[DE] BGH on Compensation for Use of a Video Film without Consent

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In a judgment of 25 March 2010, the Bundesgerichtshof (Federal Court of Justice - BGH) allowed an appeal concerning a breach of copyright resulting from the use of a video film without authorisation.

In the proceedings at the centre of the appeal, the plaintiff had filmed the parachute jump of a well-known German politician in June 2007. The politician was killed, and the film was shown several times by one defendant, the operator of a news channel, on 29 June 2007, and made publicly available by another defendant, the operator of an internet portal. Both publications took place without the plaintiff's consent. The plaintiff considered this a breach of his copyright and demanded that the defendant provide information on the advertising revenue it had generated on 29 June 2007 so that he could use it as a basis for claiming compensation.

The BGH ruled in the plaintiff's favour, stating that the defendants had used the plaintiff's recordings without authorisation and were consequently obliged to pay him compensation. That consisted in handing over to him the profit made from the publication, which was based on the advertising revenue generated on the day concerned. It was, the court went on, unimportant that the advertisers had placed their advertising before the video had been shot, and therefore with no reference to it. Rather, the decisive factor was that the clients had expected their advertising to be broadcast in a "news environment", irrespective of the actual news content. The selection of the news, according to the BGH, had had no effect on the connection between the breach of the plaintiff's rights and the advertising revenue based on that breach.

Pressemitteilung des BGH zum Urteil vom 25. März 2010 (Az. I ZR 122/08 und I ZR 130/08)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=d0002d1c114383e6d90b7570016d42de&anz=1&pos=0&nr=51392&linked=pm&Blank=1

FCJ press release on the judgment of 25 March 2010 (Cases I ZR 122/08 and I ZR 130/08)

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