[FR] The Rights of the Central Figure in a Documentary

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On 27 September the Regional Court in Paris delivered a much-awaited judgment on the rights of the "hero" of a documentary. Mr Lopez, the "star" teacher of the single-class rural school featured in the successful full-length documentary film "Être et avoir" (1.3 million tickets sold to 31 December 2002, after six months' operation), claimed "infringement of copyright by the unauthorised use of his rights as an originator and as a performer, and infringement of his exclusive rights in respect of his image, his name and his voice" and claimed compensation from the film's director, co-producer and distributors.

Mr Lopez felt firstly that, under Article L. 1122(2) of the French intellectual property code (Code de la propriété intellectuelle CPI), he held copyright in respect of his lessons, which constituted 80% of the film. The Court, recalling that such protection was conditional on the provision of proof of originality reflecting the personality of the originator, rejected the application on the grounds that, although the teacher was powerfully present throughout the film, the fact remained that none of his teaching or any teaching method were reproduced in the film. Mr Lopez then claimed that he was the co-author of the film, in application of Article L. 113-7 of the documentary. The Court recalled, however, that the teacher, in the interviews given when the film was released, constantly indicated that he had not intervened in the filming and that no document had been produced that supported his claim to have truly participated in the production operations or in the choice of shots and sequences. Nor was the applicant entitled to protection under the neighbouring rights of a performing artist in respect of his performance of lessons. The Court recalled that the mere fact of being filmed did not confer on the person who had been filmed the status of performing artist, and went on to state clearly that "the documentary, by its relationship with reality, as defined in the cinematographic arts, excluded the notion of a performance".

Lastly, the teacher claimed infringement of his rights in respect of his image, his name and his voice, protected by Article 9 of the Civil Code, claiming that he had never given his "specific" consent to their use either in the film or in the various advertising and commercial supports. Recalling that the proof of such authorisation may be "specific or tacit, and take any form", the Court noted that Mr Lopez had told journalists that he had agreed to the film being made, that he had followed the various stages of recognition of the film and taken part in its promotion (more particularly at the 2002 Cannes Film Festival). He could not,

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therefore, claim lack of consent on his part to the use of his image, name and voice in the film. Thus the Court rejected every claim brought by the "hero" of the documentary.

Tribunal de grande instance de Paris, 3 chambre, 1 section, 27 septembre 2004, G. Lopez c/ N. Philibert et autres

Regional Court in Paris, 3rd chamber, 1st section, 27 September 2004, G. Lopez v N. Philibert et al

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