Portuguese Update

There were a few interesting cases in 2009. In case (1) the Supreme Court protects, without hesitation, a six letter title. Cases (2) and (3) deal with the issue of originality and make brief references to justifications for copyright protection. Note that case (3) seems to equate originality with novelty.

1. Processo n. 7B3943, Acordão do Supremo Tribunal de Justiça, 8th January 2009

In a case that addressed the illegal use of the title of a maths textbook in a competitive product, the Supreme Court concluded that the average person would deem the title in question, "X3QMAT", to be original and non-banal. The title, said the court, showed great creativity and deep knowledge of the subject-matter at stake.

In addition to economic damages, the plaintiffs had suffered moral damages resulting from "all the anxiety, care and distress" caused by the defendants' behaviour. Compensation was set at the minimum value of Euros 30.000,00 for the first plaintiff and Euros 20.000,00 for the second plaintiff. The defendants were also told to deliver up all copies of the textbook.

2. Processo n. 1848/07.0TJLSB-8, Acordão do Tribunal da Relação de Lisboa, 2nd July 2009

This case pertained to the use of certain photographs without the authorization of the photographer.

The Court of Appeals of Lisbon stated that a photograph will only be protected where because of the selection of objects or the conditions of execution (of the photograph), one can say that one is before an artistic creation. Then, the work will deserve to be protected by copyright law, *because the public will benefit from a cultural asset that was not available to it before.*

The photographs before the court did not deserve copyright protection. Thus there was no infringement of copyright law and no obligation to compensate the injured party.

3. Processo n. 112/04.1TAFND.C1, Acordão do Tribunal da Relação de Coimbra, 18th February 2009

In a case relating to the alleged illicit use of architectural drawings, the Court of Appeals of Coimbra reiterated the need for a work to be original in order to be protected:

> "One can only talk about creating when something innovative and original emerges. In the view of the court, the drawings in question do not have any novel characteristics (when compared to other drawings) and thus do not deserve copyright protection (…) One can only talk about creation when one does something that not everyone can do. It

> is essential that the work incorporates a minimum of personal creativity, individuality and mark, so that it can be distinguished from other works. Otherwise, the concept of work (and the protection of it) will become vulgar and, consequently, banal. Thus, it is necessary to make protection dependant on a mark of individuality that makes the work different from other works – which in this case is not present (…) Copyright protection does not exist to repress imitation, which seems to be the case before the court, but to reward creativity."

The court concluded that the drawings at stake did not deserve copyright protection. Thus, there was no infringement of copyright law and no obligation to compensate the injured party.