

Actress Can't Force YouTube To Take Down Anti-Muslim Film

The actress who sought to have her five-second appearance in a controversial anti-Muslim movie removed from YouTube does not have a protectable copyright interest to support her request for an injunction, an en banc ruling from the Ninth Circuit found.

The ruling reverses an earlier three-judge panel decision that ordered Google, Inc. to remove the film from its YouTube service.

The plaintiff Cindy Garcia was cast in a minor role in a film called *Desert Warrior*. She was paid \$500 and read four lines in a script. However, her clip was included in *Innocence of Muslims*, which sparked protests by Muslims and, as the court noted, has a “purported connection to the September 11, 2012, attack on the United States Consulate in Benghazi, Libya.”

Asserting a copyright interest in her performance, Ms. Garcia sought a mandatory injunction to have the film removed from YouTube. The trial court denied the injunction. A three-judge appellate panel granted the injunction in February 2014. [See our earlier story](#). The court granted an en banc review, which reversed the three-judge panel and reinstated the trial court's order.

The en banc panel noted that Ms. Garcia “was bamboozled when a movie producer transformed her five-second acting performance into part of a blasphemous video proclamation against the Prophet Mohammed.” The panel also said the plaintiff “understandably takes seriously the fatwa and threats against her and her family, and so do we.”

However, the en banc panel found that Ms. Garcia's performance was not a copyrightable work. “*Innocence of Muslims* is an audiovisual work that is categorized as a motion picture and is derivative of the script. Garcia is the author of none of this and makes no copyright claim to the film or script.” To find her brief performance copyrightable would splinter the film into many different works, the court said.

The panel also wrote that she failed to demonstrate irreparable harm to support a mandatory injunction. The court said the threats to her life and the emotional turmoil “are untethered from—and incompatible with—copyright and copyright's function as the engine of expression.”

“Privacy laws, not copyright, may offer remedies tailored to Garcia's personal and reputational harms,” the opinion stated. “Ultimately, Garcia would like to have her connection to the film forgotten and stripped from YouTube. Unfortunately for Garcia, such a ‘right to be forgotten,’ although recently affirmed by the Court of Justice for the European Union, is not recognized in the United States.”

One judge dissented, stating that “the majority is wrong and makes a total mess of copyright law, right here in the Hollywood Circuit. In its haste to take internet service providers off the hook for

infringement, the court today robs performers and other creative talent of rights Congress gave them. I won't be a party to it.”

The dissent noted that “under our copyright law, the creators of original, copyrightable material *automatically* acquire a copyright interest in the material as soon as it is fixed. There's no exception for material created during production of a film or other composite work. When modern works, such as films or plays, are produced, contributors will often create separate, copyrightable works as part of the process. Our copyright law says that the copyright interests in this material vest initially with its creators, who will then have leverage to obtain compensation by contract.”

Cindy Lee Garcia v. Google, Inc. et al, Ninth Cir. No. 12-57302, issued May 18, 2015.

Balough Law Offices, LLC, is a Chicago-based law firm which focuses on cyberspace, business, and intellectual property law. Our homepage is balough.com.