[DE] Domains Named After Deceased Famous People

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Jacqueline Krohn
Institute of European Media Law (EMR), Saarbrücken/Brussels

The analysis of Klaus Kinski's life justifies the use of the domain that carries his name. This was the verdict of the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) in its judgement of 5 October 2006 (case no. I ZR 277/03), in which it rejected the application of Kinski's heirs for the domain "kinski-klaus.de" to be closed down.

The respondents were using the domain name "kinski-klaus.de" to advertise a Klaus Kinski exhibition. The heirs of the actor, who died in 1991, claimed that the respondents were infringing their right to exploit the financial value of the dead man's personality rights and responded by asking for warnings and fines to be imposed and an injunction to be issued.

The *Amtsgericht* (Local Court - *AG*) in Charlottenburg (decision of 9 January 2003, case no. 204 C 197/02) and the *Landgericht* (District Court - *LG*) in Berlin (decision of 30 October 2003, case no. 52 S 31/03) had both dismissed the application. They ruled that warnings were unlawful in this case, since the complainants should have chosen a less costly alternative. Furthermore, the respondents could not be prohibited from publicising an exhibition which was designed to satisfy public interest in Klaus Kinski as a famous person in contemporary history.

Responding to an appeal against these verdicts, the *BGH* ruled that the appellants were not entitled to compensation for a breach of the posthumous personality rights of Klaus Kinski. It was true that, in principle, Kinski's heirs could be entitled to compensation because the posthumous personality rights included the exploitation of pecuniary interests. However, it was necessary to weigh up conflicting rights in order to clarify whether an intrusion on those rights was justified by the need to protect other interests. A careful weighing up process should particularly take into account the basic freedom to express opinions (Art. 5 para. 1 of the *Grundgesetz* - Basic Law) and the freedom of art (Art. 5 Abs. 3 of the *Grundgesetz*). The rights of heirs should not be allowed to "control or even dictate the public analysis of the life and work of the person".

In this case, the *BGH* rejected all the claims, explaining that the posthumous personality rights had expired ten years after Klaus Kinski's death. It therefore applied the 10-year rule that applies to the posthumous protection of image rights under Art. 22 of the *Kunsturhebergesetz* (Copyright Act) to the protection of the

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financial benefits of posthumous personality rights. In the *BGH's* view, the need to protect the image rights of a deceased person declined over time. The 10-year limit created legal certainty and took into account the fact that the public had a legitimate interest in being able to analyse the life and work of someone who was well-known in their own lifetime.

Urteil des BGH vom 5. Oktober 2006 (Az. I ZR 277/03)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=08344a167e5e45a8460828b24956aab7&nr=38177&pos=0&anz=1

Ruling of the Federal Supreme Court , 5 October 2006 (case no. I ZR 277/03)

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