[FR] Paul Eluard’s poem ‘Liberté’ used in a film by David Cronenberg: conflicting rights

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On 25 February 2016, the regional court in Paris delivered an unusual but noteworthy decision on the delicate matter of the conflict between copyright protection and creative freedom. In the case at issue, the publishing house which holds the rights for the representation, reproduction, and audiovisual adaptation of the work of surrealist poet Paul Eluard, including more particularly his famous poem entitled ‘Liberté’, and the poet’s daughter instigated proceedings on the grounds of infringement of copyright against the producer and distributor of a film directed by David Cronenberg. The case was brought after the film, ‘Maps to the Stars’, was presented at the Cannes Film Festival in May 2014, when the applicant’s discovered that six verses of the famous poem were used in the trailer for the film and in the film itself.

The rightsholders claimed more particularly that the defendant companies had, without their authorisation, carried out a first audiovisual adaptation in violation of their rights, and had distorted the work. They contested the use of the poem as the foundation for the scenario of a violent film on the themes of incest and the personal failings of a number of Hollywood stars. The defendants argued that the link created between the poem and the film was the fruit of the artistic liberty of its director, David Cronenberg. The Court noted that the film showed extracts from the poem on a number of occasions; the extracts were spoken or read by the characters in the film, without the authorisation of the work’s rightsholders. The fact of infringement of copyright was therefore established. The poet’s daughter also claimed that the defendants had made changes to the extracts from the poem, both in the French-language subtitles and in the English translation. The Court noted that many changes, substitutions, and additions had indeed been made, particularly in the French (such as “sur le sable de neige” instead of “sur le sable sur la neige”). It found that, since a poem was involved, it was evident that each word was of particular importance in terms of both meaning and rhythm: these mis-readings were deemed sufficiently significant so as to constitute an infringement of respect for the author’s work.

The Court went on to pronounce on the complaint that the work had been distorted because of the themes, scenario, and meaning of the film in which the poem had been used, as the complainants felt this altered the poem substantially. The defendants argued the principle of freedom of expression and claimed that the director had expressed a new version of the poem and indeed paid tribute to

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its author. The Court found that “an author’s freedom of expression allows the creation and distribution of a composite work including all or part of a first protectable work, on condition that the right of the initial author is respected in both financial and moral terms”. Moreover, the author of the second work should therefore be able to exercise his freedom of expression without the first work being confined to the historical or factual context in which it had been created. Nor could this freedom of expression be limited by a subjective appreciation of the merits of the second work by the persons who held the moral rights for the work. In the case at issue, however, the director had had an opportunity to state to the press that his film offered a “new meaning” to the poem ‘Liberté’. Thus, while he offered a different reading of the work, the director did not deny the quality of the poem but incorporated it into his own creation as a work. The Court found that it was not proven that the way in which the film dealt with the theme of liberty constituted an infringement of Paul Eluard’s thinking as expressed in the work. Thus the director’s use of the poem did not appear to be prejudicial to the author or his work, and was not in any way damaging to either the nature or the quality of the poem. As a result, the Court did not agree that the spirit of the work had been jeopardised; it awarded EUR 10 000 in compensation for the moral prejudice suffered and EUR 4 000 Euros in compensation for infringement of the author’s moral right.

Tribunal de grande instance, Paris, (3e ch., 4e sect.), 25 février 2016, C. Eluard-Boaretto et Editions de Minuit c/ SBS Productions et a.

Regional court, Paris, (3rd chamber, 4th section), 25 February 2016, C. Eluard-Boaretto and Editions de Minuit v. SBS Productions and others

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