[AT] Format as sole characteristic feature of production video clips not covered by copyright

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On 25.06.1996 the Austrian High Court delivered a judgment in a case between an advertising agency and a film production company which is of interest as it is the first time that the concept of format in films has been referred to in Austria.

The case was brought on the grounds that the complainant, an advertising agency, was the originator of the format of an advertising video clip for an AIDS campaign produced under contract to the Ministry of Health. As a characteristic feature of the format, the complainant claimed that it had created the format for the video clip, which it defined as follows: The video clip is limited in length to approx. 120 seconds, the interviews were a collage of artificially created and animated images, graphics and music, put together in such a way as to create a new type of communication information, the artist's introduction uses a special format, avoiding the usual questions from a reporter, so that there is no real awareness of the presence of a reporter. Instead of this, themes are introduced using individually created combinations of words and images, the directness of the language is defined by the use of words such as "condom" in both written and spoken forms, the characters hold up real condom packets in front of the camera, showing them and talking about them, characteristic expressions such as "use a condom", "condoms - the best thing between you and me", "condoms don't come between you", "condoms - whenever and wherever", and "now which one of you is going to fetch the condom?" are written out, typographically created terms on graphic backgrounds are used, catch-words on the theme, particularly using different scripts and shapes blended into each other, animated graphics and images are combined together, graphics are colour-faded, there are cuts between distance shots and close-ups, black and white alternates with colour, image fades make use of various cameras and lenses, and there are extreme changes in image and contrast, fine- and coarse-grained shots are combined, the image format is distorted, the colours in the video clip are faded out completely, other material (such as documentary material or original video by the artist) is inserted abruptly, the videos are set to excerpts of the artist's music which start and stop abruptly, film and graphics are overlaid, and in addition the overlaid graphics are animated. The High Court held that even if one was willing to accept that the defendant's advertising film was based heavily on the converted concept in the complainant's film works with their characteristics of form ("formats"), this would not in itself be enough to win the case for the complainant. Protection under copyright law covers only the specific shape of material, but not the basic, as yet

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unformed thinking behind the work as such. The artistic form as such could therefore not be protected. Even if one was willing to accept that the characteristic features of the complainant's production video clip were different and novel compared with usual, everyday things, this would not be enough to admit infringement of copyright law either, as these features - being merely the creator's means of style or creation methods - cannot be protected. Protection under copyright law could only be invoked if the defendant's video clip was the same as the complainant's in its actual form.

Beschluß des OGH vom 25.06.1996, Az.: 4Ob 2093/96i.

Decision of the Austrian High Court on 25 June 1996. Az. 4Ob 2093/96i.

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