[DE] Collection of Fees for Retransmission of Programmes to Hotel Bedrooms

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Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 2 August 2006 the District Court of Cologne confirmed the fundamental legality of charging for retransmission of television programmes to bedrooms in a hotel.

The plaintiff in the underlying legal dispute runs a hotel in which she transmits programme signals received via cable through the cellar to her distributor, amplifies them and distributes them to the hotel rooms. She additionally offered both hotel information and videos via the television sets. The programmes were transmitted under a cable connection contract between the plaintiff and a cable operator, under which the right was granted to the plaintiff to make the channels supplied accessible to customers.

The defendant, an exploitation company for copyright and performance protection rights concluded, for its part, with various cable network operators what is known as the Regio contract, a contract for the payment of the use of terrestrial and satellite programmes broadcast by radio and television stations over the broadband cable networks of cable operators. The contract contained the clause that the transfer of rights of use to third parties was only admissible if the cable operators delivered the programmes of the broadcasting companies of other cable operators over the level 4 network (part of the broadband cable network set up for signal transmission over real estate and in buildings) and where a corresponding contract concerning signal delivery existed or would be concluded. Moreover, under an overall contract with the Federal Association of Music Promoters on the retransmission of private television and radio programmes to bedrooms in hotels, the defendant had concluded an individual contract with the plaintiff.

What was at issue now was whether and to what degree the defendant was entitled to retransmit within the hotel free of charge.

The Court established firstly that there would no doubt be chargeable use of copyright protected works by the plaintiff if she transmitted television programmes via her internal cable network to the individual bedrooms. This would constitute retransmission within the meaning of §§ 20, 20b, 87 copyright law (UrhG) and accordingly an infringement of broadcasting rights.

In so doing, the court based itself on a decision of the Federal High Court of Justice (BGH) dating from 1993, in which it had issued a ruling regarding the transmission of programmes via distribution facilities in prisons. It had based itself on the criterion that the transmission of works via broadcasting facilities came under broadcasting rights, when the operator of the installation did not limit himself to receiving and transmitting material broadcast via aerial and cable, but also provided reception facilities, with which the users - at their own discretion - could make use of the broadcast works. Such circumstances, in the view of the BGH, distinguished the activity from mere reception via communal aerial facilities and at the same time rendered it comparable in its meaning to other uses of works reserved by law to the creator through public reproduction. The decisive point in the ruling was the actual use, not the technology involved, i.e. that for instance that reception facilities were also suitable for individual reception.

The District Court accepted this line of argument and saw in the current case a comparable situation. Neither the fact that the defendant rented out the reception facilities nor the provision of additional videos or, in comparison to prison establishments, the limited amount of accommodation, allowed for a different ruling.

Thus the legal case was successfully made to refuse the fee requirement vis-à-vis the defendant. The hotel owner was exempt from any additional fee requirement, as long as the cable network operator concerned under the Regio-contract was entitled to transfer rights of use. This was the case since the internal hotel cable network of the plaintiff was to be classified as part of the level 4 network. The court ruled out the fact that sub-licensing in Hotels and similar establishments was not covered by the rights transfer clause of the Regio contract.

Entscheidung des Landgericht Köln vom 2. August 2006, Az.: 28 O 3/06

http://www.justiz.nrw.de//nrwe/lgs/koeln/lg_koeln/j2006/28_O_3_06urteil20060802.html

Ruling of the District Court of Cologne dated 2nd August 2006, Az.: 28 O 3/06