

[DE] Court rules in ARD's favour in case against BILD LIVE concerning unlawful broadcast

IRIS 2022-2:1/20

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On 9 December 2021 (case no. 16 O 297/21), the *Landgericht Berlin* (Berlin regional court - LG Berlin) granted an interim injunction in proceedings brought by the nine public broadcasting corporations that comprise the ARD, declaring the broadcast of certain clips from ARD programmes by a private broadcaster as illegal on account of copyright infringements.

The dispute began when private broadcaster BILD TV, recently launched by the Axel Springer media company in August 2021, showed excerpts from the public broadcasters' election programming in its own BILD LIVE programme. On the day of the German parliamentary elections, 26 September 2021, BILD TV reported on the election, build-up events and the latest projections in its programme "*Es geht um Deutschland! Wahl 2021*" ("*It's about Germany! 2021 election*"). Excerpts from the ARD programme, that was running in parallel, were broadcast for a total of around 13 minutes. Some, including initial election result projections and forecasts, were shown live by feeding the public broadcasters' TV signal into the BILD TV programme, while others were time-delayed clips. ARD graphics were shown, as well as an interview with the CDU general secretary and excerpts from the "*Berliner Runde*", a discussion programme involving party leaders and top candidates for the parliamentary parties. The ARD had not agreed to this. Claiming that their neighbouring rights had been infringed and that their protection against passing off under competition law had been partly breached, the public broadcasters therefore applied for interim measures against BILD TV. The allegations were rejected by BILD TV, which argued that the unauthorised broadcast of the clips was justified on the grounds that the parliamentary election was an important moment in contemporary history. In particular, it claimed that the "*Berliner Runde*" was a newsworthy event of great significance which, although it was centrally produced by ARD and ZDF as public broadcasters funded by the licence fee, was also relevant to people who wished to be informed by other means on election night. The broadcast of the clips, with a clear indication of their source and a discussion of what had been shown, was therefore justified under the copyright law exemption for matters of public interest.

The LG Berlin partially upheld the ARD's application. It ruled that the simultaneous broadcast of parts of the ARD programme, containing election result projections and initial forecasts in the BILD LIVE programme, infringed the original

broadcaster's neighbouring rights that were protected under Article 87 of the German *Urheberrechtsgesetz* (Copyright Act – UrhG). It could not be justified from the point of view of reporting on current events (Article 50 UrhG) or quotations that were permissible under copyright law (Article 51 UrhG) because the limits of what was allowed under these provisions had been exceeded.

As regards to the time-delayed broadcast of the interview, on the other hand, the court decided that this constituted admissible reporting on current events (Article 50 UrhG) that was justified by the purpose of the report, and therefore did not require the original broadcaster's permission.

The court also rejected the claim under competition law on the grounds that the broadcasters that formed the ARD were, in this case, not competitors of BILD TV within the meaning of competition law, so they had no standing to bring such a claim.

The detailed reasons for this decision will be published in the written grounds, which are not yet available.

Landgericht Berlin, Pressemitteilung vom 9.12.2021

<https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2021/pressemitteilung.1156051.php>

Berlin regional court, press release of 9 December 2021

