[FR] Television film infringe copyright of works by a Resistance author

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On 22 December 2017, the court of appeal delivered a noteworthy decision reiterating the conditions defining infringement of copyright when an audiovisual work is an adaptation of a literary work. In the case at issue, the holders of rights in respect of the work of Charlotte Delbo, an iconic figure in the French Resistance and author of six books detailing her time spent as a political prisoner in La Santé prison, at Auschwitz, and in the Raisko commando, brought proceedings for infringement of copyright against France Télévisions, one production company, and two scriptwriters. They claimed that twelve characteristic scenes of the works in question had been used in a script and a television film entitled Rideau Rouge à Raisko and that descriptions of very characteristic places and objects, together with characteristic expressions and turns of phrase, had also been used. The main argument advanced by the producer and the co-scriptwriters was that the disputed points referred to historic events which Charlotte Delbo had experienced in person but which could not be covered by copyright. The court rejected the claim that copyright had been infringed, and the rightsholders lodged an appeal.

The court reiterated that in respect of literary matters, the re-use of an idea or theme did not constitute infringement of copyright - but only the reproduction of the expression used, or the form in which an idea or theme was expressed (particularly with regard to the composition of the subject, the sequence of situations or scenes, and original characteristics that gave the work its own specific physiognomy. However, although historical events could not be covered by copyright, the same did not apply to the original narration of such historical events by an author. It was noted that, in the case at issue, while what Charlotte Delbo wrote did indeed relate to the time she spent in concentration camps, the events in question were nevertheless recounted in a literary fashion, and in a form that was specific to her and unrelated to a collection of historical facts or even a documentary narrative.

Furthermore, an adaptation of the works of Charlotte Delbo had been claimed clearly in a director’s project note and in a letter of commitment on the part of France Télévisions, so the respondents could not claim that the books had not been their main source of inspiration for the audiovisual adaptation of the scenario at issue - even though the scriptwriters had manifestly also researched the subject for themselves. Moreover, even if it were limited to a professional

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audience, the showing of the film constituted dissemination, including the dissemination of the scenario. The court also referred specifically to the analytical tables describing and comparing scenes from the books with scenes from the film. It found that although Charlotte Delbo's deportation did indeed constitute a historical fact, infringement of copyright with regard to the six books, as originally claimed, had been constituted by: the repeated similarities in the composition of the works at issue (as noted); the development and organisation of ideas; the use of original turns of phrase from the initial works; the adoption of the approach that is specific to those works; the use of specific expressions employed by the author in her writings; and the use of particular situations and metaphors. The similarities did indeed concern original elements for which the author had constructed her own narrative and descriptive choices which went beyond the mere narration of historical facts. Nor could the respondent production company claim the exception for "short quotation", since the borrowings were repeated and the film at issue and its script did not constitute a critique of Charlotte Delbo's works (nor an instrument used in argument, nor an educational, scientific or informative work), but rather a fictional programme directed at the general public.

Regarding remedial measures, the court found a ban on using the disputed scenario disproportionate, since the use made of the works at issue had been only partial. Nor could a ban on the commercialisation and broadcasting of the television film be upheld, since the case did not concern all the co-authors. Taking into account the fact that the use made of the original works was partial, that the disputed film has only been shown to professional audiences, and that this showing of the television film constituted a dissemination of its definitive script, the court found it could not concur with the appellants' claim for a flat-rate sum of EUR 250,000 each in respect of the financial loss suffered. The respondents jointly and severally were ordered to pay EUR 40,000 euros to the rightsholders as compensation for their loss.

Cour d'appel de Paris (pôle 5, ch. 2), 22 décembre 2017 - Les Editions de Minuit, Y. Riera et a. c/ Native, France Télévisions et a.

Court of appeal of Paris (section 5, chamber 2), 22 December 2017 - Les Editions de Minuit, Y. Riera and others v. Native, France Télévisions and others

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