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Intellectual Property - Sweden

Court Rules that Commercial Breaks Infringed Authors' Moral Rights

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On April 12 2006 the Svea Court of Appeal issued a judgment against Swedish television company TV4. The court upheld a previous judgment of the Stockholm District Court in favour of two scriptwriters and directors who claimed that TV4 violated their moral rights when it interrupted their films with advertising breaks.

Facts

Claes Eriksson and Vilgot Sjöman, two well-known Swedish directors, sued TV4 for broadcasting their films *Hajen som visste för mycket* and *Alfred* with advertising breaks. The authors claimed that TV4 had violated their moral rights by interrupting their works (each had written the screenplay and directed his respective film) with advertising breaks. Each break was approximately five minutes long. TV4 denied that the interruptions were prejudicial to the artistic reputation or individuality of the authors. TV4 also claimed that, in any event, the authors had given up their rights in this respect when they had granted broadcasting rights to a commercial television channel.

Decision

The court of appeal had to determine:

- whether the interruptions for advertising spots meant that the works were changed;
- whether such changes amounted to a violation of the authors' moral rights;
- whether the authors had waived their moral rights; and
- whether TV4 had been negligent (which, under Swedish law, constitutes liability for damages) in interrupting the films.

Moreover, TV4 argued that the insertion of advertising breaks in accordance with the rules of the Radio and Television Act - which is based on the EU Television Without Frontiers Directive (89/552/EEC) - could not be considered to violate the authors' moral rights.

The court dismissed TV4's claim that the advertising rules of the Radio and Television Act should be allowed to affect the scope of moral rights, as provided for in the Copyright Act. When considering whether the interruptions for advertisements meant that the films were changed within the meaning of the Copyright Act, the court noted that authors must tolerate insignificant changes to their works, but that the advertising breaks in these cases were significantly long. The court then weighed the interests of the parties and found that the commercial interests behind the advertising breaks did not outweigh the authors' interests in respect of their moral rights.

The court further stated that the efforts put into the creation of a continuing story with the intended

dramaturgic flow must be appreciated when assessing whether changes result in an infringement of the moral rights of the author. In the court's opinion, it was obvious in this case that the advertising breaks had not only interrupted the continuity and dramaturgy of the films, but also incorporated subject matter which was foreign to the film. In one specific case, the break had interrupted and destroyed the intended dramatic effect of the transition between two scenes.

The mere fact that the authors had granted broadcasting rights to a commercial television channel did not mean that they had waived their moral rights. According to Swedish law, authors may waive their moral rights only in relation to uses which are limited as to their character and scope.

Finally, the court found that TV4 had acted negligently by including the advertising breaks without the authors' permission and should thus pay damages.





Comment

Even though advertising breaks are inserted in accordance with the Radio and Television Act, they may violate authors' moral rights under the Copyright Act - that is, when they constitute infringing changes to the work. Moral rights are not waived by the mere granting of broadcasting rights to a commercial broadcaster.

The obvious effect of the judgment is that commercial broadcasters will make sure that express consent for the insertion of advertising breaks is included in future broadcasting agreements.

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