[DE] Court Limits Video Sales by TV Broadcaster

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In a ruling of 23 October 2001, the Oberlandesgericht Düsseldorf (Düsseldorf Regional Court of Appeal - OLG) upheld a complaint concerning the sale by the broadcaster of video recordings of programmes produced by third parties.

The defendant provides a TV recording service in co-operation with public-service broadcasters, selling video recordings of programmes broadcast on their channels. The plaintiff also sells video cassettes of programmes, having bought from two production companies the "exclusive video rights" to their particular productions. The OLG granted the injunction sought by the plaintiff.

The Court began by defining a film producer as the person who, in his or her own name, concludes the necessary contracts, bears the economic responsibility and organises the production of the film. In the Court's view, the use of the term "co-production" or "commissioned production" in the contract between broadcaster and producer is irrelevant. In this case, therefore, the two production companies were the film producers in the sense of the Urheberrechtsgesetz (Copyright Act - UrhG). They therefore had reproduction and distribution rights in accordance with Articles 16, 17.1 and 94.1 of the Copyright Act. The production companies had transferred these rights to the plaintiff under the terms of a contract.

The defendant claimed that, as a result of its contracts with the broadcasting companies, it had acquired the right to "televisual exploitation" or exploitation "for film and broadcasting purposes". However, the Court decided that such a right should, in accordance with Article 31 (paras 4 and 5) of the Copyright Act, be interpreted narrowly. It certainly did not entitle the defendant to sell video recordings.

The Court added that its decision was not altered by the inclusion in a contract between a broadcaster and one of the production companies, which had transferred its rights to the plaintiff, of a clause concerning the producer's duty to abstain from further assignment of rights. In the Court's opinion, such a clause was invalid under Article 9.1 of the Gesetz über die Allgemeinen Geschäftsbedingungen (General Terms of Business Act - AGBG), since it put the producer at an unreasonable and unfair disadvantage.

OLG Düsseldorf Urteil vom 23. Oktober 2001, Az. 20 U 19/01

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Düsseldorf Regional Court of Appeal, ruling of 23 October 2001, case no. 20 U 19/01

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