



A film idea is not protected by copyright - OGH 19.12.2023, 4 Ob 112/23h

According to the case law of the Supreme Court, mere ideas, including film ideas, are not protected by copyright (Supreme Court 4 Ob 49/20i). The object of copyright protection is not the yet unformed thought (idea), underlying the work, as such, but only the personal physical shaping and definition of a creative idea (RS0076830 [T1]).

This principle was once again confirmed by the Supreme Court; it dismissed the action brought by the plaintiff, who had published a text entitled "Here comes the sun" on the website "Make'n Movies" in 2011, in which an insignificant musician is found in a world in which the Beatles never existed. According to the published text (the published idea), the musician becomes a star with the Beatles songs that everyone believes he wrote. According to the plaintiff's script, the musician fears being murdered like John Lennon.

The lawsuit was directed against the distributor of the 2019 film "Yesterday" to Austrian cinemas and against the owner of the rights to use the film (sale, distribution and other use) on the Austrian video market. In "Yesterday", the main character, a previously unsuccessful musician, discovers that nobody but him knows the Beatles and their songs. He subsequently passes the songs off as his own, which marks the beginning of his rise to global stardom.

The Supreme Court points out - as did the previous instances - that the plaintiff's film idea basically consists of a musician in a fantasy world passing off the Beatles' works as his own and thus achieving fame. The defendants argued in the proceedings that similar ideas had already been taken up in earlier works such as "Jean-Philippe" or "I'm a Beatle". Although it was established in the proceedings that the plaintiff was not familiar with these earlier works, this was irrelevant according to the Supreme Court, as the text "Here comes the sun" - which embodies the film idea - lacked originality; the Supreme Court therefore considered that the work status of the text was justifiably denied by the lower courts.

The Supreme Court also confirmed that the plaintiff was not entitled to any protection of adaptation; based on the principle that the (less pronounced) individuality of the original fades the stronger the individuality of the new work, the Supreme Court took the view that the plot of the film "Yesterday" deviated significantly from the half-page text of the plaintiff (quite apart from the lack of creative originality of the plaintiff's film idea). In the plaintiff's film idea, the protagonist fears being murdered on his 40th birthday like John Lennon; in contrast, the film "Yesterday" is a Rock'n Roll comedy in which the main character is faced with the conflict of exploiting the plagiarism for a star career at the cost of breaking up a love affair.

Comment

This decision once again highlights the importance of not publishing or sharing mere ideas, whether for a film, commercial, marketing strategy or other work, with third parties before the actual work embodying the idea has been created. If this principle is not observed, you may be left empty-handed if a third party takes up the idea and first creates the work that realizes the idea.