[DE] Munich Appeal Court Classifies Online Video Recorder as Separate Type of Use

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On 18 November 2010, the Oberlandesgericht München (Munich Appeal Court - OLG) ruled in favour of RTL Television GmbH in its dispute with a company that provides technical support for the online video recorder (OVR) service Save.TV.

In the first instance proceedings, RTL had obtained a temporary injunction against the Save.TV service company from the Landgericht München I (Munich District Court 1) for breach of its retransmission rights set out in Articles 87 and 20 of the Urheberrechtsgesetz (Copyright Act - UrhG) (see IRIS 2010-9/17). The Appeal Court upheld this decision with reference to the ruling of the Bundesgerichtshof (Federal Supreme Court - BGH) of 22 April 2009 in the case RTL versus Save.TV (case no. I ZR 175/07; see also IRIS 2009-7/9). The Save.TV service company was therefore prohibited from continuing to provide technical support for the OVR service.

In the appeal proceedings, the service provider had argued that RTL had transferred its rights to the Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen (Society for the Administration of Copyright and Performance Rights of Media Companies - VG Media) and was therefore not entitled to take legal action.

Taking into account a press release issued by the Deutsche Patent- und Markenamt (German Patent and Trade Mark Office - DPMA) on 10 September 2010, in which the DPMA gave its views on the extent to which the rights exercised by VG Media covered the use of OVRs (see IRIS 2011-1/22), the OLG München nevertheless concluded that the retransmission of television signals to OVRs represented a separate type of use, since there were technical and economic differences compared to traditional video recorders, particularly in terms of financing. Therefore, according to the rule set out in Article 31(5) UrhG, under which, if the types of use to which exploitation rights extend were not specifically designated when the right was granted, the scope of transferred rights is limited to the types of use necessary to achieve the purpose of the agreement, OVRs were not included under the copyright agreement between the broadcasters and VG Media. The retransmission rights therefore remained the property of the broadcasters, which meant that RTL was entitled to prohibit the OVR service provider from retransmitting its programmes.

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Urteil des OLG München vom 18. November 2010 (Az. 29 U 3792/10)

OLG München ruling of 18 November 2010 (case no. 29 U 3792/10)

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