[DE] No Right to Exploit Programme Information in EPGs

IRIS 2011-1:1/21

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In a second instance ruling, the Oberlandesgericht Düsseldorf (Düsseldorf regional court of appeal - OLG) has rejected a complaint by the Verband Deutscher Zeitschriftenverleger (association of German magazine publishers - VDZ) against Verwertungsgesellschaft Media (media collecting society - VG Media) concerning the use of programme information.

The VDZ had originally asked the Landgericht Köln (Cologne regional court - LG) to issue a negative declaratory judgment, explaining that the magazine publishers it represented were entitled to use the programme information published by the broadcasters affiliated to VG Media for their electronic programme guides (EPGs) free of charge. On 23 December 2009, the LG decided that VG Media was not entitled to exercise its members' rights in this way, since the merger had not been authorised under the EC Merger Regulation for this purpose. However, as regards the fundamental question of whether programme information could be protected, the court had no doubt that it could (see IRIS 2010-2/12).

In the appeal, the OLG Düsseldorf found against the plaintiff and ruled that the original action should be dismissed on the grounds of inadmissibility. The court explained that the VDZ, for its part, was not authorised to represent its members in the pending legal proceedings, since it had no legitimate interest in asserting these rights. The question of in what circumstances broadcasters' programme information could be used in EPGs went beyond the VDZ's statutory purpose, which was to protect and promote the common interests of its members. Representing them in relation to this particular issue was not covered by this purpose, since this would depend on (virtually) all members needing to offer an EPG in the near future in order to remain competitive. The plaintiff had failed to prove that this was the case.

Neither could it be argued that a common interest resulted from the fact that the procedure concerned basic issues that were also relevant to members in other contexts. There was no evidence that answering these copyright-related questions could, at the same time, clarify the legal situation in relation to other copyright-protected works owned by the publishers. The same applied to clarification of the question of what cartel law provisions applied to a media company with a dominant market position.

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Finally, the court also ruled that the plaintiff did not have a legitimate interest because it was not authorised under Article 12 of the Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten (Act on the exercise of copyright and related rights - UrhWahrnG) to conclude a general agreement for the “small number of members affected”. To conclude such an agreement on behalf of only the nine companies concerned would not be in the members’ common interest and therefore exceeded the organisation’s statutory purpose. The LG Köln had ruled otherwise on this point.

Urteil des OLG Düsseldorf (Az. VI-U (Kart) 15/10) vom 3. November 2010

http://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2010/VI_U__Kart__15_10urteil20101103.html

Ruling of the Düsseldorf regional court of appeal (case no. VI-U (Kart) 15/10), 3 November 2010

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