[DE] RTL Loses Dispute with Save.tv

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According to media reports, the *Oberlandesgericht Dresden* (Dresden Appeal Court - OLG) issued its ruling in the case between the online video recording service Save.tv and the RTL media group (case no. 14 U 801/07) on 12 July 2011. Save.tv reported that the court had decided that its online video recorder did not infringe the broadcaster's right of reproduction.

In the same case, the OLG Dresden had already ruled in favour of Save.tv on 9 October 2007. However, after upholding an appeal against this ruling, the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided on 22 April 2009 (case no. I ZR 175/07) to refer the matter back to the OLG Dresden for a final ruling. It instructed the court to examine in detail who actually carried out the recording. Only if the recording process was automated could it be attributed to the customer and therefore be considered as a lawful recording for private use. It should also clarify the extent to which the service, by forwarding the recorded programmes to the "personal video recorders" of several users, infringed the broadcaster's retransmission rights (see IRIS 2010-9/17 and the similar case RTL v Shift.tv, IRIS 2009-7/9).

According to Save.tv, in the proceedings before the OLG Dresden, an independent expert stated that the user initiated an automated recording process in order to create a private copy of television programmes. It was therefore a similar process to that of a traditional video recorder which, according to the BGH, did not infringe the broadcaster's reproduction right. A further appeal was not permitted.

However, according to Save.tv, the question of a possible breach of RTL's retransmission rights by the online video recording service was not resolved. Before the proceedings, referring to the obligation to conclude a contract with the *Verwertungsgesellschaft Media* (media collecting society - VG Media), which looks after the relevant rights of RTL, Save.tv had tried in vain to obtain a licence for the retransmission rights (regarding RTL's announcement in March 2010 that it wished to look after its own rights in future, see IRIS 2010-4/15). In response, the *Deutsche Patent- und Markenamt* (German Patent and Trade Mark Office - DPMA) had decided in September 2010 that Save.tv could not rely on the obligation to contract because the retransmission of programme signals by the operator of an online video recorder represented a separate type of use that was not covered by the purpose of the agreement between the broadcasters and VG Media (see IRIS 2011-1/22). In a separate procedure between RTL and Save.tv, the *OLG München*

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(Munich Appeal Court), in a ruling of 18 November 2010, referring to the DPMA's decision, had rejected Save.tv's objection that RTL was not entitled to take legal action because it had transferred its rights to VG Media. In the OLG München's view, RTL is entitled to prohibit Save.tv from retransmitting its programmes (see IRIS 2011-2/19).

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