[AT] Digitisation and Storage of Musical Works on Computer Hard Disk Constitutes Reproduction

IRIS 1998-4:1/7

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The complainant (Radio Melody GmbH) holds a broadcasting licence under the terms of the Regional Radio Act (Regionalradiogesetz). It has organised its broadcasting in such a way that musical performances on sound carriers are digitised and stored electronically in a data processing unit from which they can be retrieved and broadcast completely automatically (and even repeatedly).

Radio Melody's main complaint against the performing rights company (Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte GmbH) was that, since the pieces of music on CDs and records are digitised in-house at the complainant's electronic data processing studio for the purpose of the complainant's broadcasting operation, they do not fall within the scope of the charges payable to the defendant as reproduction rights in accordance with Section 15 of the Copyright Act (Urheberrechtsgesetz - UrhG); secondarily, the complainant referred to the conclusion of an agreement authorising use for functional purposes.

The initial court delivered a partial judgment on the main complaint; the decision on the secondary complaint will be included in the final judgment.

In the justification of its judgment, the Commercial Court (Handelsgericht) in Vienna confirmed that reproduction copyright also applied to the digitisation and electronic storage on the hard disk of a dataprocessing unit. The fact of whether the sound vibrations were altered, involving a loss of quality, was just as irrelevant as the fact that the transformation/storage was carried out by the complainant in preparation for a broadcast; there was no technical justification for systematic transformation in order to broadcast a piece of music which was available on a sound carrier.

Teilurteil des Handelsgerichts Wien vom 13. Januar 1998, Aktenzeichen 24 Cg 174/96p

Partial decision of the Vienna Commercial Court (Handelsgericht) on 13 January 1998, ref.no. 24 Cg 174/96p

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