[DE] Supreme Court Limits Forfeiture of Copyright Claims

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In a ruling of 6 February 2014, the First Civil Chamber of the Bundesgerichtshof (Federal Supreme Court - BGH) decided that copyright claims are not, in principle, forfeited if rightsholders do not assert their rights over a period of many years (case no. I ZR 86/12).

The plaintiffs had filed for an injunction and compensation against a broadcaster. The dispute concerned the use of images filmed by cameraman Herbert Ernst showing Peter Fechter's attempted escape from the GDR, which the defendant had broadcast in programmes such as the Berliner Abendschau on 13 August 2010. The plaintiffs claimed that Herbert Ernst had granted them the rights to use the footage concerned. After the regional court had rejected their initial claim, the plaintiffs' appeal was also dismissed. The appeal court ruled that any claims by the plaintiffs had been forfeited because the footage concerned had already been broadcast repeatedly without the rightsholders asserting any claim under copyright law.

At the plaintiffs' request, the Federal Supreme Court partially quashed the appeal ruling and referred the case back to the appeal court for a new hearing and decision. Forfeiture of the claim for injunctive relief against the broadcast of 13 August 2010 was out of the question, since such relief only applied to future rights infringements. Only claims relating to past infringements could be forfeited. Regarding compensation for the unauthorised use of the footage, a forfeiture claim was possible. Since the footage had been used for decades without any complaint being made, the defendant could be confident that it would not be asked to pay compensation. However, the legal concept of forfeiture could not lead to the shortening of the three-year limitation period. Therefore, the only claims that were forfeited were those that fell outside the limitation period triggered by the institution of legal proceedings in 2011. The plaintiffs' claims for injunctive relief and compensation for use of the images since 1 January 2008 were therefore still valid.

The Supreme Court did not consider the plaintiffs' claims to be diminished by the fact that the broadcast footage was documentary in nature rather than a personal intellectual creation. Although the footage and still images were not protected as cinematographic and photographic works respectively, the individual images were

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protected under Article 72(1) of the Copyright Act (UrhG). According to the court's interpretation, this covered the right to exploit the individual images in film form.

The appeal court must now verify whether the plaintiffs hold the right to exploit the disputed film images.

Pressemitteilung des BGH zur Entscheidung vom 6. Februar 2014 (Az. I ZR 86/12)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2014&Sort=3&nr=66711&pos=26&anz=48

Federal Supreme Court press release concerning the decision of 6 February 2014 (case no. I ZR 86/12)

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