

Copyright Law

Case study

Subject matter and scope of protection

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Subject Matter

Berne Convention Article 2

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.



Subject matter

On June 2006, the Dutch Supreme Court recognized that the scent of perfume (Trésor from Lancôme), if original may qualify for protection. By contrast, the French highest civil jurisdiction refused to protect the scent of a perfume by copyright. (Cass. com., 10 déc. 2013, n° 11-19.872, SNC Lancôme Parfums et Beauté et cie c/ Farque et Cass. 1re civ., 13 juin 2006, n° 02-44.718)



Subject matter

The French Supreme Court recognized that « *the Gates of Paradise* » benefit from copyright protection (Cass. 1re civ., 13 nov. 2008, n° 06-19.021, D. 2009, p. 266, note E. Treppoz)



Subject matter

A fictional character,
such as Leeloo in « Le
cinquième élément »
could be protected by
copyright (CA Paris,
4^{ème} ch. A, 8
septembre 2004,
Dalloz, 2004, n°35 jur.
p. 2574, obs. Daleau)



Subject matter

Headlines:

Holder Says Ferguson Is Emblematic of Deeper Tensions NYCTimes, Thursday, August 21 2014

L'Espagne émue par un bébé migrant arrivé seul sur ses côtes, Le Monde, Jeudi 21 2014

Selfie du macaque: les singes sont des photographes comme les autres, Libération, Jeudi 21 2014

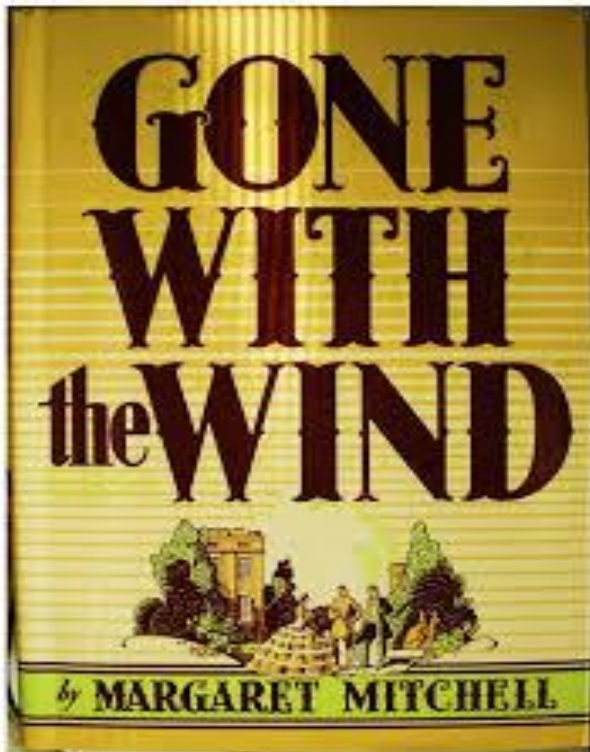
Berne Convention,
Article 2

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Subject matter and authorship



Scope of protection



The French book
« *La bicyclette bleue* »
is a plagiarism and
not an
infringement of
« *Gone with the
wind* » (CA Versailles,
ch. réunies, 15 déc.
1993 : RIDA
2/1994, p. 255 ;
D. 1994, jurispr.
p. 132, note Gautier)

Scope of protection

The American movie « *The running man* » is considered as an infringement of the French movie « *Le prix du danger* » (CA Douai, 20 mai 1996 : RIDA 4/1996, p. 278).



Scope of protection

The idea to pack object could not be protected by copyright (TGI Paris, 26 mai 1987, D., 1988, SC, p. 201, obs. C. Colombet), nevertheless the Pont-Neuf packed is protected by copyright (CA de Paris, 13 mars 1986, D., 1987, SC, p. 150, obs. C. Colombet)



Scope of protection

No fair use for Koons

Rogers v. Koons, 960 F.2d 301 (2d Cir. 1992)

