[DE] Ruling on Geographical Division of Satellite Broadcasting Rights

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In a recently published ruling, the Landgericht Stuttgart (Stuttgart District Court - LG Stuttgart) decided that Europe-wide satellite broadcasting of a film, whereby exploitation rights were transferred without time restrictions but were limited geographically to German-speaking areas, was not subject to the regulations set out in Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, provided the film was broadcast before the Directive was transposed into German law.

In the proceedings, the plaintiff requested that the defendant be prohibited from broadcasting a film via satellite in Europe without prior consent. The plaintiff was the co-producer of the film concerned and, through a co-production agreement signed in 1987, had granted to her partner the exploitation rights for the retransmission of the film via satellite and cable for an unlimited period of time. However, the agreement restricted the rights geographically to German-speaking areas only.

In 2001, the plaintiff's partner then sold the rights to broadcast the film to the defendant. The defendant is a programme provider which broadcasts via the Astra 1 C satellite broadcasting system and whose programmes are therefore accessible to anyone with a satellite receiver anywhere in Europe.

The Stuttgart District Court ruled that, according to the "broadcasting country principle", which has applied since the Directive on satellite and cable retransmission was transposed into German law (see Art. 20a of the Gesetz über das Urheberrecht und verwandte Schutzrechte

- Act on Copyright and Related Rights - UrhG), the complete transfer of exploitation rights, even with geographical restrictions, includes transfrontier broadcasting via satellite. Nonetheless, the Court held that the plaintiff's prior consent should be obtained because Art. 137h para.2 of the UrhG applied to the co-production agreement in question. Under this provision, if a co-production contract concluded before 1 June 1998 makes provision for a geographical division of exploitation rights without distinction between satellite broadcasts and other kinds of broadcast, and if the broadcast by satellite of the film would prejudice exploitation of the exclusive rights of another producer in a given

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language, the broadcast shall be permissible only with the consent of the holder of these exclusive rights.

Urteil des Landgerichts Stuttgart (Az. 17 O 334/01)

Ruling of the Landgericht Stuttgart (Stuttgart District Court), case no. 17 O 334/01

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