[FR] Infringement of copyright on format of variety programme

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Court decisions acknowledging the original nature of the format for a television programme are rare, so due attention should be paid to the decision delivered by the regional court in Paris on 20 April 2017.

In 2009, the producer-presenter of a number of variety programmes on television concluded a production contract with France Télévisions for a new musical programme entitled Chabada, which was based on an original idea she claimed was her own. The aim of the programme was to bring together singers and French “chansons” both past and present, with three or four guests, representing three generations of performers, present on the set. The programme was produced and broadcast on France 3 between 2009 and 2013, when the public-sector audiovisual group decided to terminate the contract, citing financial reasons. Since the programmes Les chansons d’abord and “Du côté de chez Dave” (co-produced by a subsidiary of the Lagardère group in conjunction with the public-sector audiovisual group, France Télévisions, and broadcast from 2013 to 2016 on the same channel on the same basis as for Chabada, reproduced the original characteristics of her programme), the producer and her company brought a court case for infringement of copyright, calling for a halt in broadcasting the programmes at fault and claiming EUR 4.5 million in damages.

In its defence, the defendant company held that the applicant could only claim copyright with regard to those characteristics of the original broadcast that were original, whereas the programmes being broadcast were based on elements that were known, habitual and conventional for this type of music programme. The applicant claimed that a combination of ten characteristics made the format for the Chabada programme original; those characteristics included: the presence of five musicians playing live on the set; performers singing songs by different artistes; guests always representing several generations during each programme; archive recordings; regular features on the history of the songs; features on discoveries and favourites; and guests singing rearranged extracts of songs while remaining seated.

The court reiterated that “format” should be understood as meaning some sort of “instructions” describing the constant form of a programme, consisting of a pre-determined succession of sequences involving not only the material form of the

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programme but also the sequence of situations and scenes and the composition of scenes, and comprising a starting point, action, and a conclusion. The format thus constituted a framework within which a work could be developed.

To examine the original nature of its format, the court accordingly examined Chabada's "memorandum of intent", which listed the combination of the ten elements that the applicant parties claimed was to be found in each of the programmes produced and broadcast between 2009 and 2013. It noted that none of the previously-broadcast programmes cited by the defence had used the full combination. In the light of these elements, the applicant parties showed that they had created a format for a French variety programme with specific characteristics, the aim of which was to "transmit heritage and bring generations together". The format differed from anything previously shown in this type of broadcast and constituted a creative effort that was sufficient to be covered by the protection of copyright.

Once the court had decided the case was admissible, it went on to examine whether the programmes Les chansons d'abord and Du côté de chez Dave did indeed copy the format of Chabada. It noted that the press release presenting the programme Les chansons d'abord had cited the same "transmission of heritage and mix of generations" concept, presented in a similar way to that of the format for the applicant parties' programme. On viewing extracts from the disputed programmes, the court recognised nine of the ten combined characteristics that made Chabada original. With regard to the programme Du côté de chez Dave, which had taken over from Chabada on the same channel in the same time slot, the court noted that one of the ten original characteristics had been re-used. Differences with regard to the personality of the presenters, the logos and credits were of little importance, given the importance of the similarities between the programmes. The court found that copyright had indeed been infringed.

In their original summons, the applicant parties claimed compensation for the damage caused jointly and severally by the two co-producer companies (subsidiaries, respectively, of Lagardère and France Télévisions). A settlement was subsequently reached with the latter, the details of which were not made known to the court, as the parties concerned preferred to keep the terms of the settlement out of the argument. As the court was not in a position to know whether there was still any damage to be compensated for after this settlement had been reached, the claim for compensation from the Lagardère subsidiary was rejected.

TGI de Paris (3e ch. 4e sect.), 20 avril 2017 - Degel Prod c/ Carson Prod

Regional court in Paris (3rd chamber, 4th section), 20 April 2017 - Degel Prod v. Carson Prod

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