

Google Must Take Down Anti-Muslim Film Over Copyright Dispute

An actress's brief appearance in an anti-Islamic film may be copyrightable, entitling the actress to an injunction requiring Google to remove the film from YouTube, the Ninth Circuit found.

Cindy Garcia was cast in a minor role in a film called "Desert Warrior," an Arabian adventure film. She was paid \$500 and read from four pages of script. However, the film in which she appeared was called "Innocence of the Muslims" and her performance was dubbed with the line, "Is your Mohammed a child molester?" The film eventually was aired on Egyptian television, sparking protests that received worldwide attention. Garcia alleged she had received numerous death threats. Garcia sent eight takedown notices to Google to remove the film from YouTube, but Google refused.

Garcia sued Google, YouTube, and the producer of the movie. Only Google responded to the Complaint. Garcia sought an injunction requiring Google to take down the film because it violated her copyright in her performance. The district court denied the injunction and she appealed.

Garcia contended that her brief appearance was separately copyrightable from the film itself, that her acting was not done as an employee, and that her performance was not a work for hire.

The appellate court found that the question of whether an individual who makes an independent copyrightable contribution to a joint work can retain a copyright interest in that contribution "is a rarely litigated question." The appellate court admitted that Garcia was not a joint author of the film, but that fact "doesn't mean she doesn't have a copyright interest in her own performance within the film."

"An actor's performance, when fixed, is copyrightable if it evinces 'some minimal degree of creativity,'" the appellate court wrote. "That is true whether the actor speaks, is dubbed over or, like Buster Keaton, performs without words at all."

The appellate court dismissed the notion that Garcia was an employee because she worked for only a few days and did not have a written contract. The appellate court agreed with Google that the filmmaker had an implied license to use her copyright. But the appellate court found the license "wasn't so broad as to cover the use of her performance in *any* project. Here, the problem isn't that "Innocence of Muslims" is not an Arabian adventure movie: It's that the film isn't intended to entertain at all. The film differs so radically from anything Garcia could have imagined when she was cast that it can't possibly be authorized by any implied license she granted" to the producer.

The appellate court ordered Google to remove the film from YouTube “and to take all reasonable steps to prevent further uploads.”

The dissent said the appellate court “makes new law in this circuit in order to reach the result it seeks. We have never held that an actress’s performance could be copyrightable. Indeed, ‘[t]here is little case law or statutory authority as to the position of performers as authors of an audiovisual work under U.S. law.’”

Cindy Lee Garcia v. Google, Inc., et al., Ninth Circuit, No. 12-57302, issued February 26, 2014.