[DE] Supreme Court decides on appropriate remuneration for ‘Das Boot’ chief cameraman

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In a decision of 20 February 2020, the *Bundesgerichtshof* (Federal Supreme Court – BGH) determined how much revenue from television broadcasts should be paid to the chief cameraman of the film ‘Das Boot’ (Case no. I ZR 176/18).

The plaintiff in the case at hand had worked as chief cameraman on the film ‘Das Boot’ in the early 1980s, for which he had been paid a fee equivalent to EUR 104 303.54 by the production company. The film was exploited internationally in cinemas and on television, as well as on video and DVD. The plaintiff claimed additional remuneration of at least EUR 521 446.96 from Westdeutscher Rundfunk (WDR) and the broadcasting institutions that make up the consortium of German public service broadcasters (ARD) for the broadcast of the film on the ‘Das Erste’ channel and several regional and digital channels between 29 March 2002 and 12 March 2016. He also asked the court to grant him additional remuneration for broadcasts from 13 March 2016 onwards.

The plaintiff’s claim was only partly successful in the lower-instance courts. The *Landgericht Stuttgart* (Stuttgart District Court) partially granted the action for payment of EUR 77 333.79 and the application for a declaratory finding (judgment of 28 November 2017, Case no. 17 O 127/11), while the *Oberlandesgericht Stuttgart* (Stuttgart Appeal Court – OLG) granted a claim for EUR 315 018.29 and confirmed that the plaintiff was entitled to a further reasonable share of revenue generated from 13 March 2016 onwards (judgment of 26 September 2018, Case no. 4 U 2/18). The BGH set aside these rulings and referred the case back to the OLG Stuttgart. The judges thought the plaintiff’s claim to reasonable additional remuneration could not be granted on the grounds mentioned by the OLG Stuttgart.

The BGH began by stating that the plaintiff could only demand reasonable additional remuneration from the defendants on the basis of Article 32a(2)(1) of the German *Urheberrechtsgesetz* (Copyright Act – UrhG) if there was a noticeable disproportion between the previously agreed remuneration and the proceeds and benefits derived by the defendants from the exploitation of the film. However, since the judges believed that the OLG Stuttgart had made several calculation errors in its examination of the claim, they thought there was insufficient evidence that such a disproportion existed. For example, the OLG Stuttgart had

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based its calculations on the full one-off payment that the cameraman had received and had ignored the fact that the dispute only concerned the proceeds from the television exploitation of the film. When analysing the disproportion, according to the BGH, only the part of the payment that was relevant to television broadcasting should have been taken into account. The appeal court had also failed to take into account the fact that the agreed one-off payment had been designed to cover not only the initial exploitation of the film, but also all subsequent types of exploitation. This also had an impact when calculating the disproportion.

The OLG Stuttgart, which has been asked to review the case and issue a new decision, will now, in the reopened appeal proceedings, be required to check whether the agreed one-off payment is noticeably disproportionate to the proceeds earned by the defendants, taking into account the BGH's findings.

Pressemitteilung Nr. 20/2020 des Bundesgerichtshofs

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=3&anz=473&pos=0&nr=103848&linked=pm&Blank=1

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