[FR] The Representation of Works of a Painter During a Television Programme Was Not a Short Quotation within the Meaning of the Intellectual Property Code

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In a judgement of 4 July 1995, the Court of Cassation held that the showing of the entire works of a painter during a television programme did not constitute a short quotation within the meaning of the Intellectual Property Code.

In this particular case, the television company, Antenne 2, showed a programme on 29 November 1988 devoted to topical events in the theatre, during which, in connection with a play being performed at the Théâtre des Champs-Elysées, the mural paintings of Edouard Vuillard in the smokers' bar were shown. On 16 November 1988 the theatre had inaugurated the re-hanging of the panels painted by Vuillard , which had been stolen in 1986. During the programme, more than an hour long, the camera, which travelled throughout the entire theatre to show the quality of restoration work, stopped for 49 seconds on the rediscovered works of Vuillard. Acting on behalf of the beneficiaries of the painter, who died in 1940, the SPADEM (Société des auteurs des arts visuels- Society of authors of the visual arts), considering that these works had been shown without prior authorisation, requested damages. The Court of First Instance dismissed the SPADEM on the grounds that the showing of artistic works, such as paintings or sculptures, came within the scope of the right of quotation. In its decision of 7 July 1992, the Court of Appeal of Paris reversed the decision, holding that the "showing of the litigious frescoes of Vuillard may not be analysed in this particular case as a short quotation".

The Court of Cassation approved the decision of the Court of Appeal and rejected the appeal lodged by Antenne 2, refusing to retain as a criterion the fleeting nature of the showing of the works, the speed of vision, in order on the contrary to take into account that the works of the painter had been shown in their entirety and that such a representation could not constitute a short quotation within the meaning of article L. 122-5 of the Intellectual Property Code. The same solution had been adopted by the first Civil Chamber of the Court of Cassation in its decision of 22 January 1991 Fabris v. Loudmer and in the decision of the Plenary Meeting of 5 November 1993. Moreover, the description of the work making the quotation, in other words the television programme, as a work of information, was not retained in the analysis of the Court of Cassation.

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Arret de la 1re Chambre Civile de la Cour de Cassation du 4 juillet 1995 , Société nationale de programmes Antenne 2 contre Société SPADEM.

Decision of the 1st Chamber of the Court of Cassation, 4 July 1995, Société nationale de programmes Antenne 2 vs. Société SPADEM.

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