[DE] OLG Rejects Claim to Additional Remuneration for “Tatort” Opening Credits

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In a judgment of 10 February 2011, the Oberlandesgericht München (Munich Appeals Court - OLG) rejected a claim under copyright law for additional remuneration and naming of the author.

The plaintiff wrote the opening credits of the television series “Tatort”. The defendants are two public service broadcasters affiliated to the ARD. The “Tatort” series is very popular and has been broadcast for over 40 years. The same opening credits have been used ever since it was first broadcast. In the proceedings, the plaintiff argued that this unusually long-term use of the work she had created was highly disproportionate to the fixed sum of DM 2,500 (approx. EUR 1,250) that she had received for producing the opening credits. She therefore claimed additional remuneration in accordance with Article 32a of the Urheberrechtsgesetz (Copyright Act - UrhG). The plaintiff also requested that she be named during the opening credits as their author.

The OLG München rejected both requests and overturned most of the provisions of the lower instance ruling. The additional remuneration mentioned in Article 32a UrhG was based on the notion of fairness and only applied if the agreed amount of compensation for granting exploitation rights was clearly disproportionate to the proceeds and benefits generated from exploitation of the work (see IRIS 2010-9/20). However, this additional remuneration did not apply to every copyright-protected work. The work in question needed to be more than of secondary importance to the work as a whole. However, the “Tatort” opening credits were only designed to introduce the programme and show viewers that it was starting. The fact that these opening credits had been used for more than 40 years and were therefore very well known was due to the popularity of the series itself, whereas the opening credits were not a decisive factor in the series’ success. There was therefore no entitlement to additional remuneration in this case. The author’s claim to be named in the opening credits was also rejected. Although the plaintiff had not expressly waived her right to be named in this way, it was customary for the opening and final credits of a cinematographic work to name only those who had played a substantial role in its production. Furthermore, since the plaintiff had not complained about this practice over a period of several decades, the defendants could no longer be expected to take such a request seriously.

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This judgment cannot be appealed.

Pressemitteilung des OLG München zum Urteil vom 10. Februar 2011 (Az. 29 U 2749/10)

http://www.justiz.bayern.de/gericht/olg/m/presse/archiv/2011/02919/index.php

Press release of the Munich Appeals Court concerning its judgment of 10 February 2011 (case no. 29 U 2749/10)

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