[DE] LG Leipzig Prohibits Unfair Contract Clause on Film-Makers' Remuneration Rights

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In a ruling of 8 August 2012, the Landgericht Leipzig (Leipzig District Court - LG) prohibited Mitteldeutscher Rundfunk (MDR) from using the so-called "VFF clause" in its contracts. Under this clause, broadcasters that commission films are allowed to claim for themselves all remuneration owed to the film producer by third parties. The court considered that this put the film producer at an unreasonable disadvantage.

The ruling followed a complaint from the Arbeitsgemeinschaft Dokumentarfilm (German Documentary Association - AG DOK), a professional association of independent authors, directors and producers. The AG DOK criticised the clause used in pre-formulated contracts, under which MDR, as the commissioning body, had the exclusive right to third-party remuneration generated from commissioned productions. Under the clause, this remuneration was to be collected by the Verwertungsgesellschaft der Film- und Fernsehproduzenten GmbH (Film and Television Producers' Collecting Society - VFF). Half of the proceeds were due to MDR as the commissioning body.

The LG Leipzig considered the VFF clause to be a standard business term in the sense of Articles 305 et seq. of the Bürgerliches Gesetzbuch (Civil Code - BGB). It created an unreasonable disadvantage in the sense of Article 307(1)(1) BGB, since it was incompatible with the essential principles of Article 94 of the Urheberrechtsgesetz (Copyright Act - UrhG). Under the latter provision, film producers, in principle, held copyright-related rights. The clause also excessively limited the film producer's right to assert the various remuneration claims under Articles 20b, 27 and 54 UrhG. It also infringed Article 94(4) in conjunction with Articles 20b(2), 27(1) and 63a UrhG, under which these claims could not be waived or assigned in advance. Although film producers should be able to choose which collecting society to use, the VFF clause required them to use a particular one. In the court's opinion, the fact that there was actually no freedom of choice in Germany, where the VFF was the only suitable collecting society, was irrelevant.

An additional factor was that, in the present case, the film was a so-called genuine commissioned production, in which the commercial risk associated with the production of a film was predominantly borne by the producer.

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The procedure did not concern the VFF's equally controversial distribution formula, which the AG DOK has described as "arbitrary" and concerning which it has promised to take further legal action.

The ruling has particular significance beyond this specific case, since the disputed VFF clause has been used by all the ARD-affiliated regional broadcasting companies and Zweites Deutsches Fernsehen for decades.

Urteil des LG Leipzig vom 8. August 2012 (Az. 05 O 3921/09)

http://www.agdok.de/download_open.php?id=74342

LG Leipzig decision of 8 August 2012 (case no. 05 O 3921/09)

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