[DE] Supreme Court Rules on Owner's Right to Prohibit Filming

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

On 17 December 2010, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that the owner of a plot of land could, in principle, prohibit the unauthorised creation and exploitation of photographs and film recordings of its property for commercial purposes.

The plaintiff, the "Stiftung Preußische Schlösser und Gärten" (Prussian Castles and Gardens Foundation), a public law foundation, is responsible for looking after, maintaining and providing public access to numerous historic buildings and gardens of interest to tourists in the Länder of Berlin and Brandenburg. Two of the defendants sell their own and third-party photographs and films. The third defendant operates an Internet platform where photographers can post their images, which can then be downloaded for a fee. The foundation considered that, since all the defendants had sold images of the cultural treasures that it managed, its ownership rights had been infringed and it therefore applied for an injunction, disclosure of information and damages. The first instance court granted these requests, but they were rejected by the appeal court.

The BGH overturned the appeal court's decision. Referring to previous rulings, it explained that owners could prevent the creation and sale of images made on their land. Owners were entitled to decide whether and for what purpose people could walk on their land. This applied in this case even though the owner was not a private individual and the cultural treasures could normally be visited free of charge.

The BGH referred the proceedings against the first two defendants back to the appeal court for the clarification of unresolved questions, particularly concerning the foundation's status as owner and the level of fault. Regarding the platform operator, the BGH also referred to previous decisions (see IRIS 2010-7/14) and ruled that he had not infringed any rights.

Pressemitteilung des BGH zu den Urteilen vom 17. Dezember 2010 (Az. V ZR 44/10, 45/10 und 46/10)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=4d7ce9c94757f57d47274a938ed70f16&nr=54399&linked=pm&Blank=1

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BGH press release on the rulings of 17 December 2010 (case nos. V ZR 44/10, 45/10 and 46/10)

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