[FR] Conditions for Using Phonograms as Background Music for Video Clips

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The distribution of many phonograms is often promoted by means of a video clip that adapts the soundtrack of the original phonogram to visual images. These video clips are entirely dependent on the exploitation of the original sound work, and a recent decision by the court of cassation has now set out in detail the conditions for producing video clips. In the case in question, the performing musicians and their representatives claimed that video clips could not be produced without their authorisation as this constituted a secondary use of their performances. On the other hand, the producers of the phonograms and videos claimed that the authorisation given by the performers at the time of recording was equivalent to a transfer to the producers of the rights concerning the performance, thereby authorising any secondary exploitation, subject to additional remuneration.

The court of cassation upheld the decision that the reproduction of the musicians' performance in the form of videos was unlawful if they had not given their consent. The producers based their claim on Articles L 762-1 and L 762-2 of the Employment Code, which govern authorisation by the performer, but the court did not agree. The court held that the existence of an employment contract did not waive the enjoyment of intellectual property rights; the performer's authorisation was required each time the performance was used, in compliance with Article L 212-3 of the Intellectual Property Code.

The producers also based their claim on professional agreements which showed that the authorisation given at the time of recording was valid for any secondary use of the performances. The court of cassation, interpreting the common intention of the parties, decided that this authorisation given at the time of the recording was specifically limited to reproduction in the form of a phonogram produced for commercial purposes.

Videos were therefore not covered by these agreements, and the court concluded that the production of a video based on a phonogram was subject to obtaining the performers' authorisation.

Cour de cassation, 1 chambre civile, 6 mars 2001, Syndicat national de l'édition phonographique c/ Syndicat national des artistes musiciens de

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Court of cassation, 1 civil chamber, 6 March 2001, French national union of phonographic editors v. French national union of performing musicians

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