[DE] Evidence Concerning Disputed Film Rights

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In a judgement of 15 February 2007 (case no. 7 O 21384/03), the *Landgericht München I* (Munich District Court I) ruled on a case in which one of the German public service broadcasters had been accused by a film distributor of broadcasting its films without permission. It was alleged that, between 1995 and 2001, the broadcaster had shown 10 classic films from the 1950s and 1960s on its own channel and had broadcast them a total of 38 times in co-operation with other broadcasters on two other channels without obtaining the necessary permission.

The Court upheld the complaint and ruled in the plaintiff's favour.

The judgement contains, in particular, some interesting points concerning evidence law. For example, the broadcaster had disputed the plaintiff's right to sue, i.e. the right to submit the claim before the Court in the first place, even though the broadcaster’s own broadcasting rights were based on a series of agreements to transfer rights, which had been fully or partly instigated by the plaintiff. Hence, although the broadcaster had obtained permission to broadcast the films from the plaintiff, it also disputed the plaintiff's rights over the films. The Court allowed this defence, even though it was contradictory. It ruled that there had not been any abuse of the law pursuant to Art. 242 of the German Civil Code (BGB) (performance in good faith) since in the "very confused film rights industry, particularly where older films are concerned, it is normal, in the Court's experience, that within film packages covering several hundred individual films, individual broadcasting rights are (deliberately or accidentally) sold without permission“. The plaintiff must therefore begin by offering full proof of ownership of the rights, which the defendant claims to have obtained from the plaintiff.

In the end, the Court considered that the proof had been provided in the present case. On the other hand, the broadcaster was unable to convince the Court that it had acquired the rights. The Court granted the plaintiff's claim under Articles 97.1 and 97.20 of the *Urhebergesetz* (Copyright Act) and under the principle of unjustified financial benefit enshrined in Art. 812.1 of the *Bürgerliches Gesetzbuch* (Civil Code). The plaintiff is claiming the entitlement to the sum of EUR 1.66 million, an issue which will not be considered until later in the proceedings.

Landgericht München I, Urteil vom 15. Februar 2007 (Az.: 7 O 21384/03)

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Landgericht München I (Munich District Court I), ruling of 15 February 2007 (case no.: 7 O 21384/03)

Pressemitteilung des Gerichts

http://www4.justiz.bayern.de/lgmuenchen1/presse/presse1.html

Press release of the Court

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