[DE] Cologne Appeal Court Limits Quotation Right Under Art. 51 UrhG For YouTube Excerpts

IRIS 2014-3:1/17

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In a ruling of 13 December 2013 (case no. 6 U 114/13), the Oberlandesgericht Köln (Cologne Appeal Court - OLG) decided that the quotation right enshrined in Article 51 of the Urheberrechtsgesetz (Copyright Act - UrhG) did not cover all forms of critical debate concerning films. Distributing excerpts of a protected film for the purpose of blanket criticism was therefore contrary to copyright law.

The maker of a documentary film had launched an action against the operator of a YouTube channel, who had published a video on the YouTube platform, in which excerpts of the said film had been shown and briefly commented on.

As well as numerous points of dispute between the parties, particularly regarding the definition of an operator of a YouTube channel, the judgment deals essentially with the conditions in which the quotation right in Article 51 UrhG applies. In its defence, the YouTube channel operator referred to this quotation right. According to the OLG, the freedom to quote should not be exploited as a vehicle for publishing a work or parts thereof. It was therefore not sufficient to insert or add quotations in an unstructured way. Instead, quotations should be closely related to the ideas being expressed by the person using them.

Referring to the case law of the Bundesgerichtshof (Federal Supreme Court), particularly the “TV-Total” judgment of 20 December 2007 (case no. I ZR 42/05), the OLG pointed out that a quotation should, in principle, serve as the evidence or basis of the author’s own remarks. Even in a debate about the content of a quoted work, blanket criticism of individual aspects of the work was insufficient.

A photograph of the film-maker had been posted alongside the uploaded video. The court did not rule whether the quotation right applied to this image. A quotation under Article 51 UrhG assumed that the quoted work had been published with the author’s permission, which was not the case here.

The lower-instance Landgericht Köln (Cologne District Court) had issued a similar decision on 6 June 2013 (case no. 14 O 55/13).

Urteil des OLG Köln vom 13. Dezember 2013 (Az. 6 U 114/13)

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2013/6_U_114_13_Urteil_20131213.html

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