

Media & Entertainment - France

Exploiter of phonogram can rely on presumption of ownership

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It is vital to demonstrate ownership of rights in infringement actions. In France, as in most countries, the neighbouring rights of artists and producers were legally recognised some time after authors' rights.

It is often difficult for the producer of a phonogram to establish proof of title for old recordings, given the frequent absence of written contracts with performers and musicians, as well as transfers of catalogues and purchases by record labels under contracts which were often less secure than those used by music publishers.

In one case two companies sued competitors which were reproducing and distributing without permission a boxset of jazz and music hall phonograph recordings, which the claimants believed they held the sole right to reproduce under the Intellectual Property Code:

"The phonogram producer is the natural or legal person who has the initiative and responsibility for the first fixation of a sound sequence. The authorization of the phonogram producer is required before any reproduction, offer to the public for sale, exchange or rental, or public communication of the phonogram."

The companies initially exploiting these recordings could not demonstrate that they had financed the production of the recordings, which had been made abroad almost 40 years ago, or – in the absence of a written contract – that they were assignees of the performers' rights.

The Paris Court of Appeal dismissed the claimants' arguments that they had exploited the contested recordings in a peaceful way for many years without any claim being made by the artists or producers, and that they had possessed the masters necessary to exploit recordings.

Given that the dispute was about neighbouring rights rather than authors' rights, the court concluded that the claimants could not be presumed to be the holders of these rights. It thus rejected the application of the relevant article on authors' rights, according to which a "collective work is, unless proved otherwise, the property of the natural or legal person under whose name it was released".

However, in a policy decision of November 14 2012, the Supreme Court censured this reasoning by stating that:

"in the absence of any claim from the natural or legal person who took the initiative and the responsibility for the first fixation of a sound sequence, or its legal assigns, the public, peaceful and unequivocal exploitation of a recording by a natural or legal person under their name, serves to create a presumption against third parties that it holds the rights to the recording under the Intellectual Property Code."

This landmark decision recognises a presumption of title over the rights to recordings without having to establish the usual chain of rights (ie, a transfer of rights from the artist to the producer or sales made by previous producers), thus extending to neighbouring rights the presumption of ownership of the rights granted by case law to a peaceful exploiter of a protected work.

This decision, made in relation to phonographic production, is important in the context of the extension of the term of protection for neighbouring rights to 70 years. There is no doubt that the presumption of ownership can be extended to audiovisual producers, but it will generally be less useful to them, given the existence of an official register for cinematographic works and considering the assignment to the producer of authors' rights which, in Europe, enjoy a longer protection period.

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