[DE] Berlin regional court rules on film revenue information rights

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In a judgment of 27 October 2020 (Case no. 15 O 296/18), the *Landgericht Berlin* (Berlin regional court – LG) decided that a screenplay writer was entitled to information about the revenue generated from the exploitation of film productions so she could demand an adjustment to her remuneration for use of her screenplays.

The dispute between the screenplay writer on the one hand and the production company that owned the rights to two well-known German films and a film and media group on the other concerned the right to further equitable remuneration as enshrined in Article 32a of the German *Urheberrechtsgesetz* (Copyright Act – UrhG). The author had written the screenplays for the films *Keinohrhasen* (2007) and *Zweiohrküken* (2009), which had been very successful in Germany, and had granted associated exploitation rights to the producers in return for remuneration in accordance with a flat-rate agreement. However, in so-called "best-seller" cases, German copyright law provides for contractually agreed remuneration to be subsequently amended (Article 32a UrhG). This can occur if a work is unexpectedly successful to the extent that the originally agreed remuneration is disproportionately low compared to the revenue derived from the exploitation of the production. Article 20 of Directive 2019/790 (DSM Directive) contains a similar contract adjustment mechanism at EU level.

In order to find out whether she was entitled to a higher level of remuneration than under the existing agreement, the author initially requested from both defendants, that is, the production company and the film and media group, in multistage proceedings, information about the revenue they had generated by exploiting the films.

The Berlin regional court granted this information claim. It ruled that it did not matter whether the claimant was the sole author or a co-author, she was entitled to the information because both films had achieved a level of success that could justify amending the level of remuneration under German law. The defendants had argued that, since the conditions for adjusting the remuneration had not been met, the applicant was not entitled to the information. They claimed, firstly, that the remuneration originally agreed was not conspicuously disproportionate (as the law required) to the proceeds derived from the exploitation of the films

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because the author had received adequate remuneration. Regarding the conspicuous disproportion, the LG Berlin reiterated that the films had been very successful. Secondly, the defendants claimed that the right to information being claimed by the author had become time-barred. On this matter, the court referred to the case law of the *Bundesgerichtshof* (Federal Supreme Court – BGH), Germany's highest ordinary court. The BGH considered that information about revenue generated should be disclosed for remuneration adjustment purposes even after the limitation period. The argument that the right to the information required to determine remuneration rights was time-barred was therefore not valid.

The regional court's initial decision only concerned the right to information. A decision on whether additional remuneration should be paid has yet to be taken. An appeal against the ruling may be lodged within one month of the grounds being notified in writing.

Pressemitteilung des Landgerichts Berlin

https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2020/pressemitteilung.1009617.php

Press release of the Berlin regional court

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