[FR] Qualification of Video Games as Complex Works

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On 25 June 2009 the Court of Cassation delivered an important judgment on the much debated issue, in terms of both doctrine and case law, of the legal qualification of video games. A video game incorporates both software and audiovisual elements, alongside other elements (music, text, etc) that are covered by copyright under common law. This raises the question of its qualification, as a unit or in terms of distribution, as each of these elements has been subject to a different scheme. The only legal definition under French law is given in relation to tax, and opts for qualification as software (Article 220 terdies of the General Tax Code). Case law has often qualified video games as software works, or even multimedia works, on the basis of copyright under common law.

In the present case, SESAM, which exercises and manages the rights to the mechanical reproduction of musical works in the SACEM/SDRM catalogue for multimedia works, declared among the liabilities of a company's court-ordered liquidation debts resulting from the unauthorised reproduction of works in its catalogue in the video games produced, edited and marketed by the company in question. If video games were to be considered as software works, it would be possible to apply a lump-sum remuneration, but if not it would be possible to consider a proportional remuneration based on the right to mechanical reproduction managed by SESAM. The court of appeal held that the games were complex works and their qualification could not be reduced to that of software, sale of which was subject to a lump-sum payment. The Court of Cassation rejected the appeal against the decision, but came up with a new solution by stating that video games were complex works which could not be reduced merely to their software dimension, however important that might be, such that each of their component parts was subject to the scheme applicable to it by virtue of its nature - which means that each work incorporated in a game is covered by its own scheme. This judgment therefore breaks down any qualification of the video game as a unit. Time will tell if this solution will be easy to implement.

Cour de cassation (1re ch. civ.), 25 juin 2009, M. J. X. c/ Sesam

Court of cassation (1 st chamber, civil section), 25 June 2009, Mr J. X. v. SESAM

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