France

“ABC News”

Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, Art. 5(2) – *M.X. v. ABC News*

Decision of the Supreme Court (Cour de cassation)

(First Civil Chamber)

10 April 2013 – Case No. 11-12.508

© Max Planck Institute for Intellectual Property and Competition Law, Munich 2013

By considering the *lex protectionis* as a general conflict of law rule governing all copyright matters, including the initial ownership of rights, the Supreme Court endorses the unitary approach for the interpretation of Art. 5(2) of the Berne Convention.

Findings:

Pursuant to Art. 5(2) of the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886.

Considering that, according to this text, the enjoyment and the exercise shall not be subject to any formality, such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

Considering that in denying the appellant’s request, the court of appeal held that Art. 5(2) of the Berne Convention governed the content of the protection of the author and of the work without any reference to the ownership, acquisition or transfer of rights; consequently, owing to the absence of express legal provisions in the Convention, the choice of law should be governed by national rules.

That in so deciding, whereas the determination of the ownership of rights in a work is subject to the *lex protectionis* designated as a conflict-of-law rule by Art. 5(2) of the Berne Convention, the court of appeals breached that provision.

Translation by Anne-Catherine Lorrain. The decision is available at: http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/347_10_25996.html.

A comment to this decision by A.-C. Lorrain can be found at doi:[10.1007/s40319-013-0118-2](https://doi.org/10.1007/s40319-013-0118-2).