[DE] BGH Rules on Reasonable Share of Revenue from Film “Das Boot”

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On 22 September 2011, the Bundesgerichtshof (Federal Supreme Court - BGH), in a decision not published until recently, ruled on a dispute over a claim for additional remuneration in accordance with Article 32a of the Urheberrechtsgesetz (Copyright Act - UrhG).

In the case concerned, the former chief cameraman of the 1981 film “Das Boot” had demanded an additional share of the revenue generated by the film - which had become a global success - from the producer, a video company and a public service broadcaster. He claimed that the payment he had received at the time was clearly disproportionate to the income received by the defendants from the film. In order to assert a possible claim to remuneration, the plaintiff had, in the first stage of his action, demanded information about the revenue generated from exploitation of the film. His action had been partly successful in the lower-instance courts. For example, the Oberlandesgericht München (Munich Appeals Court - OLG) had found a “noticeable disproportion” under Article 32a UrhG, but had ruled that the defendants’ obligation to provide information only applied from 28 March 2002 onwards. The requirement of Article 32a UrhG had only been introduced as part of the 2001 copyright reforms and, according to Article 132(3) UrhG, only applied to “circumstances [...] that arose after 28 March 2002” (see IRIS 2010-9/20 and IRIS 2009-6/12). Both parties appealed against this decision.

In its ruling, the BGH stated firstly that the plaintiff, as chief cameraman, had helped to make the film and was therefore, in principle, entitled to information exclusively for his own use in the sense of the Act (Art. 32a UrhG, Art. 242 of the Bürgerliches Gesetzbuch (Civil Code)). However, the right to information applied only if there were “clear grounds” to support the claim that there had been a noticeable disproportion. Since the OLG had failed to find sufficient grounds to support this claim, its decision could not be upheld. The same applied to the decision to limit the right to information to the period from 28 March 2002. Although the meaning of the term “circumstances” in the transitional provision of Article 132(3) UrhG was unclear, the explanatory memorandum showed that it did not, in any case, limit the applicability of Article 32a UrhG to contracts concluded after that date; older contracts were also covered. “Circumstances” in this sense meant - in contrast to the OLG’s view - exploitation. If the conditions set out in Article 32a UrhG were met, a reasonable share should only be based on “income

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and benefits from exploitation [...] that took place after 28 March 2002". When the noticeable disproportion arose was irrelevant. Whether such a disproportion existed should be verified, in principle, with reference to all income and benefits generated by those that had exploited the film.

The BGH referred the case back to the lower-instance court for a new hearing and decision.

Urteil des BGH vom 22. September 2011 (Az. I ZR 127/10)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=eb423522621aae85129b202c7dc024fa&nr=59538&pos=0&anz=1

Decision of the BGH of 22 September 2011 (case no. I ZR 127/10)

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