[DE] Digital Cable Transmission Needs Broadcaster's Consent

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At the end of 2002, the Oberlandesgericht Dresden (Dresden Appeals Court) ruled on a dispute between cable network operator PrimaCom and TV broadcaster ProSieben. The Court upheld all aspects of the broadcaster's claim that PrimaCom should be prohibited from feeding the programmes of private broadcaster ProSieben into its Leipzig cable network and transmitting them only digitally without the broadcaster's consent.

In September 2000, PrimaCom (which operates a broadband cable network in Leipzig) decided to carry ProSieben's programmes only as part of a digital pay-TV package. ProSieben could therefore only be received via a special digital decoder, which PrimaCom rented out to its customers for an additional fee. PrimaCom had neither informed the broadcaster of this decision, nor sought to negotiate with ProSieben before implementing it. ProSieben therefore applied to the Landgericht Leipzig (Leipzig District Court) for an injunction prohibiting the digital retransmission of its programmes, basing its claim on sections 97.1, 87.1.1, 87.4, and 20b.1.2 of the Gesetz über Urheberrecht und verwandte Schutzrechte (Act on Copyright and Related Rights - UrhG). The broadcaster claimed that the defendant was not entitled to digitally retransmit its programmes, since there was no agreement between the parties; such agreement was required by section 87.4 of the Act. ProSieben had merely tolerated the analogue retransmission of its programmes, but this did not mean that it approved of digital retransmission, as PrimaCom was claiming. In any case, ProSieben was also entitled to refuse to conclude a contract in accordance with Section 87.4, since digital retransmission restricted the channel's potential audience, which affected the broadcaster's advertising revenue. In addition, ProSieben only had limited pay-TV rights over its programmes.

After the Leipzig District Court had dismissed the complaint as inadmissible through lack of jurisdiction, ProSieben appealed to the Dresden Appeals Court.

The Appeals Court declared the appeal admissible and well-founded. In principle, cable retransmission required a contract according to section 87.4. The need for a contract enshrined in this provision did not give PrimaCom retransmission rights as described in section 20 of the UrhG, but merely the right to conclude a contract for retransmission under reasonable conditions. However, the Appeals Court did not answer the question of whether the broadcaster was entitled to refuse to

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enter into such an agreement, referring instead to the jurisdiction of the arbitration tribunal mentioned in section 16.1 of the Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten (Act on the Administration of Copyright and Related Rights), since it thought specialist knowledge was required to deal with this question.

Urteil des Oberlandesgerichts Dresden vom 29. Oktober 2002, Aktenzeichen 14 U 2179/01

Ruling of the Dresden Appeals Court, 29 October 2002, case no. 14 U 2179/01

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