[FR] Should the Film “Séraphine” be Outlawed?

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Amélie Blocman
Légipresse

The original nature of the screenplays for two successful French films has recently been contested in court.

The first was the screenplay for “Outlaws” (original title “Hors la Loi”), a film by Rachid Bouchareb presented at the Cannes Film Festival in 2010, which relates the involvement of Algerians living in France in the war of independence through three brothers who adopt the different attitudes of Algerians. The co-writers of another screenplay, entitled “Sparring Partners”, called for a ban on showing the film and claimed damages to compensate for the prejudice they felt they had suffered as a result of the alleged infringement of copyright. The 3rd Chamber of the Regional Court in Paris found however that viewing the films and reading the screenplays sufficed to demonstrate that these were two very different stories, covering different periods of time, and with different themes. The applicants’ screenplay merely told the story of two enemy brothers who shared a passion for boxing and whose friendship was almost crushed by History. Thus the screenplay for “Outlaws” told a universal story, whereas the other film was limited to the fate of two individuals. The Court found that there was therefore no similarity between the two works, in terms of either subject matter, treatment, or construction. Furthermore, the only two points of contact between the two works were a passion for boxing, displayed by one of the three brothers in the film “Outlaws”, and the Algerian war as a triggering factor. The Court found that the focal points of war, boxing, prison, and exile that the applicant (the other applicant having been declared inadmissible for lack of proof of capacity to take action as an originator) claimed bore the imprint of his personality were no more than general ideas and could not be protected by copyright in that form. Only the definitive form the film or the screenplay gave to the various themes could constitute a form of the themes that might be protected. In the present case, the oversimplified nature of the screenplay and the general claim the applicant laid to these themes meant that they could not be protected in any way.

The other noteworthy judgment concerns “Séraphine”, a film about the painter of the same name, which has won a number of awards, including the César for best original screenplay in 2009. An art historian who has written a novelised biography of the painter, in whom he specialises, and his editor, claimed that many passages of the screenplay for the film were a slavish or quasi-slavish reproduction of his book, published in 1986; they identified 35 borrowings. The same chamber of the Court recalled that historical or purely biographical facts

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could not in themselves be appropriated in any way. It was very different if the tale describing them brought previously little-known events or situations to the public's knowledge and treated them in a manner specific to the author. The Court held that in many cases the alleged resemblances were based on biographical elements taken from reality, or on general ideas, or on expression in a form that did not display any originality. In nine specific cases, however, it noted a similarity in the wording used, sometimes to the letter, between the screenplay for the film and the book written by the applicant, such that copyright had been infringed. The Regional Court therefore ordered the production company and the screenwriter to pay the applicant EUR 25 000 to compensate for the infringement of his moral rights as author, and to pay his editor EUR 25 000 to compensate for the infringement of its pecuniary rights. The Court also ordered the publication of its judgment in three newspapers or magazines. The request to ban showing the film was rejected, however, since it was only one version of the screenplay and not the film itself that infringed copyright.

TGI de Paris (3e ch. 1re sect.), 16 novembre 2010 - MM. Afiri et Roques c. R. Bouchareb et a.

Regional Court of Paris (3rd Chamber, 1st Section), 16 November 2010 - Mr Afiri and Mr Roques v. R. Bouchareb et al.

TGI de Paris (3e ch. 2e sect.), 26 novembre 2010 - Editions Albin Michel et a. c. Sté TS Productions et a.

Regional Court of Paris (3rd Chamber, 2nd Section), 26 November 2010 - Éditions Albin Michel et al. v. the company TS Productions et al.

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