

# **Amtsgericht München**

## **(Local Court Munich)**

142 C 30130/14

**Dr. Evelyn Schels v. Wikimedia Foundation Inc.**

### **Final Decision**

**It was held that:**

- 1. The action is dismissed.**
- 2. The Claimant shall bear the costs of the proceedings.**
- 3. The decision is provisionally enforceable. The Claimant may avert enforcement of this decision by the Defendant by paying a security amounting to 110 % of the amount enforceable according to this decision, unless the Defendant pays a security amounting to 110% of the amount enforceable before enforcement.**

### **Reasons for the Decision**

The action is admissible but unfounded. There exists no claim for injunctive relief against the publication of the Claimant's birth year in the online lexicon "Wikipedia". Therefore, the action has to be dismissed.

The publication of the Claimant's birth year in the online lexicon "Wikipedia" does not infringe upon her general right of personality or data protection law.

1. The general right of personality comprises the right of a person to decide on matters within their own individual sphere of privacy (Palandt, § 823, recital 115). This includes the publication and transmittal of data that can be attributed to a person in a way recognizable to third parties (BGH, NJW 2012, 771). In principle, the right to informational self-determination grants the individual authority to decide when and to which extent personal matters are disclosed. This includes the basic right to determine whether and which information is published on the Defendant's website in question (LG Tübingen, BeckRS 25260). At the same time, personal data represent a part of a person's social reality, which means that such data cannot exclusively and without exception be attributed to that person (BGH, NJW 2012, 771). Therefore, an extensive balancing is required to determine whether the interests warranting protection of the person concerned outweigh the interests warranting protection of the other party (BGH, NJW 2012, 3645). The free expression of opinion regularly takes priority over personal interests (Art. 5 GG, Art. 10 EMRK), if the opinion in question expresses facts that can be considered true. This principle does not apply without exceptions, though. True reports can infringe upon the personality right of a person, particularly if the consequences of such publication severely affect the person's development, and if the need for protection outweighs the public's interest in the publication (BVerfG NJW,

2889). Interests warranting protection may include a person's interest in safeguarding their personality right, but also in preventing economic harm that might result from a publication of personal data (BGH VI, ZR 196/08). The term "interest warranting protection" requires the balancing of a person's interest in protection of their data, and the significance of any disclosure and use thereof, with the interests of the users for which such data is stored, all that in consideration of the value system of our basic rights (BGH VI ZR 351/13).

- a) The birth year obviously is a personal date of the person concerned (§ 3 BDSG).
- aa) It is not part of a person's most intimate privacy as it does not concern the core of a person's personality, or their internal emotional and intellectual structure (Palandt, § 823, recital 87).
- bb) However, it is part of a person's privacy in a broader sense, which includes that part of a person's life to which - according to social norms - other people should only have access with the consent of the person concerned (BGH NJW 2012, 763). The birth year of a person is a date that is difficult for others to find out about, if at all, without the person concerned disclosing it. In contrast to a person's approximate age, which may be estimated from their appearance, the exact date of birth is not written on a person's face. Without the person's consent it usually cannot be learned by others. It must be considered, though, that the significance of a person's birth date, which in today's society is often requested not only by public authorities but also in private business, is not particularly high.
- b) The date is correct.
- c) The Claimant has not consented to the publication of her birth date on Wikipedia.
- d) Contrary to her statements the Claimant has to be considered a person in which the general public is interested.
- aa) This does not only result from the fact that the Wikipedia entry in question, which is two pages when printed out (Appendix K1), deals with the Claimant. Her profile as a public person, and the public interest resulting from that, is in fact a consequence of the many movies she produced and of her position as a lecturer (part time) at the Hochschule für Fernsehen und Film in Munich. The latter shows that she has made a name for herself within the movie and television business. In the opinion of the court, the Wikimedia article, the correctness of which is not disputed by the Claimant, clearly documents that the Claimant is a renowned producer of documentaries, who has published a documentary almost every year since 1987.
- bb) This is confirmed by the review of the cinema movie "Baselitz" 2013 on [www.focus.de](http://www.focus.de) as submitted by the Defendant. The review, which is still available online in the archive of a big national online news magazine, including the name and a quote by the Claimant, proves that there is or has been a public interest in her - at least when the movie was released. Even though the quote was taken from a press booklet and was not part of an actual interview, as credibly stated by the Claimant, it remains a fact that the quote was made by the Claimant in the press release and was adequately used in the review.
- cc) Moreover, the Claimant stated that she worked as a director for the TV show "Gute Zeiten, schlechte Zeiten", at least partly, for 5 - 6 months.
- dd) The public perception of the Claimant is confirmed by the entry on "Die Kinokritiker" and IDRef.

- ee) In addition, the Claimant deliberately presents herself to the public in her role as director/producer through her own website, which she herself stated to be an “electronic business card” in the court hearing. The use of the term “business card” shows that even in the Claimant’s own view her web presence is supposed to make her perceived by the public.
- e) The birth year is accessible through publicly available sources. The Claimant herself made it publicly available (see BVerfG NJW 2006, 3406). It is undisputed that the Claimant had her birth day printed on the back cover of her dissertation, published in Peter Lang Verlag. This book can still be purchased at the publisher’s. The passage in dispute refers to this source in the respective footnote. Moreover, the Claimant stated that she distributed her birth date in printed press releases on showings of her movies some 15-20 years ago. While the Claimant could not have expected at the time that those hand printed short biographies distributed on movie showings would once be circulating on the internet worldwide, the book publication represents a different case. The book has an ISBN number and was published by Peter-Lang-Verlag. So it had to be clear to the Claimant from the start that this book, and the public knowledge of her birth date along with it, would not remain limited to a small circle of people interested in films, but be accessible in various libraries etc. to a circle of user unlimited in theory.
- f) Here is a public interest in the birth year. The Claimant is a renowned, public producer of documentaries. Insofar, it is of interest to the public which movies she produced at which age. The Claimant herself proved that the public is interested in her birth date by stating that she published it on hand-outs distributed on showings of her movies 15 – 20 years ago. As aware of data protection as the court got to know the Claimant during the hearing she surely did not do so without a reason but assumed, or knew of, a certain interest of the movie recipients in this date. Therefore, the court is convinced that there is an interest in her birth date, not least because of the Claimant’s own statement.
- g) Furthermore, the significance of the birth date has to be considered relatively low in regard of other publicly available data concerning the Claimant’s education and production activities, like the release years of her movies. These data allow drawing certain conclusions as regards the Claimant’s age – her first movie was released by Patrice Chéreau in 1987, and she studied in Munich from 1975 (see cover of the dissertation).
- h) The Wikipedia entry represents general information for the formation of public opinion, not a publication for the purpose of advertising or marketing (see BGH, NJW 2009, 3032).
- i) It does not appear to the court that the publication in dispute significantly affects the Claimant in a negative way.
- aa) In her statement of claim the Claimant argues that the media industry is very strongly influenced by significantly younger people than herself, which leads to disadvantages in her job.
- bb) The Claimant relativized this statement in the personal hearing by saying that the disclosure of her birth date does not represent a problem in working with production companies and the TV channel ARTE; however, it is problematic in relation to BR, with whom she does most of her business, and where the Director General, according to the Claimant, has laid down a policy to engage noisy, young directors to attract young viewers. So the Claimant argues that she suffers a selective disadvantage due to a specific production policy at BR.

- cc) The case at hand deals with the general right of personality and not with age discrimination in terms of labor law.
  - dd) Due to her work the Claimant is known to BR. Therefore, the court does not see how the entry in dispute could play a role in allocating productions to certain producers/directors. The Claimant herself states that BR is her everyday business. Thus, a deletion of her birth date would surely not have any impact on her relation to BR as she has been known there for a long time, including her age. Moreover, the production years of her first movies make it possible to categorize the Claimant's age to a certain degree; according to the entry in dispute, her first movie was released in 1987; the publication year of her dissertation is also publicly available, e.g. via library catalogues. This means that a deletion of her birth date would not in any way make her "young" in the eyes of BR. Therefore, the court is convinced that the Claimant is not negatively affected by the publication of her birth date. Art. 12 GG is not affected by the publication.
  - ee) Moreover, there is no evidence that the Claimant is threatened to be socially excluded or isolated as a result of the Wikipedia entry (see LG Tübingen).
  - j) In consideration of all facts and circumstances the balance is in favor of the Defendant (Art. 5 GG). The entry cannot be considered unlawful.
2. There is also no infringement upon data protection law.
- a. The transmittal of data is admissible according to § 29 BDSG.
  - aa) § 29 BDSG is relevant. The collection of data is primarily in the interest of information and to a lesser degree for the exchange of the views of the users – it is undisputed by the Claimant that the content on Wikipedia is created by the users, whereas the Defendant only provides the platform and storage space – and does not serve the Defendant's own business purposes. It is a businesslike collection in the meaning of § 29 BDSG as it is repetitive and implemented for a certain period of time. A commercial purpose with the intention of making profit is not required (BGH VI ZR 196/08).
  - bb) The exception of § 29 Sec. 1 No. 2 BDSG applies. The birth year is from a publicly accessible source, which the Claimant herself has published (see above). There is no reason to assume that the Claimant has an interest warranting protection in preventing the data transmittal of her birth year. In fact, the balancing of the general right of personality, Art. 1, 2 GG, with the communication interest, Art 5 GG, favors the latter. This balancing of basic rights must also apply to the BDSG (BGH VI ZR 196/08).
  - b. In contrast, § 41 BDSG does not apply. It is relevant for the applicability of the media privilege that the data is "exclusively intended for one's own journalistic, editorial or literary purposes". With regard to tele media, the mere transmittal of collected data to users does not warrant special protection of the press as the mere automatic listing of editorial content – according to the Defendant he does not check the entries written by the user in advance, nor control them subsequently - does not yet represent an own journalistic-editorial work by the Defendant (BGH VI ZR, 196/08).