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Statute of limitations applicable to copyright infringement proceedings and term of copyright protection

In a case concerning the music *Just because of you*, the theme song of the French movie *Les bronzés font du ski*, the *Cour de Cassation* (French Supreme Court) reversed its case-law in a decision handed down on July 3, 2013.

Specifically, the *Cour de Cassation* ruled that "*while the moral rights of a performing artist are imprescriptible and its economic rights protected for fifty years, legal actions seeking the payment of claims arising from the infringement of either rights are subject to the statute of limitations provided for by ordinary law*", i.e. a 5-year limitation period since the entry into force of Law n°2008-561 of June 17, 2008[1].

On September 18, 1979, Mr. Jean-Denis Perez had participated as a soloist in a recording session of the song *Just because of you* written and composed by Pierre Bachelet for the cult movie *Les bronzés font du ski*. For his performance, Mr. Jean-Denis Perez had received at that time the sum of 2,000 Francs.

On November 13, 2003, i.e. 24 years later, the performing artist sued the company Tinacra, the producer of the movie, and sought the recognition and indemnification of his rights as performing artist because his name had never appeared in the movie closing credits or on the cover of the records that had been released afterwards and because he had not received any part of the revenues derived from the sales of such records.

The Court of Appeals of Versailles granted his request and dismissed the plea of inadmissibility raised by the defendant who claimed that the action initiated by Mr. Jean-Denis Perez was time-barred.

It should be recalled that while the French Intellectual Property Code ("FIPC") clearly provides that the statute of limitations in respect of infringements of industrial property rights is three years, it remains silent on the term of the statute of limitations applicable to legal actions concerning the protection of copyrights or related rights, such as the rights of performing artists.

On the other hand, the FIPC includes specific rules on limitation periods applicable to the existence and enjoyment of economic and moral rights associated with copyrights and related rights.

This gap in the French legislation has created a case-law uncertainty that has been removed by the decision of the *Cour de Cassation* commented herein.

In a judgment handed down on September 29, 2010, the Court of Appeals of Versailles held that the legal action brought by Mr. Jean-Denis Perez was not time-barred:

- pursuant to Article L.211-4-1 of the FIPC that stipulates that the economic rights of a performing artist shall not expire until 50 years after January 1 of the calendar year following that of the performance; and
- pursuant to Article L.212-2 of the FIPC that stipulates as follows: *"the performing artist has the right to respect for his name, his capacity and performance. This inalienable and imprescriptible right shall be attached to his person"*.

The appellate judges thus refused to distinguish between the term of the moral and economic rights of the performing artist and the term of the limitation period applicable to legal actions brought for the defense of such rights. They consequently denied the application of the former 10-year statute of limitations period under ordinary law as provided for by former Article 2270-1 of the French Civil Code.

The judges followed a former case-law that used to equate the term of copyrights protection to the term within which a legal action could be brought to defend such copyrights.

This case law was enshrined by a decision rendered on January 17, 1995 by the 1st Civil Chamber of the *Cour de Cassation* that had held that *"the exercise by the holder of an intellectual property right that he holds by law and that is attached to his person as author is not subject to any statute of limitations"*[2].

This part of the aforementioned landmark decision was reproduced "as is" in another decision handed down on May 6, 1997[3].

This case-law was supported by some French legal writers who considered that *"it would be paradoxical to recognize that the right is not subject to any statute of limitations while not permitting any legal action in relation therewith"*[4].

In the decision rendered on July 3, 2013, the *Cour de Cassation* reversed the aforementioned case-law and quashed the judgment of the Court of Appeals of Versailles.

This case-law reversal endorses the decisions that had already been delivered by some first instance and appellate jurisdictions.

As such, in a judgment dated May 16, 2008, the Court of Appeals of Paris had ruled that *"it is necessary to make a distinction between the statute of limitations applicable to the right itself that is imprescriptible on the one hand, and the statute of limitations applicable to the legal actions seeking indemnification for the*

infringement of such right on the other hand", and consequently that *"the legal action brought in connection with the infringement of the moral and economic rights of the author is subject to the statute of limitations provided for by ordinary law"*[5].

Some French legal writers strongly criticized this judgment and stated about the relevant part of the aforementioned 1995 landmark decision of the *Cour de Cassation*:

"It is about the exercise of the right, not about the existence or the enjoyment of such right: consequently, if words have any meaning, we are of the opinion that the restrictive interpretation of the scope of the non-applicability of statutory limitations imposed by Article L.121-1 is incompatible with this part of the landmark decision and with the general thrust of copyright laws"[6].

Despite these criticisms, the *Cour de Cassation* decided to follow the legal trend launched in 2008 by the Court of Appeals of Paris and to reverse its 1995 landmark decision by making henceforth a clear distinction between the term of the rights and the term of the period within which a legal action can be brought in connection with the infringement of such rights.

As a result, the non-applicability of statutory limitations to moral rights attached to copyright or related rights does not entail the non-applicability of statutory limitations to infringement proceedings that are subject to the statute of limitations provided for under ordinary law.

Since the entry into force of the Law of June 17, 2008 relating to the statute of limitations reform in civil matters, the statute of limitations rules are set forth in Article 2224 of the French Civil Code that stipulates as follows: "*actions related to persons or moveable property can be brought within a period of five years as from the date on which the right holder became aware or should have become aware of the facts enabling him to bring such actions*".

While the performing artist has a permanent and inalienable right for respect of his/her name, capacity and performance, he/she has five years to initiate any infringement proceedings in relation to such right.

Yet, the *Cour de Cassation* has not ruled out the possibility of indemnification for Mr. Jean-Denis Perez, the performing artist, and remanded the case to the Court of Appeals of Paris for a new trial.

Mr. Jean-Denis Perez may therefore obtain from the judges to whom the case has been remanded an indemnification for the loss he suffered as a result of the violation of his rights as performing artist for a period of ten years prior to the commencement of his action in 2003.

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[1] 1st Civil Chamber of the *Cour de Cassation*, July 3, 2013, n°10-27.043

[2] 1st Civil Chamber of the Cour de Cassation, January 17, 1995, n°91-21.123

[3] 1st Civil Chamber of the Cour de Cassation, May 6, 1997, RIDA oct. 1997.231

[4] *De la prescription en droit d'auteur*, Frédéric Pollaud-Dulian, RTD Civ. 1999 p. 585

[5] 4th Chamber, Section B, of the Court of Appeals of Paris, May 16, 2008, n°06/04646

[6] *Droit moral. Prescription. Action en contrefaçon.* Frédéric Pollaud-Dulian, RTD com. 2008 p.553