[DE] Ruling on Public Dissemination of Copyright Photographs

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In a recently published judgment, the Oberlandesgericht Köln (Cologne Appeal Court - OLG) decided in a dispute between a photographer (plaintiff) and the commissioner of a photograph (defendant) that the latter was not entitled under current copyright law (Art. 60 of the Gesetz über Urheberrecht und verwandte Schutzrechte (Act on Copyright and Related Rights - UrhG)) to disseminate a photograph on the Internet without the photographer's consent.

On the instructions of a publishing firm, the plaintiff had taken photographs of the managing director of the defendant, a limited company (GmbH), to be used in the company's publicity. After the contact prints had been sent, the defendant had ordered a few passport photographs of the managing director and used these on various Internet pages. The plaintiff took legal action against the company, claiming damages and seeking an injunction. The Landgericht Köln (Cologne District Court) essentially upheld the complaint in the first instance, at which point the defendant appealed to the OLG and demanded that the complaint be dismissed in full. It referred to Art. 60 UrhG, under which the commissioner of a portrait may reproduce it and distribute copies without payment.

However, the OLG did not think the conditions described in Art. 60 UrhG had been met. It ruled that Art. 60 only gave permission for portraits to be reproduced and distributed to individual third parties, not publicly distributed worldwide via the Internet. The provision served only to protect the right of the commissioner of the photograph and the person photographed (since these were not the same person) to use the portrait without payment and distribute it to third parties. However, since there was no right to public distribution that took priority over the exploitation rights of the copyright holder, the defendant was not entitled to publish the passport photos on the Internet. Nevertheless, since the Landgericht had also ordered the defendant to pay damages for the distribution of the picture on other Internet sites for which it was not responsible, the OLG thought the appeal was justified as the defendant could not be liable when it had committed no fault. The damages awarded by the first instance court were therefore reduced accordingly.

Urteil des OLG Köln vom 19. Dezember 2003, Az.: 6 U 91/03

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Judgement of the OLG Köln (Cologne Appeal Court) of 19 December 2003, case no.: 6 U 91/03

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