[DE] BVerfG Confirms Court Control over Copyright Remuneration

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Martin Rupp
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision of 23 October 2013, the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) rejected constitutional complaints about Article 32 of the Urheberrechtsgesetz (Copyright Act - UrhG). Article 32 UrhG enables the courts to control the fairness of remuneration for the granting of copyright for the use of a work by entitling authors to request a change to the level of remuneration.

The claimant, a publishing firm, complained about this provision after being ordered to pay translators' fees in two procedures before the Bundesgerichtshof (Federal Supreme Court - BGH). In the BGH's view, the contractually agreed level of remuneration had been underestimated.

The BVerfG considered the provision of Article 32 UrhG to be in conformity with the Constitution. It was true that Article 12 of the Grundgesetz (Basic Law - GG) protected authors' freedom to determine for themselves, in an individual contract, how remuneration should be paid for use of a copyright-protected work and how much should be paid. However, since authors often found themselves in a weak negotiating position vis-à-vis publishing companies or other users of rights, there was good reason to create laws to guarantee equitable remuneration and thereby give the courts control over the level of remuneration. In this respect, the property guarantee enshrined in Article 14(1) GG favoured authors. Like Article 11(2) UrhG, it required equitable remuneration to be paid to authors. This guarantee was also laid down in international and European law.

The BVerfG recognised that Article 32 UrhG considerably restricted private autonomy and therefore also impaired the security of long-term planning and the reliability of contract content. However, the rule did not deprive rights users of all room to negotiate, but merely imposed a minimum level of remuneration. Nor was the rights users' position excessively harmed by the fact that the onus was always on the author to prove any claim that remuneration was unreasonable. Furthermore, legal certainty could be created by means of joint remuneration agreements under Article 36 UrhG. If such an agreement were in place, the corresponding remuneration was irrefutably presumed to be equitable under Article 32(1)(1) UrhG.

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The BVerfG countered the claimant's argument that, to be consistent, the legislator should also have made provision for rights users to exercise control over prices, by ruling that, in view of the structural differences between authors and rights users, remuneration could, in principle, never be excessive.

The constitutional complaint was also rejected in so far as it disputed the retrospective application of Article 32 UrhG, which was adopted in 2002, under Article 132(3) UrhG. According to the BVerfG, this retrospective application was limited to a 13-month period and was necessary in order to avoid the existence simultaneously of contracts that entitled authors to demand a change to the level of remuneration and contracts that did not.

Beschluss des BVerfG vom 23. Oktober 2013 (Az. 1 BvR 1842/11; 1 BvR 1843/11)

http://www.bverfg.de/entscheidungen/rs20131023_1bvr184211.html

Decision of the Federal Constitutional Court, 23 October 2013 (case no. 1 BvR 1842/11; 1 BvR 1843/11)

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