

# THE COUR DE CASSATION IN FAVOUR OF INCREASING THE FLEXIBILITY OF COPYRIGHT ASSIGNMENT

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## **Formalism of assignment of copyright: the Cour de cassation in favour of increasing the flexibility of the protection enjoyed by authors**

French lawmakers have always been highly protective of author's interests. For example, Article L. 131-3 of the Intellectual Property Code requires that rights assigned by an author must be restrictively listed and that their field of exploitation must be determined in terms of the scope, intended use, place and term.

Yet, in a ruling of 21 November 2006 (Cass. civ. 1<sup>ère</sup>, 21 November 2006, no. 05-19.294 Emmanuel Chaussade v Sté EOS SA), the *Cour de cassation* found that the provisions of Article L. 131-3 of the Intellectual Property Code only cover the contracts listed in Article L. 131-2 (1), namely performance, publishing and audiovisual production contracts.

Certain authors inferred from this that, for other contracts, the rights assigned by the author do not need to be restrictively listed.

Our view is that for the time being it is better to stay on the safe side and to continue to restrictively list such rights.

**AREAS OF LEGAL PRACTICE**

• **MERGERS & ACQUISITIONS**

Engineering of takeovers and deal structuring, legal due diligence, restructuring operations, joint ventures, obtaining necessary administrative permits and licenses, drafting and negotiation of documentation (letters of intent, sale & purchase agreements, warranties that assets and liabilities are as stated, bank guarantees, shareholders' agreements, etc.), merger deals, takeovers of companies in difficulty or in the framework of collective procedures.

• **CAPITAL INVESTMENTS AND LBOs**

Representation of investment funds, issuers, targets and company officers, during the due diligence, advisory and negotiation processes.

• **COMPANY LAW**

"Long-term capital" transactions, capital increases, issuance of composite securities (convertible or repayable in shares, investment certificates, priority dividend shares etc.), stock option agreements, company founder share plans, temporary business combinations, management fees and cash management agreements, changes to charter/by-laws and legal secretariat services.

• **SECURITIES LAW**

IPOs and preparatory work, drafting of prospectuses, legal secretariat services for listed companies, relations with market authorities, securities litigation.

• **BANKING AND FINANCE**

Advice on loan and financing agreements, warranties/guarantees, syndication, banking regulations, financing of acquisitions and structured asset financing (particularly of real estate).

• **COMMERCIAL CONTRACTS / ECONOMIC LAW**

Advice and litigation with commercial contracts, i.e. service, sale, distribution, concession, franchise, commercial agent agreements, distributor/supplier relations, general terms of purchase/sale, commercial partnerships, manufacturing and subcontracting agreements, business sale agreements, management leases, consumer law, public and private procurement contracts.

• **LABOUR AND EMPLOYMENT LAW**

Advice and litigation work in collective and individual disputes as well as in social security law and criminal labour law.

• **INTERNATIONAL LITIGATION / ARBITRATION**

Advice and litigation work covering all facets of business, company and securities law, as well as collective procedures and white-collar crime. Representation at all stages of the dispute, from pre-litigation to litigation before judicial or arbitral courts, protective measures and enforcement.

• **REAL ESTATE LAW**

Advice and litigation work in connection with commercial leases, real estate due diligences, purchase/sale of property and of preponderantly real estate companies, financing of real estate acquisitions.

• **COLLECTIVE PROCEDURES**

Alert, restructuring and reorganisation procedures, amicable composition and ad hoc representation procedures. Court-ordered reorganisation, continued operation, sale and continuation plans, liquidation.

• **INDUSTRIAL PROPERTY**

Advice and litigation in the field of trademarks, patents and/or design and model applications, transfers of technology and/or know-how, unfair competition and passing off.

• **COMPETITION LAW (FRENCH AND EU)**

Advice and litigation work in respect of industrial cooperation agreements and structuring of distribution networks. Representation before the competition authorities and courts in cartel, anti-competitive practices, abuse of a dominant position and unfair competition cases. Advice on the control of concentrations (conduct of feasibility studies, preparation of notification files, negotiation with the national and Community control authorities) and on State aids/subsidies.

• **IT LAW**

Development and integration of software, licenses, assignments and other software contracts, facilities management, maintenance of IT systems and software, appraisals of the compliance of IT services, anti-piracy fight.

• **ELECTRONIC COMMUNICATIONS**

Regulatory domain; construction of networks, co-localization of facilities, agreements and general terms of supply of services, access and interconnection agreements, judicial or administrative litigation (against the decisions of the regulatory authority).

• **INTERNET**

Creation and hosting of websites, affiliation, partnership, audit of websites, application for and defence of domain names, market shares, online auctions, ASP licenses.

• **MEDIA**

Advertising (protection, operation) and marketing; sponsoring; regulation of broadcasting and of electronic communication services (TV, mobile phone TV, Internet TV, video on demand etc.).

• **PROTECTION OF PERSONAL DATA AND PRIVACY RIGHTS**

Relations with the CNIL; specific regulations on electronic communications (geolocalization services, storage of traffic data); breach of privacy rights, defamation.

• **LITERARY AND ARTISTIC PROPERTY RIGHTS, COPYRIGHT AND NEIGHBOURING RIGHTS**

Protection and licensing of copyright and neighbouring rights; audiovisual (cinema, TV) and multimedia (online and offline video games, cd-roms etc.) production and co-production; motion picture regulations; distribution licenses (TV, merchandizing, video distribution, derivative rights); rights of performing artists, sports law; infringement litigation (customs seizures, infringement seizures, proceedings before civil and criminal courts).

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The Firm has developed a wide network of foreign correspondents in most industrialised countries and in certain developing countries.

**ISO 9001**

The Firm was the first Paris law firm to obtain ISO 9001 certification back in 1998.

31, avenue Hoche  
75008 Paris

Phone : 33 (0)1 56 88 30 00  
Fax: 33 (0)1 56 88 30 01

22, rue Croix-Baragnon  
31000 Toulouse

Phone: 33 (0)5 62 26 20 79  
Fax: 33 (0)5 62 26 08 34

[www.bersay-associes.com](http://www.bersay-associes.com) / [cb@bersay-associes.com](mailto:cb@bersay-associes.com)