[FR] Court of Cassation Gives Verdict on Journalists' Copyright

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In recent years judges have had to deal with a number of cases concerning journalists' copyright when their articles are re-used on-line, and the Court of Cassation has just delivered an important decision on the subject. In the case in question, an appeal had been lodged with the Court by a freelance journalist whose former employer had, without his consent, re-used - in several issues of the same magazine - photographs he had taken that had been published previously in the magazine. The substance of the case did not therefore concern their reuse on-line, but the principle behind the Court of Cassation's decision should permit its extension to such use.

The Court of Appeal in Versailles, interpreting Article L. 761-9 of the Employment Code that the Court of Cassation had used in its arguments in the past, held that the publisher was entitled to re-publish - in the same publication - photographs taken by the journalist without his authorisation and without further remuneration. It is true that, by virtue Article L. 761-9 of the Employment Code, entitlement to publish journalists' contributions in more than one newspaper or periodical is subject to specific agreement setting out the conditions under which reproduction is authorised. However, the Court of Appeal found that these provisions did not apply in the present case, considering that the phrase "more than one newspaper or periodical" was intended to refer to the issues of a newspaper or a periodical published by the same press group under the same title.

In its decision on 12 June, however, the Court of Cassation overturned this reasoning. Referring to Article L. 111-1, paragraph 3 of the Intellectual Property Code and Article L. 761-9 of the Employment Code, the Court stated in very broad terms that "the existence of an employment contract did not waive the enjoyment of the originator's intellectual property rights". Thus, "in the absence of a specific agreement, concluded in accordance with the statutory conditions, an originator does not transfer the right to reproduce his work to his employer by the sole fact of the initial publication". The publisher must therefore request authorisation from the salaried originator for any re-use of his works (probably including on networks), unless there is a clause to the contrary that meets the requirements of the Intellectual Property Code.

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Cour de cassation (1 chambre civile), 12 juin 2001, Rillon c/ Sté Capital Méda

Court of Cassation (1st civil chamber), 12 June 2001, Rillon v. Société Capital Méda

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