[FR] Copyright Protection for Journalists and the Broadcasting of their Work on the Internet

IRIS 2002-1:1/31

Mathilde de Rocquigny
Légipresse

Whereas companies, journalists and representative unions in press circles are currently concluding agreements aimed at regulating the re-use of work on the Internet, this type of agreement appears to be less common in the audiovisual sector. The courts are therefore sometimes called on to deal with disputes arising from the broadcasting of television news programmes on the Internet (see IRIS 1998-10: 3). On 16 November 2001, the regional court in Strasbourg found against a television channel that was broadcasting audiovisual programmes (television news broadcasts) as it could not produce proof of the agreement of the journalists who were the cooriginators of the programmes.

The court held that compiling television news broadcasts of this kind constituted an "intellectual work" within the meaning of Article L. 112-2 of the Intellectual Property Code (CPI). They were, moreover, collaborative works, and case-law applies the presumption of Article L. 113-7 of the CPI to any audiovisual work, as this type of work implies the work of a number of contributors collaborating in the choices, selection of subjects and shots, editing, compositions, presentations, etc. In the circumstances, as the programme could not be regarded as a "collective work", the producer - in this case the France 3 television company - could not be considered as the sole originator and exclusive holder of the economic rights attaching to the work. In the absence of specific provisions in the employment contracts between the applicants and the company France 3 on the matter, the judge referred to the national collective agreement on the work of journalists for guidance on the way in which rights should be transferred. As the agreement had been drawn up in 1983, the judge felt that the rights in respect of the distribution, reproduction and use of works that it covered could not refer to use on the Internet. The court therefore concluded that the company France 3, which could not claim to hold the intellectual property rights attaching to the programmes, should have asked the co-originators of the collaborative works in question for their authorisation.

Moreover, the court threw out the claim made by the company France 3 that the provisions of Article L. 761-9(2) of the Employment Code, according to which any further use of a work was subject to a specific agreement stating the conditions under which reproduction was authorised, were not applicable to a further full broadcasting of the television news programme by the same audiovisual company. Indeed it felt that, although the electronic version of the entire

television news programme should be considered as a "further publication in the same newspaper", this did not challenge the principle according to which the right of reproduction was exhausted after the initial publication, as the further use of a work, even in the same newspaper, and whatever the support used, was not exempt from this rule.

Tgi Strasbourg (2 ch. com.), 16 novembre 2001 Snj, Chavanel c/ Plurimedia et France 3

Regional court in Strasbourg (2nd chamber, commercial section), 16 November 2001; SNJ, Chavanel v. Plurimedia and France 3