[FR] Judgment against screenwriter claiming infringement of copyright upheld on appeal

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The Court of Appeal in Paris has also been looking at infringement of copyright - in this case, the alleged infringement of copyright with regard to the film The Artist, which won five Oscars. A French scriptwriter who claimed that he held author's rights in respect of the script for an intended full-length silent film in black and white entitled Timidity, la symphonie du petit homme, felt that the film The Artist, released at the end of 2011, used key sequences from his script, included in a previous version. He therefore instigated legal proceedings against the writer, director and producers of the film on the grounds of infringement of copyright. The court rejected his application (see IRIS 2016-4/12), considering that he had failed to provide proof of the anteriority of the rights he claimed to hold, and found against him, ruling that he had instigated court proceedings abusively. He appealed against the judgment.

Before the Court of Appeal, unlike in the initial proceedings, proof of the anteriority, and of the existence and content of the script, was provided in the form of a certificate from the Alsace regional authority, to which the writer had submitted his script in 2006 within the context of a request for funding. It was therefore deemed admissible for him to instigate legal proceedings on the grounds of infringement of copyright. Called to pronounce on the originality of the scenario and on the alleged infringement of copyright, the Court of Appeal noted that the characteristics described by the appellant in his most recent writings (which he considers to indicate the originality of his script - its chronology, the futuristic universe described in it, the character traits of the main character in the film and his relations with other people, the events and twists in the plot, etc.) were not to be found in The Artist. Pronouncing on the twenty-seven elements of his script which the appellant claimed were to be found in The Artist, the court referred to the grounds for the judgement, according to which these elements either could not be protected as ideas, or displayed no similarities, or were presented "in such a distorted form as to be almost misleading". The court finally concluded that apart from the idea of a silent film in black and white (which could not be appropriated), the two works had no original characteristics in common. Accordingly, case for infringement of copyright was rejected.

The Court of Appeal, like the judge in the original proceedings, declared the proceedings abusive in the light of the judicial and extra-judicial behaviour of the appellant. The substantial and numerous similarities he was claiming only existed

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in his mind. The Court of Appeal found that it was indeed imprudent and disproportionate on his part (and, moreover, beyond the limits of his freedom of expression) to have widely circulated in France and elsewhere in the various written, online and television media the existence of the proceedings he was instigating - presenting the alleged infringement of copyright as a certainty, making derogatory remarks about the film's director and producers (who he specifically claimed were acting dishonestly in order to grossly conceal the actions he claimed to be a victim of), and seriously distorting reality in order to give force and credit to his allegations in order to make his script fit that of The Artist. The Court of Appeal concluded that the judge in the original proceedings had been quite right in finding that these faults had caused prejudice to the defendants by tarnishing their reputation. The appellant was ordered to pay nearly 60,000 euros in damages, including the cost of legal publications, under Article 700 of the Code of Criminal Procedure.

Cour d'appel de Paris (pôle 5 ; ch. 1), 24 octobre 2017 - C. Valdenaire c/ M. Hazanavicius, SARL La classe américaine et a.

Court of Appeal in Paris (section 5, chamber 1), 24 October 2017 - C. Valdenaire v. M. Hazanavicius, SARL La Classe Américaine and others

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