# [FR] Court proceedings on remuneration for creators of ‘Arthur et les Minimoys’ characters

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The regional court (tribunal de grande instance - TGI) of Paris has delivered an extremely significant judgment on the possibility of parties to an author contract waiving the principle of proportional remuneration.

In 2002 and 2008, the production company of the director of the animated film ‘Arthur et les Minimoys’ (English title: Arthur and the Invisibles) concluded an author contract for the “graphic conception of secondary characters, accessories and drawn decors” which provided for a lump-sum payment in return for the agreed transfer of rights. Two further episodes in the trilogy had been produced subsequently, and new transfer contracts signed by the parties concerned in 2008, in return for a lump-sum remuneration of EUR 40,000. The new contracts also provided for the transfer of the merchandising rights of the four graphic artists, and additional remuneration on the condition that the representations and reproductions included only one or other of the secondary characters they had created. The production company had failed to produce elements making it possible to determine the amounts generated by merchandising, and the creators had discovered that the company was continuing to make use of their creations all over the world without their agreement, a contract, or remuneration. Because of this, the creators were calling on the courts to declare the transfer contracts null, and to award reparations for the prejudice suffered as a result of the wrongful use of their creative work.

The applicants claimed that their transfer contracts contravened the principle of proportional remuneration provided for in Article L. 131-4 of the Intellectual Property Code (Code de la Propriété Intellectuelle - CPI), in that their graphic creation could not be considered merely “accessory” to the film, contrary to the indications set out in their contracts. They also felt that that the co-contracting party had been fraudulent in only making provision for a percentage of the revenues from merchandising in the case of “individualised [reproduction] representing solely one of the secondary characters”. The Court recalled that, under Article L. 131-4 of the CPI, it was for whichever party so claiming to explain why rendering application of proportional remuneration was impossible, and to justify it applying lump-sum remuneration to the creator as an exceptional measure.

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In the case at issue, it transpires from the contracts that the applicants had been entrusted with the intellectually creative work of creating both a number of characters and a quantity of accessories and decors for the film. The Court held that such a contribution could hardly be qualified as non-essential to the intellectual creation of the work, since it consisted of laying down the foundations for the film and creating its graphic environment. This important contribution to the creative process made by the applicants had indeed been specifically acknowledged by the defendant production company. The Court also noted that the fact that several people contributed together to the graphic work of an animated film, without it being possible to determine precisely the contribution of any one individual creator to each drawing, was not in itself enough to waive application of proportional remuneration, nor such as to establish the accessory nature of the person's contribution to the complete work. On the contrary, the drawings, illustrations and graphic work constituted a foundational, principal element on the basis of which the work could be created in three dimensions and subsequently finalised. Thus the defendant party had not justified that it was not in a position to determine proportional remuneration for the graphic artists, such that the disputed article in the contracts should be considered unlawful. The merchandising clause laying down a production condition which depended solely on the will of the defendant party was also erroneous. The illegality of these clauses, which constitute an essential and decisive element of the contract, resulted in the entire transfer contract being declared null.

The applicants were found justified in claiming damages in respect of the creation of all the characters, accessories and decors (and not solely the secondary characters, as claimed by the defendant party). Anyone who made use of their creations but disregarded their rights, which should be calculated in monetary terms as a proportional participation in income generated by sale or use, would have to pay damages to the applicants. An expert's report was ordered so as to determine the amount of income received as a result of making two sequels to the film and from spin-off merchandise.

### *Tribunal de grande instance, Paris, (3e chambre ; 2e section), 8 janvier 2016, P. Rouchier et a. c/ Société Europacorp et L. Besson*

*Regional court (TGI) of Paris (3rd chamber, 2nd section), 8 January 2016, P. Rouchier and others v. the company EuropaCorp and L. Besson*

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