[DE] Common Remuneration Rules for Film Camera Operators

IRIS 2013-5:1/16

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In a dispute over the remuneration of camera operators, the Berufsverband Kinematografie (professional film-makers' association - BVK) - following the example of Constantin Film Produktion GmbH (CFP) - accepted the agreement proposed by the Oberlandesgericht München (Munich Appeal Court - OLG) on 12 March 2013. The BVK had instigated proceedings with the OLG under Articles 36 and 36a of the Gesetz über Urheberrechte und verwandte Schutzrechte (Act on Copyright and Related Rights - UrhG).

As authors of a work, cameramen are entitled to "reasonable remuneration" under Article 32(1)(2) and (3) UrhG. The procedure provided for under Articles 36 and 36a UrhG is designed to define this abstract concept of "reasonableness" by creating so-called "common remuneration rules". Representative and independent associations of authors and of users of works are involved in this process in order to ensure the interests of both sides are taken into account in the common remuneration rules.

The OLG acted as an arbitration body in the sense of Article 36a UrhG and, in accordance with Article 36(4)(1) UrhG, proposed an agreement, including grounds, on 20 December 2012. Following its approval by the BVK and CFP, this constitutes "common remuneration rules" in the sense of Article 36(1)(1) UrhG and defines the reasonable remuneration to which authors are entitled under Article 32(1) UrhG.

This is the first time that the remuneration rights of German film camera operators have been properly regulated. The common remuneration rules include a minimum payment, although this can be exceeded in contracts. Since they define reasonable remuneration, they do not apply only to the parties involved in the arbitration procedure.

The common remuneration rules include the following detailed provisions:

1. Firstly, camera operators must be paid at least the current tariff for their work.

2. If CFP reaches participation threshold 1, camera operators are entitled to 0.85% of CFP's total revenue. Participation threshold 1 is reached if CFP covered or could have covered loans that funded the project, including interest, which have to be

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repaid, from the income received from its exploitation of the film. A 5% corridor applies, whereby if the participation threshold is exceeded, an initial sum worth 5% of the total budget is paid to the producers only, excluding camera operators, in order to cover the financial risk borne by the film producers.

3. If CFP reaches participation threshold 2, camera operators are entitled to 1.6% of all revenue. This threshold is reached if loans (particularly film aid loans) that only need to be repaid under certain conditions were or could have been paid off from exploitation income.

4. Payments above the agreed rate or dividends paid to camera operators by collecting societies do not reduce the standard entitlement, unlike profit-sharing agreements between camera operators and CFP.

The common remuneration rules do not include a “best-seller clause” as described in Article 32a UrhG. According to the latter provision, the author can demand the adjustment of the agreed payment if it is obviously disproportionate to the amount of revenue generated by exploitation of the film, e.g., if sales far exceed the expectations on which the agreement was based.

The common remuneration rules entered into force on being approved by the BVK and therefore apply to all films shot after 12 March 2013.

Einigungsvorschlag des OLG München vom 20. Dezember 2012

http://www.bvkamera.org/kontakt/anhang/2013-03-12_13-35_Einigungsvorschlag.pdf

Agreement proposed by the Munich Appeal Court on 20 December 2012

Pressemitteilung des BVK vom 12. März 2013

http://www.bvkamera.de/aktuelles/index.php?m=akt&aid=1570&page=1

BVK press release of 12 March 2013

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