[FR] Courts authorise showing of “The Man who Killed Don Quixote” to close Cannes Film Festival

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Amélie Blocman
Légipresse

In the late 1990s, Terry Gilliam wanted to embark on the production of a film he referred to as “The Man who Killed Don Quixote”, inspired by Cervantes’ novel. He could have had no idea that more than twenty years later, the film’s release for screening in cinemas and its status as the closing film of the Cannes Film Festival would be dependent on a court decision. In addition to the many incidents that occurred during filming, a dispute arose between the author/director and the company Alfama Films Production and its manager Paulo Branco. This reached breaking point in August 2016 when Gilliam felt that the conditions imposed by the producer would not allow him to make the film he had had in mind for all that time. The film was therefore produced by other companies, but the initial producer felt that his contract with Terry Gilliam - and all the associated rights - was still valid.

The regional court (tribunal de grande instance - TGI) in Paris was called on to deliberate on the dispute over ownership of the production rights; on 19 May 2017 it rejected the author/director’s application for the courts to terminate the contract binding him to the original producer. The latter’s application for filming to be suspended was also rejected. The case went to appeal in April 2018 and was scheduled for deliberation by the Court of Appeal in Paris on 15 June. And so it was that the film company and its manager (on learning that the film was to be shown on 19 May 2018 to close the Cannes Film Festival) had the Festival’s organiser, AFFIF, summoned to appear in court to hear the court ban the screening of the film.

In its decision delivered on 9 May 2018, the court, sitting under the “urgent procedure” at the TGI in Paris, noted initially that it was apparent from the contracts and court decisions already delivered (proceedings had also been instigated in the United Kingdom) that Alfama Films Production was justified in claiming benefit of the rights arising from the contract it had concluded with Terry Gilliam in terms of the transfer of future author’s rights within the context of carrying out its activities as producer in exchange for the payment of an advance on part of the revenue generated by the showing of the film. The applicant company and its manager were also justified in claiming that they had an option to acquire a licence to use the film’s scenario. These elements thus confirmed that the contracts with applicant company and its manager (in respect of

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producing the film) had not been terminated, even though in the end the film had been made by Terry Gilliam and produced with companies other than the applicant parties. The latter also produced evidence that they were indeed the holders of rights that had been disregarded by the continuation without their agreement of the project to produce and screen the film. The judge therefore felt that the violation of those rights was characteristic of a “manifestly unlawful disturbance”, within the meaning of Article 809 of the [French] Code of Civil Proceedings, and that steps should be taken to put a stop to that disturbance.

The judge went on to reiterate that the court was required to put a stop to any disturbance brought to its attention, applying the measure most appropriate to the aim being pursued and compromising as little as possible the rights and interests of each of the parties. It was pointed out that the applicants, who were calling for a ban on the screening of the film, paradoxically acknowledged that the presentation at the international film festival’s closing session “is probably the most highly valued promotion tool for producers and filmmakers”. Their application was found to be manifestly disproportionate to the rights that they were entitled to claim on the basis of the contracts. The judge noted that they had devoted themselves to the project for a short period of time (between March and August 2016) and had invested approximately EUR 300 000, whereas the director, Terry Gilliam, had been working on the film for more than 25 years and the other producers had contributed more than EUR 16 million towards its financing. It was also noted that while nobody could anticipate how a work would be received by audiences and critics after it had been shown at Cannes, the applicants had produced no objective reasons that might point to any risk for the screening of the film in the future, apart from alleging possible artistic weaknesses in the film; they did not even produce evidence that they had actually viewed the film. Lastly, it was emphasised that the TGI in Paris, in its judgment on the merits of the case in 2017, had not found that the production of the film without the agreement and participation of the applicant production company constituted an infringement of copyright or a violation of economic rights.

In the light of these elements, the court found that the requested ban on the screening of the film would manifestly exceed what was fair and necessary in order to put a stop to the disturbance invoked, and accordingly ordered the AFFIF, at its own expense, to screen a warning to audiences stating that the screening of the film at the close of the Festival in no way prejudiced the dispute between the parties, which had not yet been resolved.

And so the film was screened on 19 May 2018 to close the Cannes Film Festival, and in cinema theatres.

TGI de Paris (ord. réf.), 9 mai 2018, Alfama Films Production et Paulo Branco c/ Association française du festival international du film et a.

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Regional court of Paris (urgent procedure), 9 May 2018, Alfama Films Production and Paulo Branco v. Association Française du Festival International du Film and others

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