[DE] Judgment by the Federal High Court on direct satellite transmission and copyright

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Valentina Becker
Institute of European Media Law (EMR), Saarbrücken/Brussels

The Federal High Court (Bundesgerichtshof - BGH) has found that broadcasting to the public by direct satellite transmission is not a new method of use in the sense of Section 31 IV of the Copyright Act (Urhebergesetz - UrhG), compared with the usual terrestrial transmission.

The complainant, a production company, concluded three broadly similar contracts in the years 1975 to 1977 with the defendant, a broadcasting company, involving the joint production of a television broadcast which was afterwards to be broadcast terrestrially. In 1992 the defendant broadcast the entire series of programmes on the former joint satellite channel of the ARD broadcasting network, Eins Plus . This channel was available to the public throughout the Federal Republic by satellite and was included in the cable network (in the USA referred to as cable system) for the whole of the Federal Republic. The complainant maintained that the defendant had thereby infringed its rightful copyright protection and claimed damages under Sections 97 and 31 IV of the UrhG.

In its judgment the BGH held that Section 31 IV of the UrhG did not oppose direct broadcasting by satellite. According to Section 31 IV of the UrhG, the cession of rights of use, for types of use and obligations not yet known, is inoperative.

This provision was not applicable in the present case as the broadcast of works by direct satellite was not a new method in the meaning of Section 31 IV of the UrhG, compared with the usual terrestrial broadcasting. In its explanatory statement, the Court held that a new method within the sense of Section 31 IV of the UrhG must involve a way of using the work which was indeed different technically and economically. This provision was intended to prevent the originator being excluded from additional profits resulting from new technical developments. Its strict legal effect of inoperativeness should not however prevent the further economic and technical development of the uses of the work by the creation of new methods of use requiring separate licensing, and this was in the originator's interests. In the further development of methods of using the work, the originator's interests in the contractual relationship for exploitation would in general always be protected by contract law, in particular the principles of the further construction of a contract. The additional specific protection of the originator under Section 31 IV of the UrhG therefore presupposed that a newly

created type of use was involved, and that it was so different from the previous method that exploitation of the work in this form could only be allowed on the basis of a new decision by the originator in full knowledge of the new possibilities for use. This was not however the case where a type of use which was habitual was extended and reinforced by technical progress. The changes in means of transmission and the extension of the area of reception did not make satellite television a new type of use within the meaning of Section 31 IV of the UrhG.

Bundesgerichtshof, Urteil vom 04.07.1996, -I ZR 101/94.

Federal High Court, judgment of 04.07.1996, -I ZR 101/94