[DE] BGH Rules on Cable Retransmission Right

IRIS 2010-6:1/17

Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision of 12 November 2009, which has only recently been published, the Bundesgerichtshof (Federal Supreme Court - BGH) ruled on the scope and conditions of the cable retransmission right enshrined in Art. 87(1)(1), case 1, and Art. 20 of the Urheberrechtsgesetz (Copyright Act - UrhG).

In 2003, the plaintiff, Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen (copyright and performance rights collecting society for media companies - VG Media), signed a contract with cable network operator ish NRW for compensation for cable network operators' use, via broadband cables, of the terrestrial and satellite channels of radio and television companies (Regio-Vertrag). Section 2 of the contract entitles the cable network operator to use the rights held by the plaintiff in cable networks, to feed in and retransmit the channels of the broadcasting companies and to transfer the rights to third parties, provided it "supplies the broadcasting companies' channels to other level 4 cable network operators and that a contract concerning the signal supply is in place or concluded between the cable network operators and the other operators involved."

The defendant, a hotelier, had concluded a cable contract with level 4 cable network operator Tele Columbus, under which he received channels of private broadcasters. Tele Columbus, for its part, took over the relevant programme signals from the operator ish NRW at the boundary of the defendant's property and fed them, via an internal distributor, to the individual guest rooms. There was a corresponding signal supply contract between Tele Columbus and ish NRW. Under Art. 97(1) UrhG, VG Media asked the hotelier to stop feeding the television channels, whose rights it owned, to the hotel rooms. It argued that the defendant was not entitled to act in this way under the Regio-Vertrag and was infringing its cable retransmission right.

Unlike the lower instance court, the BGH rejected the injunction request which had been submitted on copyright grounds. The reception of the programme signals at the property boundary and the transmission of those signals to the hotel rooms constituted retransmission under Art. 87(1)(1), case 1 UrhG because the content of the programmes was being transmitted simultaneously to a new audience (hotel guests) by independent technical means.

The broadcaster in this context was "only the party who decides which broadcast programmes are fed into the cable and transmitted to the public, rather than the party which merely provides and operates the technical devices required for this purpose." This decision only concerned Tele Columbus. The defendant had not had any influence on the network operator, but had only placed the necessary reception devices in the rooms.

Tele Columbus had been entitled to carry out the disputed actions because the operator ish NRW had, through the signal supply contract - based on the Regio-Vertrag - effectively transferred the necessary rights.

Urteil des BGH vom 12. November 2009 (Az. I ZR 160/07, veröffentlicht am 3. Mai 2010)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&nr=51809&pos=10&anz=614

BGH ruling of 12 November 2009 (case no. I ZR 160/07, published on 3 May 2010)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&nr=51809&pos=10&anz=614