

[FR] Audiovisual adaptation of a political book constitutes free-riding

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A journalist who wrote a book about a famous political adviser to the Vth Republic felt that a documentary devoted to “the secrets of the Elysée’s gurus” broadcast on a public-service television channel two years after the book’s publication constituted an infringing adaptation of his work. He therefore had the producer and the channel summoned to face charges of infringement. When the Regional Court in Paris concurred, the producer and the television channel appealed against the judgment. In its decision delivered on 17 November 2015, the Paris Court of Appeal overturned the original judgment. It recalled that neither the investigative journalism, the historical events, the information regarding political life, including a number of anecdotes and revelations, nor the slogans of a political campaign, which belonged to history, could in themselves be protected under copyright. On the other hand, the originality of the work lay in the combination of the author’s arbitrary selection of the facts reported and the way in which he analysed them, his drafting skills, and the light he personally shed on the psychology and the actions of the political adviser who is the subject of the book. The Court observed, however, that - unlike the book - the documentary only devoted a few moments to the personal life of the person concerned: the spotlight was not on the person, but on the new strategies of political communication. The Court found that the documentary’s lack of emphasis on the personal life of the subject of the book meant that it was not possible to detect the same combination of characteristics that made the book an original work.

The Court then went on to analyse the appellants’ subordinate appeal on the grounds of free-riding. It began, before considering the facts of the matter, by recalling the principle according to which free-riding consisted of economic players placing themselves in the wake of other players and deriving undue benefit from the latter’s skill, notoriety or investments, even if there were no risk of confusion. Thus legal action claiming free-riding could be founded on the same facts as those alleged in support of legal action for infringement which was rejected under private law on condition that justification of the wrongful behaviour was furnished. In the case at issue, the author claimed that the appellant companies had made systematic wrongful use of the information and anecdotes he had selected for inclusion in his book, on the basis of his analysis, and in an identical or very similar formal presentation. The Court noted that the bibliography and the author’s acknowledgements included in the book reflected

the scale of the work of investigation, research and selection he had carried out. And indeed both the content and the format of the book had been awarded the Prix du Livre Politique in 2010. For its part, the publishing company which had commissioned and paid for the book and been responsible for its rewriting and layout as well as its printing and promotion, justified the substantial investment it had made. As the Court showed in its analysis of the alleged infringement, the documentary constantly borrowed heavily from the applicant's book, but made no reference at all to it, and did not include the author in the list of people included in the acknowledgements. The Court saw in this a reflection of the editor's warnings as to the unavailability of rights to adapt the book and the author's refusal to collaborate in the production of the documentary in the capacity of a political adviser.

It was therefore judged that by deliberately appropriating, in disregard of the investment made and without providing official acknowledgement, the fruits of the author's intellectual labours made possible thanks to the financial investments of his editors, the producer and broadcaster of the documentary had ensured the success of the documentary at issue at minimum effort and cost to themselves, and were therefore guilty of free-riding. The Court set the figure of EUR 20,000 on the resulting prejudice suffered by both the author and his editor.

