

Copyright protection of TV characters in Germany

The protection of TV characters like Micky Mouse, Batman and Homer Simpson is not only important for making movies but also for marketing and merchandising. Many imaginary characters have been the object of German court decisions, for example Harry Potter¹, Bill² (a dog character) and Pumuckl³.

For some time now, the imaginary character Pippi Langstrumpf has been at the centre of many court decisions.⁴ Well known in the U.S under the name Pippi Longstocking, Pippi Langstrumpf is a freckle faced nine year girl with red hair pigtails, unusual clothes and a superhuman strength. Even though her mother is dead

and her father is far away sailing, she is happy, rich, and fearless. Recently⁵, the copyright holder of the Pippi Langstrumpf character sued various retailers who were selling carnival costumes of Pippi Langstrumpf. Although the retailers had changed some small details, there could be little doubt that the costumes were designed to represent Pippi Langstrumpf. The courts had to decide whether this constituted an infringement of the author's copyright.

Copyright protection of TV characters

Sec. 2 of the German Copyright Act defines works which are protected under German Copyright Law.

"...a distinctive imaginary personality with an unmistakable combination of external features, qualities, and recognisable behavioural trends"

"...the character Pippi Langstrumpf was protected"



Cinematographic works are explicitly mentioned. Therefore, the concrete form of a film is undoubtedly protected by German Copyright Law. The script and plot of the story is also protected. In contrast, TV characters are not explicitly mentioned in that list. However, the list is not totally inflexible but open to the interpretation by the courts. In the case of Asterix-Parodies⁶ the German Federal Supreme Court decided that "famous cartoon characters enjoy comprehensive copyright protection which is not limited to their concrete graphic representations in certain stories". It would seem that to ensure protection under German copyright law it is necessary to create a distinctive imaginary personality with an unmistakable combination of external features, qualities, and recognisable behavioural trends.

Fair use

An exemption to the normal copyright protection is regulated by Sec. 24 of the German Copyright Act. A new work can be published and used without acquiring permission from the original author if it is independent from the pre-existing work. This is defined as "fair use". However, case law shows that the necessary criteria to rely on this exemption can be very stringent. Fair use requires that the pre-existing work has faded significantly enough into the background, so that the new work appears independent from the original. Nevertheless, it is not necessary that in the new work the copyrighted character only "shimmers through weakly". This, it is argued would be too restrictive for the "fair use" exemption to apply. The similarity permitted to the pre-existing work depends on what extent it is necessary to borrow the copyright.

For example, if the pre-existing work is an object of a parody, the secondary work must remain recognizable to achieve the same comedic effect. However, it should be noted that there is no specific exemption in the legislation that says that parodies may utilize works without acquiring permission from the author. Therefore, it is necessary that the new work remains independent in the sense of Sec. 24 of the German Copyright Act from the original piece.

Pippi Longstocking

In the Pippi Langstrumpf costume case mentioned above, both the Cologne District Court and the Cologne Court of Appeal agreed with the jurisdiction of the German Federal Supreme Court that the character Pippi Langstrumpf was protected under the German Copyright Act. The courts noted that the character has a high level of creativity due to her extraordinary features. Furthermore, the courts decided that the sale of the carnival costumes could not be considered to fall under the exemption of "fair use". Since the general impression created by the costumes was the same, it was irrelevant that some minor details were different from the original character. Additionally, the carnival costumes were neither parodies of the character nor did they have an sufficiently independent threshold of originality.

Conclusion

These recent judgements show that the degree of copyright protection for TV characters in Germany remains high. It seems that utilizing the original character in a predominantly unchanged format or exploiting the character in another guise or creative work will in most cases be found to be an infringement of the author's copyright.



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- 1 Hamburg District Court, Decision of December 12th 2003 - Case No. 308 O 57/03.
- 2 Federal Supreme Court, Decision of July 8th 2004 - Case No. I ZR 25/02 ("Dog Character").
- 3 Munich District Court, Decision of May 24th 2007 - Case No. 7 O 6358/07; Decision of January 10th 2008 - Case No. 7 O 8427/07.
- 4 Hamburg District Court, Decision of June 24th 2009 - Case No. 308 O 200/09; Berlin District Court, Decision of August 11th 2009 - Case No. 16 O 752/07.
- 5 Cologne District Court, Decision of August 10th 2011 - Case No. 28 O 117/11; Cologne Court of Appeals, Decision of October 14th 2011 - Case No. 6 O 128/11.
- 6 Federal Supreme Court, Decision of March 11th 1993 - Case No. I ZR 264/91 ("Asterix-Parodies").