[SE] TV Commercial Breaks Ruled in Breach of Film Directors' Moral Rights

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In 2002, TV4 AB broadcast two cinematographic works which were interrupted for commercials and trailers. The interruptions were for two and three breaks respectively, lasting approximately six minutes each. The two film directors sued TV4 claiming that their moral rights had been violated by the insertion of commercials during their works. TV4 claimed that the commercial breaks were in accordance with European broadcasting practice and that the company had, by the acquisition of the right to broadcast the films, also acquired the right to schedule breaks including commercials.

The District Court as well as the Court of Appeal found that the moral rights of the directors had indeed been violated by TV4. The Court of Appeal held that the commercial breaks constituted an alteration of the cinematographic works rather than a mere interruption of the films. This alteration was not negligible and the directors could therefore not be expected to tolerate it. In addition, the motives for introducing commercial breaks were not of such a nature that they should be allowed to override the interests of the film directors. The Court found that the insertion of commercials had affected the continuity and drama of the cinematographic works, and that the breaks had introduced elements into the films which were foreign and unjustified. It therefore concluded the moral rights of the directors had been violated.

Moral rights cannot be assigned and can only be contractually conceded on condition that a limited and well-defined use of the rights in question has been agreed upon by the parties. The Court found that a general agreement containing a right to interrupt for commercials cannot be understood as a limited and defined concession of the moral rights of the author. The Court held that such an interpretation would result in a situation where the effects of the agreements would be unforeseeable for the author. The moral rights could therefore not be seen as having been conceded to the broadcaster TV4.

TV4 has launched an appeal and will bring the case before the Supreme Court.

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(Judgment of 12 April 2006 of the Court of appeal

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