[FR] Luc Besson’s film ‘Lock-Out’ plagiarises pre-existing film: judgment upheld on appeal

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In a decision delivered on 10 June 2016, the Court of Appeal in Paris upheld a sentence for plagiarism that hit the headlines when it was delivered in the initial proceedings, and substantially increased the amounts awarded in damages. In the case at issue, an American director claimed that the film ‘Lock-Out’, released in 2012, was very similar to the film ‘Escape from New York’ (French title: ‘New York 1997’), released in 1981, which he had co-written. The French production company of the film ‘Lock-Out’ and the film’s writers were summoned to appear in court to answer charges of plagiarism. The regional court found that the disputed film had indeed plagiarised the film ‘Escape from New York’, and ordered the defendants in the case to pay EUR 20 000 to the director, EUR 10 000 to his co-screenwriter, and EUR 50 000 to the company holding worldwide rights for the film, in compensation for their respective prejudice suffered. The defendants in the case appealed against the court’s decision.

The Court of Appeal began by recalling that plagiarism was appreciated not in terms of the differences but in terms of the similarities between the works at issue, and that consideration of the motivations of the parties bringing the case, as requested by the appellant parties, was irrelevant. The Court considered whether the film ‘Lock-Out’ used the same combination of various elements comprising the initial work, ‘Escape from New York’, even if taken in isolation, as this would constitute an infringement of copyright. The Court therefore examined these elements individually: the development of the plot, the cinematographic treatment, the principal and secondary characters, characteristic scenes in the films at issue, and lastly the message put across by the two works. The Court found that, disregarding the common theme of hostage-taking in a prison, which could hardly be deemed to constitute an appropriation, plagiarism was evidenced by the substantial borrowing by the writers of ‘Lock-Out’ of key elements in the initial work which when combined, as the result of arbitrary choices, constituted infringement of copyright. The Court added that film critics had all agreed on this in their press articles when the film was released. The writer of one of these articles, for example, felt the film was “closer to plagiarism than homage”, and that the plot “cribbed from the original film”. The judgment that plagiarism had indeed taken place was upheld, but was overturned regarding the evaluation of the prejudice suffered. The Court noted in particular that the co-writers of the initial work, who were invoking their entitlement to acknowledgement of paternity

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and respect for the work ‘Escape from New York’, had suffered moral prejudice. Furthermore, the Court found that the earlier date of the film (released in 1981) was not to be taken into account, which the judges in the initial proceedings had appeared to have done, since moral right is imprescriptible.

The defendants were ordered jointly and severally to pay the director the sum of 100 000 euros and the co-scriptwriter the sum of EUR 40 000 in compensation for the moral prejudice suffered, and to pay EUR 300 000 to the rightsholding company in compensation for the pecuniary prejudice suffered.

Cour d'appel de Paris, (pôle 5 - ch. 2), 10 juin 2016, SA Europacorp et a. c/ J. Carpenter et a.

Court of Appeal in Paris (section 5, chamber 2), 10 June 2016, Europacorp S.A. and others v. J. Carpenter and others.

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