination of the contract between a photographer and his agency, the photographer requested the return of all the photographs he had submitted, which the agency (Gamma) refused. The photographer therefore took the case to court and the court had to determine the true owner of the rights concerning the photographs in question - the photographer as their originator, or the agency, which claimed coownership of the rights. As some of the disputed photographs had been pooled, the judges divided the photographs into two separate categories. In refusing to return the photographs as requested, the agency Gamma claimed co-ownership of the economic rights attached to the photographs on the grounds of the concept of co-production. The agency claimed that this concept was contained in Article L 761-9 of the Employment Code, which governs relations between reporters and press companies. The court rejected the extension of the scope of the article and the assimilation of photographic agencies to press companies. It also recalled that the concept of co-production claimed by Gamma did not confer any economic rights in respect of the works, as the agency had had no part in their creation. Ownership of the originator's intangible rights was not dependent on the economic conditions of the production of the work. Thus, as the photographs had not been lawfully transferred by the photographer to the agency, the agency could not be considered as a co-owner of the works and could not object to their return. Ownership of the photographs exploited in a pool was determined by the legal status of the productions resulting from the practice, which consisted of gathering together a number of photographers covering the same event who then pooled their work, using the best. Because of the number of photographers involved, the agency Gamma held that that the photographic production resulting from pooling constituted a collective work and that this in turn conferred on it, as instigator of the pool and in charge of it, ownership of copyright. The court did not agree. It found that the photographs concerned were not the result of merging a number of contributions, but that each had a "single, individual, perfectly identifiable originator allowing the separate exploitation of each contribution". The photographs could not therefore be termed a collective work, and each photographer retained the economic rights in respect of his own works. Lastly, in the case of pooled

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photographs, the revenue was shared among its members without this affecting the amount due to the agency. The agency's rights in respect of these photographs were therefore the same as for photographs exploited individually. The agency Gamma could not therefore claim any rights in respect of the photographs, and the court ordered the photographs to be returned to the applicant, subject to the authorisation of the other members of the group.

TGI Nanterre, 1 Chambre A, 13 décembre 2000 - Francis Apesteguy et autres c/ Société Gamma Presse Image

Regional Court in Nanterre, 1 chamber A, 13 December 2000 - case of Francis Apesteguy et al. v. Société Gamma Presse Image.

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