

Intellectual Property - France

Right to publish protected work after author's death

Contributed by [Hogan Lovells](#)

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On March 25 2010 the First Chamber of the Supreme Court rendered a key decision regarding the right to publish a work protected by French author rights.⁽¹⁾

The case involved the publication of posthumous works of well-known philosopher Emmanuel Lévinas, who died in 1995, leaving his two children Simone and Michaël as his heirs. Both are co-owners of the patrimonial rights in Lévinas's works, whereas only Michaël was designated by Lévinas as the owner of the right to publish such works, which is part of the moral rights. Lévinas's codicil states: "I assign the moral right to my son exclusively in relation to the publication and the preservation of the manuscripts and of the works already published."

Simone instituted legal proceedings before the French courts against her brother, arguing that he had infringed her right to exploit her father's works by entering into a publishing contract with publisher Grasset & Fasquelle in 2007 for the publication of their father's posthumous works. She requested the seizure of all copies of the books already manufactured or being manufactured, and the cessation of the commercialization of those books.

In a June 30 2009 decision the Paris Court of Appeal dismissed Simone's claims. She filed an appeal before the Supreme Court. Simone argued, in particular, that the owner of the right to publish cannot enter into a publishing contract of a work which includes assignment of the right of reproduction and the right of representation of the work, and which thus requires the consent of the owners of the patrimonial rights in that work.

The Supreme Court was thus faced with an important issue. Considering that the owner of the right to publish posthumous works was not the same as the owners of the patrimonial rights in the same works, the question was to determine who was entitled to enter into a publishing contract regarding these works.

The Supreme Court confirmed the decision of the Paris Court of Appeal and ruled that the owner of the right to publish is the only person entitled to enter into a publishing contract, because he or she alone can "determine the methods of publishing and the conditions thereof", according to the IP Code.

The right to publish, which is part of the author's moral rights, was considered to confer on its owner the right to disclose the work to the public. Pursuant to this decision, the right to publish prevails over the patrimonial rights of the author. Indeed, the owner of the right to publish is entitled to negotiate the first publishing contract. The owner of the patrimonial rights cannot participate in such negotiations unless invited. However, as was the case in the present matter, he or she will earn royalties in the same way as all co-owners of the patrimonial rights.

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Endnotes

(1) *Lévinas v Ed Grasset and Fasquelle*, 09-67.515.

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