

## [DE] Copyright Infringed as TV Film Is Produced without its Director

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In a ruling of 24 February 2000, the Landgericht München (Munich District Court) upheld the complaint of a TV director and prohibited the production company Bavaria from producing and broadcasting the German version of an English-language television programme directed by the plaintiff.

Since 1993, the director had been working on a film set in Australia, which had been established as a German-Australian co-production before filming began. On this basis, he directed the original English version. However, he had certain disagreements with the production company, which was producing the German version of the film. In the end, the director was excluded from the production and mixing of the German-dubbed version, which Bavaria wanted to produce alone.

In the production contract, the parties had agreed that the director would not exercise his temporary rights over the film. Moreover, under the terms of the contract, Bavaria was entitled, at any time, to dispense with the services of the director and produce the film in its own way without the director's involvement.

However, the Munich Court considered these clauses to be null and void. Through the third-party effect of basic rights, the guarantee of recourse to legal action provided in Article 19.4 of the Grundgesetz (Basic Law) must also apply to disputes between private individuals. Therefore, the director must be legally entitled to demand his rights and to claim temporary rights over the film.

The Court also concluded from the right of publication enshrined in Article 12.1 of the Urheberrechtsgesetz (Copyright Act - UrhG) that a director, as an author of a film, should be allowed to help add the soundtrack to and mix the film. Also, the specific rules for cinematographic works set out in Articles 88 to 94 UrhG did not restrict the rights of directors in such a way as to allow production companies to finish producing a film without the director's involvement. Bavaria has announced its intention to appeal the decision.

In the past, the protection of authors against their financially stronger contractual partners has frequently been a topic of discussion among producers and exploiters of TV programmes. Producers claimed that, since the parties were free to draw up contracts, the previous legal position stemmed from freedom of contract and, moreover, had proved its worth.

The Federal Minister of Justice is currently examining a draft Bill, prepared by a group of experts, which is designed to strengthen the contractual position of authors and performing artists. The main provisions of the Bill are to give these individuals legal entitlement to reasonable compensation and to create the possibility of drawing up standard contracts between authors' associations and bodies representing the exploiters of their work. Such contracts, containing certain minimum conditions, would form the basis of individual contracts between authors and exploiters.

***Gesetzesentwurf zum Urhebervertragsrecht.***

[http://www.bundesjustizministerium.de/misc/2000/m\\_35\\_20.htm](http://www.bundesjustizministerium.de/misc/2000/m_35_20.htm)

