

thing 000770  
*(Zwischen Zirkuskuppel und  
Manege)*



Specimen



agency

In 1959, Josef Holzmüller, an animal trainer from Speyer, made a performance for his 17 year old daughter Monique Holzmüller and the in 1954 wild born Asian elephant called Moni. For the performance Moni learned to count, make music and smoke. During the summer of 1960, Monique Holzmüller and Moni participated in a circus tour called *Radio-Circus 60* through France. During the performance entitled *Moni*, Monique presented Moni the elephant as her daughter. Moni answered verbal questions by nodding her head. She also solved simple mathematical questions, posed partly by the audience. Moni tapped out the results of the mathematical sums on a table with a hammer, which she held with her trunk. The elephant also chose food and drinks from a menu, drank champagne and smoked a cigarette.

For the tour with *Radio-Circus 60*, Monique Holzmüller signed two contracts with *Les spectacles de Paris*, a Parisian agency. The contracts contained the following clauses:

*For the duration of the contract, the signatory transfers radio and TV rights of her production to the directors of the Circus [...]. This contract includes the participation and recording both for the radio and television.*

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On September 9th, 1960, *Radio-Circus 60* gave permission to Radio Télévision France (R.T.F.), to shoot the children television series *Tony, le fils de cirque* during the *Radio-Circus 60* tour. *Tony, le fils de cirque* was directed by

Bernard Hecht and Brigitte Muel and broadcasted on R.T.F. The series is about the adventures of Tony, a child who grows up in a circus.

On July 10, 1964, the German television station Westdeutscher Rundfunk (W.D.R.) broadcasted a black and white TV movie entitled *Zwischen Zirkuskuppel und Manege*. The film was a 26 minute re-edit of the 13 episodes of *Tony, le fils de cirque* by R.T.F. The television channels W.D.R. and R.T.F. had an agreement that they could use one another's archives. This is how W.D.R. obtained the rights to use the R.T.F. archive. The film *Zwischen Zirkuskuppel und Manege* included scenes of the circus performance *Moni* by Monique Holzmüller.

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After seeing *Zwischen Zirkuskuppel und Manege* on German television, Monique Holzmüller claimed that W.D.R. copied her circus performance without her permission. She stated that the paid fee for TV recordings only implied the authorization for live TV recordings and broadcasts during the season of the tour in 1960, and that the contract did not permit an unlimited use in time and space. Monique stated that her performance with the elephant was the result of intellectual work. Holzmüller considered the performance an art work, comparable to a pantomime and choreography. She alleged that this work had been reproduced by W.D.R. without authorization. W.D.R. contacted R.T.F. about the dispute. R.T.F. claimed that it was entitled to use the litigated film recordings without any constraints, since

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the production of the TV series had been made explicit to *Radio-Circus 60* and Monique Holz Müller had agreed.

On March 21, 1967, the court case *Holz Müller g. W.D.R.* took place at *Landgericht München*. In his conclusion, judge Walter Ziegaus stated:

*For this decision German law has to be applied. The copyright infringement asserted by [Monique Holz Müller] [...] has taken place in the Federal Republic of Germany. [...] The contract [...], by which [W.D.R.] has bought the rights of use of the television series, has been signed in Munich [...] [T]he broadcast [...] has equally been done in Germany [...].*

*[Monique Holz Müller] could benefit from copyright protection depending on the given factual conditions. However, her own account of the [performance] does not demonstrate a right for copyright protection. The performance of the trainer with the trained elephant does not belong to the protected works of literature, science or art according to article 2 of the [German copyright law]. The [spoken] text, pronounced only by one side, as to be expected in a performance with a trained animal, does not contain any literary quality; it is nothing more than a set of simple questions. Neither does the performance meet the minimum requirements of a work of pantomime nor choreography. It is true that the requirement, to fix*

*in writing or other, has been dropped. But it is nevertheless necessary that the works are creative works which, by means of movements of human bodies, specially dance or facial expressions, provoke thoughts and sensations [for an audience]. In the given case, the movement and facial expression of the implied person come second to the movement of the animal which furthermore is limited to nodding and shaking the head as a sign for “yes” and “no”, to hammer blows with the trunk, to eating, to drinking and to smoking a cigarette. This is definitely an admirable achievement in terms of training an animal, but can not be considered as a creative act of the [trainer] performing her own perceptions, thoughts or emotions by means of a movement in such a way that the spectators would receive a sensory impression that stimulates their own deeper sensation.*

*[Monique Holzmüller] furthermore claims a right of protection of artistic achievement as a performing artist. A performing artist in terms of copyright law is the one who performs a work or contributes to the performance of a work in an artistic way. Without further considering to which extent this is an artistic performance, - as just demonstrated - it is not a work in the sense of article 2 of the [German copyright law]. [...] Copyright law has not extended the protection of performances in circus or variety shows which*

*are not an original work [...].*

*As [Monique Holzmüller] has neither produced a film nor moving images, that is, non creative image and sound sequences, she also can not assert the resulting copyrights of a film. [...] [Monique Holzmüller] herself, rightly does not base her request on the assertion that her contracts with the agency Spectacles contained the duty to prevent the passing on of produced TV recordings. Such an obligation could also not found any claims against [W.D.R.], which derived user rights from R.T.F. The extent to which the principle of Zweckübertragung conflicts with the passing on of copyrights [...] can remain unchecked, as [Monique Holzmüller] was never entitled to such absolute rights. Under these conditions, the question of whether the passing on [of copyrights] finally occurred without errors, also does not require further inquiry.*

*This is why the complaint and damages [by Monique Holzmüller] are rejected.*

The court concluded that Monique Holzmüller's interaction with Moni, the elephant, didn't deserve protection neither as a mime nor as choreography. On the one hand judge Walter Ziegau stated that under German copyright law, animal training is not included on the list of protected artistic achievements ('Leistungsschutz'). On the other hand

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he stated that Monique Holz Müller's contribution to the circus act was not an original work of art.