[DE] Supreme Court Rules Again in RTL/Sat.1 v. Shift.tv/Save.tv Case

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In a judgment of 11 April 2013, the Bundesgerichtshof (Federal Supreme Court - BGH) ruled on the case between RTL and Sat.1 on one side and the online video recording services Shift.tv and Save.tv on the other. The BGH decided that the two online video recorders had infringed the television broadcasters' right to retransmit their programmes, as enshrined in Article 87(1)(1) of the Urheberrechtsgesetz (Copyright Act - UrhG).

This question had not been conclusively answered in the ruling of the Oberlandesgericht Dresden (Dresden Appeal Court - OLG) of 12 July 2011 (case no. 14 U 801/07, see IRIS 2011-8/21). The OLG Dresden had merely stated that the online video recorders had not breached the broadcasters' right of reproduction.

The BGH pointed out that the online video recorder providers had, in their defence during the appeal proceedings, referred to the obligation to contract set out in Article 87(5) UrhG. Under this provision, broadcasters were obliged, under certain conditions, to conclude a cable retransmission agreement with cable companies. However, in the BGH's opinion, the operators of an online video recorder could only file such a "compulsory licence objection" against broadcasters if they had paid or deposited the licence fees due under such an agreement. The Appeal Court had omitted to check whether the conditions for filing such an objection had been met.

If these conditions had been met, the BGH continued, the Appeal Court should have suspended the proceedings to enable the online video recorder operators to appeal to the arbitration body attached to the Deutsche Patent- und Markenamt (German Patent and Trade Mark Office - DPMA) (for details of a failed attempt by Save.tv to force RTL to contract by appealing to the DPMA in a separate dispute, see IRIS 2011-1/22). The arbitration body would then have needed to check whether the operators were entitled to demand the conclusion of a cable retransmission agreement. According to Articles 14(1)(2) and 16(1) of the Urheberrechtswahrnehmungsgesetz (Collecting Societies Act - UrhWG), this arbitral procedure was necessary before claims based on the obligation to contract could be brought before the courts. It was particularly necessary if a cable company brought an action for such an agreement to be concluded. However, it was also a requirement if a company - as in this case - defended itself

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against an injunction suit filed by a broadcaster by arguing that the latter was obliged to sign such an agreement.

Pressemitteilung des BGH vom 11. April 2013 (zur Rechtssache I ZR 152/11)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=8195&nr=63754&linked=pm&Blank=1

Federal Supreme Court press release of 11 April 2013 (case I ZR 152/11)

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