[FR] Useful Details from the Court of Cassation on Film Soundtracks

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On 19 February 2013, the Court of Cassation delivered an important judgment on a matter of neighbouring rights in a dispute over the soundtrack for the film *Podium*, starring a look-alike of the singer Claude François. In the case, Spedidam, the society for the collection management of the neighbouring rights of performers of music and dance, claimed that the producer of the highly popular film had created the soundtrack of the film without obtaining authority from the performers concerned, using recordings made before neighbouring rights were protect by the Act of 3 July 1985. Collection agreements dating back to 1959 made it possible to do without this authorisation, on condition of payment of remuneration in the form of a “fair supplementary fee in addition to the price determined for the recording session”

The collections management society held that the entry into force of the Act of 3 July 1985 on 1 January 1986 rendered the agreement obsolete and that it was therefore necessary to ask the performers for their agreement to the use of the recording of them in accordance with Article L. 212-3 of the French Intellectual Property Code (Code de la Propriété Intellectuelle - CPI). The court of appeal had noted that the use of phonographic recordings to provide the soundtrack for films was current practice at the time the disputed recordings were made. The Court of Cassation considered that it was by a sovereign appreciation that the court of Appeal had judged the agreements concluded in 1959 betweeen the national syndicate of performers (Syndicat Nationat des Artistes-Interprètes) and the national syndicate for the phonographic industry (Syndicat National de l’Industrie et du Commerce Photographiques) which were enforceable with respect to Spedidam, should be interpreted as recognition of the right conferred on producers who owned recordings to use them to provide the soundtrack for future films, on condition that they paid a fair extra fee to the performers. The court also noted that the attendance sheets produced in the proceedings, contemporay with the recordings made between 1963 and 1981, did not include any reservation regarding the use to be made of the recordings. For the Court of Cassation, the court of appeal had been able to deduce that the producers were in fact perfectly entitled to use the recordings in exchange for the additional payment provided for in the agreements.

The judgment also raised the question of whether the collective management society was able to take action to defend the rights non-member performers. The

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Court of Cassation gave a negative answer, stating clearly that “it transpired from Article L. 321-1 ot the Intellectual Property Code that, regardless of its articles of association, a society for the collection and redistribution of performers rights may only be permitted to take legal action to defend the individual rights of a performer if it had received instructions from the performer to do so”.

Cour de Cassation, arrêt du 19 février 2013, SPEDIDAM c. Canal Plus et autres

http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/141_19_25484.html

Court of Cassation (1st chamber, civil cases), judgment delivered on 19 February 2013, SPEDIDAM v. Canal Plus and others

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