



Fictitious licence fee in case of unauthorized publication of photos - Copyright Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: This is what the Regional Court (LG) of Hamburg ruled in a dispute between a company and a bride and groom (File number: 324 O 690/09). The couple married at a gastronomic establishment where it had professional photos done of the wedding and the celebration. The owner of the establishment used some of these photos for advertising purposes in a magazine without having obtained the consent of the couple beforehand. The couple sued for violation of their right of privacy and demanded payment of a notional licence fee.

In its decision, the Hamburg Court agreed with the plaintiff's argument. With the unauthorized publication of the photos for advertising purposes, the defendant had violated the right of ownership in their own image. The Court stated that the general right of personal freedom also includes the sole right to determine the commercial use of photos, which constitutes a property right. Furthermore, the couple would have been entitled to make utilization of the photos subject to payment of an appropriate fee.

In the opinion of the LG, the appropriateness of the fee in an individual case would be subject to various criteria, such as the kind of publication, the circulation numbers and the advertising effect. On that basis, it would have to be estimated what fee reasonable partners would customarily have agreed to. The defendant's preparedness to pay would not be a factor to be considered. In calculating the amount of compensation, the LG of Hamburg also included the seriousness of the violation of personal rights. In the present case, the special situation of a wedding would have to be taken into account. As a rule, a wedding constitutes a very intimate and private situation, for which reason the licence fee would have to be appropriately high.

Copyright law, and in particular the law pertaining to photos, is becoming increasingly important. Especially when pictures are published for commercial purposes, the copyright law, the general right of personal freedom and the right of ownership in one's own image must be observed. When photos are used without authorization, persons affected may be entitled to damages as well as injunctive relief. A lawyer experienced in the law concerning photos should be consulted in case of questions and problems. He may - after examining the individual case - help to exercise certain claims. He can also help to clarify any right of use.

<http://www.grprainer.com/en/Picture-Law.html>

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Anlage: Bild

