

Kluwer Copyright Blog

Austrian Copyright Law & Films: No protection of mere film ideas

Max Mosing (Geistwert) · Tuesday, April 2nd, 2024

The Austrian Supreme Court (hereinafter: “ASC”) ruled on 19th of December 2023 (4 Ob 112/23h) in a case concerning the 2019 film “Yesterday”. The Plaintiff alleged that the film infringed its copyright in a short screenplay idea published in 2011.

The First Defendant distributes the film “Yesterday” to Austrian cinemas. The Second Defendant is responsible for the use of the rights to this film in the Austrian video market. As regards the content of the film, the ASC explains that at the beginning the main character, a previously unsuccessful musician, discovers that he is the only one who knows the Beatles and their songs. He passes them off as his own and thus rises to world stardom.



Photo by [TheoRivierenlaan](#) from Pixabay

Back in 2011, the Plaintiff published a text with the title “Here comes the sun” on the website “Make’n Movies”, in which an insignificant musician finds himself in a world in which the Beatles never existed. He becomes a star by using their songs, which everyone believes he wrote. At the end, he fears being murdered like John Lennon.

The Austrian Lower Courts denied infringement of the Plaintiff’s copyright.

The Plaintiff’s Extraordinary Appeal to the ASC remained unsuccessful:

“Works” within the meaning of Section 1 of the Austrian Copyright Act are intellectual creations in the fields of literature, sound art, visual arts and cinematography. The object of copyright protection is not the thought (idea) underlying the work as such, but only the personal physical

shaping of the idea. Based on the fundamental principle of this idea-expression dichotomy, mere ideas, including film ideas, are not protected by the Austrian Copyright Law.

The ASC based its decision on the following facts: The Plaintiff's "film idea" laid down in his text "Here comes the sun" essentially consists of a musician in a fantasy world passing off the Beatles' works as his own and thus achieving fame. The Defendants had shown to the courts that similar ideas had already been used in earlier works such as "Jean-Philippe" or "I'm a Beatle". On the other hand the Plaintiff could establish before the courts that he was not aware of these publications and argued that the film "Yesterday" was a adapted reproduction of his text "Here comes the sun".

The ASC found that the Plaintiff's text lacked originality. Consequently, the ASC ruled that the lower courts justifiably denied it the status as a work in terms of Section 1 of the Austrian Copyright Act.

Furthermore, the ASC ruled that in the present case – apart from the lack of creative originality of the Plaintiff's text – the plot of the Film distributed by the Defendants deviated considerably from the Plaintiff's half-page text in question: Whereas in the Plaintiff's script the main character fears being murdered on his 40th birthday just like John Lennon, the rock'n'roll comedy "Yesterday" deals with the main character's struggle with building a star career on plagiarism at the price of breaking up a love affair.

Note by the author of the blog post:

The idea-expression dichotomy is very obvious regarding most works. The idea of an unpainted painting, an unwritten novel, a non-taken photo, etc. is not protected under copyright. However, when it comes to films as works, it is the amalgamation of pre-existing, emergent in the course of filming and created in post-production pieces of the "work product" that all together lead to the copyright protected work. The Plaintiff most probably intended to enforce the copyright of his text rather than of an idea. However, the ruling of the ASC was that not even his half-pager text was a copyright protected work.

In this context it becomes obvious that it is every-day business in film production to evaluate whether a pre-existing work is exploited by a film or if a film idea is merely used as inspiration. The practical relevance of this distinction is demonstrated by the popularity of sequels and prequels. While such works could be considered as taking over the mere film idea and therefore not subject to authorisation, it is the general opinion in Austria that sequels and prequels are adaptations which require the authorisation of the right holders of the original film. Remakes, i.e. the re-filming of a film material, show how difficult the distinction is in practice and what legal implications it has on the persons involved: while the screenwriter is granted rights over "remakes", this is not generally the case for the director of the original film. This is because a "remake" generally does not draw on the cinematic design of the original film, but "only" on the pre-existing screenplay or book on which it is based and which it reinterprets on film.

The decision by the ASC at its core concerns the following questions: Is the film "Yesterday" an exploitation of the pre-existing "short screenplay" thus requiring authorisation? Or was the Plaintiff's text not a work at all? If it was a work, was there an exploitation of the text through the

film? The ASC answered all questions in the negative: In particular, on the basis of the findings that similar ideas had already been used in earlier works and that the text was merely a half-pager, the ASC ruled that the abstract basic idea underlying a film does not enjoy protection and the “short text” does not have any individuality that might justify copyright protection.

From the point of view of film production practice, this result is only partially clarifying: It cannot be ruled out that the ASC would have decided differently if it had not been a half-page text at issue but a novel and/or if there had not already been earlier works with a similar plot. Therefore, the result remains unsatisfactory in practice: As so often in the life of a lawyer – it all depends on the overall circumstances of the individual case!

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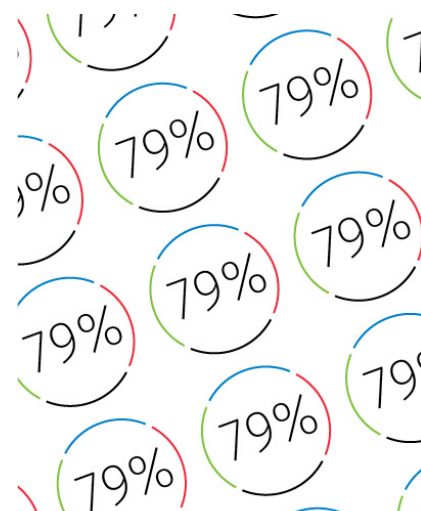
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