[DE] Arbitration Board Proposes Settlement between DTAG and VG Media

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The arbitration board set up at the German Patent and Trade Mark Office under the *Gesetz über die Wahrnehmung von Urheberrechten* (Law on the Administration of Copyright) issued a settlement proposal on 22 February 2010 in a dispute between a cable network operator and rightsholders concerning fees for cable retransmission.

The arbitration board is responsible for dealing with disputes between collecting societies and users of copyright-protected works and for disputes between broadcasters and cable network operators. Its task is to mediate between the parties with the aim of bringing about an amicable settlement.

In this particular case, Deutsche Telekom AG (DTAG) and the collecting society Verwertungsgesellschaft der Medienunternehmen (VG Media), which administers the rights of a number of private channels, were involved in a dispute concerning the rates charged by VG Media for the digital cable retransmission of broadcast signals via DSL networks (IPTV, DSL TV). The applicable rates are those listed by VG Media with respect to digital radio and television, which DTAG regarded as unreasonable because they are higher than the rates for analogue retransmission. It argued that IPTV technology led to more competition between cable network operators, which already benefited the broadcasters. In addition, it said, the digitisation, preparation and encryption of the content offered meant that the cable network operators incurred higher costs. For its part, VG Media argued that the digitisation also resulted in higher quality and increased use. Furthermore, the cable network operators benefited from the possibility of combining programmes with additional content.

The arbitration board’s settlement proposal essentially supports DTAG’s position. It provides for a reduction in VG Media’s digital rates from 2.01% or 1.72% (the latter rate applying when the cable network operator itself does not charge a feed-in fee) of the revenues generated from the retransmission to 1.1% or 1.0% (figures taking account of an overall contractual discount of 20%).

The settlement proposal brings the digital rates down to the level of the analogue rates and rejects VG Media’s demand for a higher digital rate. The transition to digital technology, it is argued, is a normal adaptation of the method of

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transmission that is of no consequence in terms of copyright and is comparable for example to the (ongoing) transition from the record to the CD. Additional uses for the consumer that resulted in improved sales opportunities for DTAG did not constitute a more intensive use of rights but were based on services provided by DTAG itself. VG Media already benefited from higher DTAG revenues as a result of its revenue-based fee rates.

The proposal also caught the attention of observers because the arbitration board - without going into detail - classified IPTV as cable retransmission under section 20b of the *Urheberrechtsgesetz* (Copyright Act - UrhG), although opinions are divided on this.

It is possible that the proceedings will be continued before the *Oberlandesgericht München* (Munich Court of Appeal).

Einigungsvorschlag der Schiedsstelle vom 22. Februar 2010 (Az. Sch-Urh 07/08)

Arbitration board's settlement proposal of 22 February 2010 (Case Sch-Urh 07/08)

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