

FOCUS IP

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COPYRIGHT LAW: THE REQUIREMENT IN SUMMARY PROCEEDINGS TO PROVE THE ORIGINALITY OF WORKS WHEN CONTESTED



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[Paris Court of Appeal, Division 5, Chamber 1, 1 October 2025, No. 24/15621](#)

IMPACT: *In this ruling, the Paris Court of Appeal recalled that when a claim is based on copyright infringement, the mere allegation -under the heading of damages- of a risk of harm to image or reputation does not justify recharacterising the action as a defamation claim falling under the Press Act of 29 July 1881.*

Regarding proof of originality at the summary proceedings stage, the court emphasised that it is for the claimant to establish the existence of a manifestly unlawful disturbance or an imminent harm, and to demonstrate, with the degree of obviousness required in summary proceedings, that the works relied upon are capable of copyright protection.

➤ **The facts**

In August 2024, the company JOURS DE PASSIONS, publisher of the magazine JOURS DE CHASSE, learned that the company LES ARÈNES was preparing to publish a book in the autumn entitled *Les nouveaux seigneurs*, which would reproduce, at least in part, four articles that had appeared in its magazine and for which it claimed copyright.

After an unsuccessful formal notice, JOURS DE PASSIONS brought hour-to-hour summary proceedings before the Paris Judicial Court seeking the suspension of the publication of the disputed book and compensation for its loss.

By an order dated 11 September 2024, the judge in summary proceedings dismissed all of JOURS DE PASSIONS' claims, leading the company to lodge an appeal.

➤ ***The validity of the copyright infringement action despite the mention of reputational harm only at the damages stage***

LES ARÈNES argued that the writ of summons was void, asserting that JOURS DE PASSIONS had failed to comply with the specific procedural rules of press law and the Act of 29 July 1881. According to LES ARÈNES, the copyright action in fact concealed grievances relating to harm to reputation and standing, which would fall exclusively within the scope of press law.

The Paris Court of Appeal upheld the lower court's order and rejected this argument. It noted that JOURS DE PASSIONS expressly based its action on copyright infringement relating to the articles published in *JOURS DE CHASSE*. According to the court, *"it is only for the*

purpose of assessing damages that it invokes a risk of harm to its image and reputation, so there is no reason to reclassify its action as a defamation claim under the 1881 Press Act.”

➤ ***The need to demonstrate originality at the summary proceedings stage when originality is contested***

The court recalled that, in summary proceedings, a claimant relying on copyright law and seeking measures such as the suspension or cessation of the marketing of a work must demonstrate the existence of either an *“imminent harm”* that should be prevented, or a *“manifestly unlawful disturbance”* that must be brought to an end.

The court also stated that *“it is settled law that, in assessing the reality of the alleged harm or disturbance, one must consider the circumstances as they stood on the day the first-instance judge delivered the decision.”* Accordingly, *“the existence of a manifestly unlawful disturbance [based on] the reproduction of articles [...] presupposes that the works at issue appear, with the level of obviousness required in summary proceedings, to be capable of copyright protection.”*

In this respect, the court reiterated the principle derived from Articles L.111-1 et seq. of the French Intellectual Property Code, according to which protection arises by the mere act of creation, provided that the work displays original form. Where originality is disputed, it is for the claimant to show that the work bears *“a distinct appearance reflecting an aesthetic choice and the imprint of the author’s personality.”*

However, according to the court, JOURS DE PASSIONS had failed, both at first instance and on appeal, to set

out *“the artistic choices or creative process underlying the drafting of these articles illustrated with photographs,”* noting that a *“brief and purely factual description”* is insufficient to establish originality.

In the absence of sufficient evidence, the court found that the originality of the articles had not been established with the required obviousness, meaning that the alleged disturbance could not be characterised as *“manifestly unlawful”*.

The court further noted that LES ARÈNES had swiftly taken *“the measures available to it”* to prevent the book from being placed on the market, and that the new edition no longer contained the disputed reproductions. The court concluded that these *“circumstances were such as to rule out the existence of such a disturbance.”*

Given the failure to demonstrate originality and the corrective measures already implemented, the court confirmed that the claims brought by JOURS DE PASSIONS did not fall within the jurisdiction of the summary proceedings judge, and therefore upheld the order finding that summary proceedings were not appropriate.

Accordingly, in this type of dispute, the outcome of the case partly depends on the evidence provided by the rights holder to demonstrate the imprint of his or her personality on the work. Thus, in a judgment delivered on 11 July 2025, the 2nd Chamber of Division 5 of the Paris Court of Appeal held that the evidence submitted to the summary proceedings judge *“clearly reflected the expression of the author’s free and creative choices and, at the very least, an appearance of originality,”* and concluded that, *“quite evidently, the work in dispute must be granted protection.”*