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Death threats against actress prompt unique copyright claim

Can every player in or contributor to a movie make “Swiss cheese” out of the copyright status of that motion picture by owning a copyright to his or her performance or contribution?

If so, that would make it possible for there to be hundreds of owners of a film, so that seeking permission to simply show it would be a mind-boggling task.

Cindy Lee Garcia, an actress, was cast in a documentary film she was told would be titled “Desert Warrior.” It was a small role, in which she only had an innocuous line or two. She was paid \$500 for her five-second appearance. But for actress Garcia, it was a part in a film, and she must have been happy to get it.

What she did not know, what was never explained to her, was that the director-producer was later going to change the original plot, dub over the spoken lines and convert the entire documentary into an anti-Muslim film called “Innocence of Muslims.”

As part of those changes, what Garcia wound up as seeming to say was derogatory of the Prophet Muhammad and hinted that the Islamic holy man was a child molester.

The film was released in various parts of the world, including Muslim countries such as Egypt, and created an incredible uproar. As part of the commotion, some Muslim clerics were so outraged

that they issued fatwas against everyone connected with the documentary, ordering that they should all die. Soon after, Garcia began receiving death threats because of things she never really said.

About six months after a trailer of the film became available on YouTube, Garcia demanded that Google (which owns YouTube) take it down. Google refused.

Garcia then asked the U.S. District Court for the Central District of California for a preliminary injunction to force Google to take the trailer down, using copyright law as her legal ground. (Under the Digital Millennium Copyright Act, 17 U.S.C. Sec. 512 (DMCA), a copyright owner whose work, without permission, been uploaded to and is displayed on

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the Internet by an Internet service provider such as YouTube may formally demand that the work be taken down, and the online provider must honor that properly worded request. But the demand must be made by a copyright owner.)

Google's refusal to recognize Garcia as the owner of a copyright in her appearance as an actress was upheld by the district

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court. The court noted Garcia's injunction request was rejected because she did not have the proper status to make a copyright take-down demand. The court sympathized with her death-threat problem, but ruled that copyright law was not her proper remedy.

On appeal to the 9th U.S. Circuit Court of Appeals, the district court was reversed. Judge Alex Kozinski, writing for two of the three judges, declared that Garcia owned a copyright in her appearance as an actress. The ruling, as a practical matter, gave copyright rights not only to actors but to all contributors of original artistic elements to movies. The panel ordered Google to take down the trailer. (743 F.3d 1258, amended 766 F.3d 929 (9th Cir. 2014))

The motion picture industry went not-so-quietly berserk as it faced the impossibility of honoring copyright ownership status in every actor, cameraperson, lighting designer, extra, costumer and set builder involved in every motion picture production. In addition, Google's appeal for rehearing

by the en banc 9th Circuit was supported by a huge amount of amici briefs.

As Google's brief put it, letting the panel's ruling stand would make “Swiss cheese” out of every motion picture as well as other creative forms. Imagine, they said, a movie “with a cast of thousands,” each of whom would own the copyright in his and her contribution. The full 9th Circuit agreed to rehear the original appeal and recently issued its opinion.

The en banc judges reversed (No. 12-57302, 9th Cir. 2015, Kozinski dissenting). It ordered the injunction dissolved and upheld the ruling of the district court's ruling that Garcia did not have a copyright interest in her performance. The sigh of relief from the motion picture community was palpable as the court went on to explain its reasoning.

The decision took pains to point out that it was not unsympathetic to Garcia's death threats resulting from the acts of the director-producer. But it decided to adhere to the concept that a motion picture is a “collective work,” involving the creative contributions of a number of people, so that the copyright exists in the entire work and not in the efforts of each person.

With regard to Garcia's death threat concerns, the circuit noted that copyright law was not the appropriate remedy. Summarizing, the circuit said that: “(A) weak copyright claim cannot justify censorship in the guise of authorship.”