[DE] Right to quote protects the use of exclusive interviews by competing TV stations

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The use of parts of an exclusive TV interview by another TV station can be covered by the right to quote enshrined in section 51 of the Urhebergesetz (Copyright Act). In this case, it is sufficient for the interview to appear as a discussion basis for independent comments made in the television programme using it. This is according to the I. Zivilsenat des Bundesgerichtshofs (1st Civil Chamber of the Federal Court of Justice) judgment of 17 December 2015 (Case I ZR 69/14).

In the case concerned, the two commercial television stations SAT.1 and VOX were in dispute over exclusive interviews conducted by the editors of the SAT.1 programme STARS & Stories with Liliana Matthäus, the ex-wife of footballer Lothar Matthäus. The station ran the interviews on 26 July and 2 August 2010. VOX also wanted to show the interviews in its programme “Prominent” and asked SAT.1 for permission, which was refused. When VOX nevertheless broadcast extracts from the interviews, indicating the source, SAT.1 filed an action with the Landgericht Hamburg (Hamburg Regional Court). The plaintiff claimed that its trade-mark rights as a broadcaster had been breached. It applied for an injunction, a disclosure order and the reimbursement of legal and other costs, and asked the court to establish that the defendant was obliged to pay compensation. In its judgment of 13 September 2011 (Case 310 O 480/10), the Court essentially upheld the complaint. The defendant’s appeal to the Oberlandesgericht Hamburg (Hamburg Court of Appeal) was dismissed (judgment of 27 February 2014, Case 5 U 225/11) and a final appeal on points of law was lodged with the Federal Court of Justice.

In contrast to the lower courts, the Federal Court dismissed the complaint. The judges agreed that the use of the interview images had breached the broadcaster’s ancillary copyright, but said the Court of Appeal’s observations did not go far enough for the assumption to be made that the breach was unlawful. The Federal Court first of all established that the defendant could not invoke the copyright limitation rule for reporting on daily news events enshrined in section 50 of the Copyright Act. This rule allows journalists to use copyright protected works for reporting on daily news events if it is not possible to obtain the necessary permission or unreasonable to require this be done. In the instant case, it was, however, possible for VOX to obtain the necessary permission from SAT.1

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and reasonable to require it do so. Moreover, the Court went on, section 50 of the Copyright Act does not permit reporting on the copyright protected item itself - i.e. in this case the interviews themselves.

However, in the opinion of the Federal Court judges, the defendant could invoke the right to quote governed by section 51 of the Copyright Act. It noted that, contrary to the opinion expressed by the Court of Appeal, in order for this protective barrier to come into play it was not necessary for the quoting party to discuss the work in any great depth. Rather, it was enough for the other party's work to appear as a discussion basis for independent comments made by the quoting party, which was the case here. The VOX programme, the Court continued, had made Liliana Matthäus's self-presentation in the media a subject for discussion and used the interview extracts selected as proof of the fact.

The Federal Court observed that on the basis of the findings made thus far there was no cause to agree with the Court of Appeal's assumption that the extracts selected were key parts of the interview, and that it had been made extremely difficult for the plaintiff to exploit the interview commercially. The Court referred the case back to the Court of Appeal, which must now make the necessary determinations.

Urteil vom 17. Dezember 2015 - I ZR 69/14 - Exklusivinterview (Pressemitteilung)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&nr=73143&linked=pm

Judgment of 17 December 2015 - I ZR 69/14 - Exclusive interview (press release)

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