[AT] Internet and Copyright - Supreme Court Decides

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A decision given in mid-August by the Supreme Court on an application for an interim injunction dealt for the first time with copyright law aspects of the use of works on the World-Wide Web (WWW). The proceedings originated in a contract concluded in 1984 between the widow of the writer, Konrad Bayer (1932-1964), and a publisher. In this contract, Mrs Bayer assigned "sole and exclusive publication rights in all impressions and editions" of her late husband's entire literary output to the publisher in question. The nature of the rights assigned was clarified by a list of the uses covered.

An injunction was sought against the Commissioner for the 1997 Venice Biennale, appointed by the Federal Chancellor's Office, who edited the official exhibition catalogue, "The Vienna Group [Ö]", and is named in it as being responsible for its content. The catalogue reproduces texts by Konrad Bayer without the publisher's permission; moreover, the defendant made these texts available on the Web at http://wienergruppe.at and announced that a bookshop edition, accompanied by a CD-Rom, would follow.

Since the plaintiff publisher's application is justified only to the extent that it itself holds rights of use , the Supreme Court was obliged to interpret the original contract and, in particular, to clarify the extent of the rights assigned by it. It took the view that the subject of the contract and the uses listed implied that the plaintiff held only the rights required for use in printed form; this view was supported by the fact that the "new media", Internet and CD-Rom, were still largely unknown at the time when the contract was concluded, or at least that their economic significance for the author was completely unforeseeable in 1984. (The appeal court had argued that WWW and CD-Rom uses were already known at the time when the contract was concluded.) While the German Copyright Act, for example, declares that no rights may be assigned, or obligations stipulated, in respect of uses still unknown, Austrian copyright law contains no express provision to this effect - and indeed no detailed rules on copyright contracts. While finding interpretation of the contract sufficient to decide this case, the Supreme Court referred to the legal situation in Germany and expressly said that the question as to whether the assignment of rights in respect of uses still unknown was also invalid in Austrian law could remain open.

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Beschluß des Obersten Gerichtshofs vom 12. August 1998, Aktenzeichen 4 Ob 193/98f.

Judgment of the Supreme Court of 12 August 1998, File No. 4 Ob 193/98f.

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