[FR] Cancellation of Investment Approval for the Film L'ex-femme de ma vie Invalidated on Appeal

IRIS 2005-8:1/19

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On 21 July 2005 the administrative court of appeal in Paris invalidated the judgment of the administrative tribunal in Paris delivered on 5 November 2004 cancelling the decision of the director of the national film centre (Centre national de la cinématographie - CNC) granting the companies ICE 3 and Josy Films investment approval for the film L'ex-femme de ma vie.

A few weeks earlier, however, the decision granting approval for the film Un long dimanche de fiançailles had been referred to the administrative court of appeal in Paris and the court had upheld its cancellation, thereby depriving its producers of receiving public aid, because the company 2003 Productions was not European (see IRIS 2005-1: 13 and IRIS 2005-7: 13).

In the present case, the Court dismissed the matter of the nationality of the co-producer company, partly owned by an American company. Under Article 33(1) of Decree No. 99-130 of 24 February 1999 on financial support for the film industry, the application for investment approval may only be submitted by the delegated production company. In the case of a co-production, this company acts in the name and on behalf of the other production company or companies. Article 35 of the Decree states that, in the case of a co-production, the investment approval is issued to each of the production companies party to the contract. The Court held that these provisions meant that in the case of a co-production, although only the delegated production company was allowed to submit an application for investment approval in the name and on behalf of the other production company or companies, the approval issued to the delegated co-producer could not be regarded as being issued implicitly and necessarily to all the companies co-producing the work, particularly where some of the co-producer companies had refrained from requesting approval, either because they had no interest in doing so or because they did not meet the statutory conditions for obtaining it, or because they had only become involved in the production after the approval had been issued to the delegated co-producer. Rejecting the notion of global approval, the Court noted that, in the present case, a single decision on investment approval had been issued in respect of the film L'ex-femme de ma vie in favour of the companies Josy Films and ICE 3. This decision could not on its own be taken to constitute approval in respect of the company 2003 Productions, a co-producer company in the film, which indeed had not requested approval. This rendered inoperative the argument that, as the company was controlled by the company

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Warner Bros. France, a 97%-owned subsidiary of the American company Warner Bros., within the meaning of paragraph III of Article L. 233-3 of the Commercial Code and paragraph II(2) of Article 7 of the Decree of 24 February 1999, the CNC's Director General could not issue investment approval in its favour.

Administrative court of appeal in Paris (plenary formation), 21 July 2005 - the company 2003 Productions and the CNC

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