[FR] Copying of Characteristic Elements of a Television Game and the Exception for Parody

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On 5 March 2008, the Regional Court in Paris delivered an interesting judgment in a case concerning the "borrowing" of elements of a television game by another party. The case had been brought by the creator and the producer of 'Fort Boyard', the well-known game of tests and adventure that the public channel France 2 has been broadcasting for the past 16 years, for infringement of copyright against Endemol, the producer of the game and reality TV broadcast entitled '1re Compagnie', which was broadcast on TF1 over a period of two months in 2005. They claimed that four minutes of sequences explicitly based on 'Fort Boyard' had been broadcast on 28 February 2005. The Court noted that only certain elements had been used, namely the music, the names of the characters, the presence of keys, the title ('Fort Guyane') and above all the method of the game, which consisted of undergoing tests in order to obtain keys. The defendants claimed the exception allowed for parody, referred to in Article L. 122-5(4) of the Intellectual Property Code, according to which "when a work has been divulged, the originator may not prohibit: (...) parody, pastiche or caricature, in view of the laws of genre". The Court recalled that in order to qualify as parody, the later work must be humorous in nature, avoid any risk of confusion with the work being parodied, and permit the immediate identification of the work being parodied. In the case at issue, the Court held that two of these criteria were clearly met, since the disputed broadcast permitted the immediate identification of the 'Fort Boyard' programme and that there was no risk of confusion between the two programmes. Moreover, the '1re Compagnie' broadcast was in itself a parody of a military training camp. However, by using the characteristic elements of 'Fort Boyard', the intention of the originators of the disputed broadcast was neither to be humorous nor to parody the earlier work since there were no riddles, clues or money to be won. The inclusion of elements of the earlier work was intended to boost the broadcast and give it some pace. The borrowings were therefore judged to be exclusively parasitic, the purpose being to take advantage of the celebrity of the original programme, excluding the intention of merely being humorous. The prejudice suffered by the complainant creator as a result of the violation of his moral right was fixed at the sum of EUR 25,000 and the monetary prejudice suffered by the complainant production company at EUR 50,000.

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TGI Paris (3e ch. 3e sect.), 5 mars 2008, SA Adventure line productions et autres c/ Endemol France et autres.

Regional Court of Paris (3rd chamber, 3rd section), 5 March 2008; Adventure Line Productions S.A. et al. v. Endemol France et al.

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