[SE] Commercial Breaks Infringe Moral Rights in Sweden

IRIS 2008-6:1/27

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The Swedish Supreme Court has come to a spectacular decision on the infringement of moral rights. The Court found that commercial breaks during films on television constitute an infringement of the directors' moral rights and that the possibility of waiving these rights is limited. In the case at hand, two well known Swedish directors complained about the broadcasting of their respective films on TV4, where the films were interrupted with commercial breaks. TV4 is Sweden's largest commercial free TV channel.

At first, the directors complained to the Swedish Broadcast Commission. The Commission, however, found the commercial breaks in compliance with the Radio and Television Act and the condition therein that all such breaks must respect the rightsholders’ rights. The directors subsequently filed a complaint under the Copyright Act, this time basing their claim on the provisions on moral rights. All instances judged in favour of the directors.

The Supreme Court found that commercial breaks are alterations of a film and that such alterations infringe the author's individuality and character (not his reputation, however). Irrespective of the artistic level of a film, a commercial break normally implies that the continuity and the dramaturgy in the film are interrupted and that unfamiliar pictures are inserted into the work in such a way so as to infringe the author's individuality.

TV4 had established contracts with the distributors of the films, who, in their turn, had established contracts with the directors. The mere fact that the distributors could sell the films to a commercial free TV channel did not constitute a clear enough waiver, according to the Court. In fact, the Court believed that, even if a contract includes a general right to break for commercials, this would not be clear enough, since the effects of such a contract would not be foreseeable by the authors. Moreover, the Court found that TV4 should have known about the rightsholders' views on commercial breaks and that TV4 had acted carelessly when broadcasting commercials during the films.

The effect of the judgment for the film and television industry in Sweden is that producers, distributors and broadcasters must be very clear when regulating commercial breaks in contracts with rightsholders. It is most liekly that prior

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agreement shall have to be reached on where breaks can be inserted, as well as whether all kinds of commercials may be inserted by the broadcaster. It remains to be seen if the judgment will also be used by rightsholders other than the authors of films as support and defence for moral rights.

On the European level, the Audiovisual Media Services Directive (2007/65/EC, previously the TVWF Directive 89/552/EC) allows films to be interrupted by commercials, as long as this does not prejudice the integrity of the film, taking into account the rights of the rightsholders. So far, no other Member State has guarded the rights of rightsholders as strongly as Sweden now has, via the above-mentioned judgment of the Supreme Court.

Mål nr T 2117-06, TV4 Aktiebolag ./. Dödsboet efter VS m.fl.

http://www.domstol.se/Domstolar/hogstadomstolen/Avgoranden/2008/2008-03-18%20T%202117-06%20Dom.pdf

Judgement no T2117-06, TV Aktiebolag v. Dödsboet efter VS

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