[DE] Federal High Court on the Admissibility of Electronic Press Archives under Copyright Law

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In a judgement on 10 December 1998, the Federal High Court (Bundesgerichtshof - BGH), overruled a decision of the Düsseldorf Court of Appeal (Oberlandesgericht - OLG) on the admissibility of electronic press archives and remitted the case to that court.

The appellant was the publisher of the " Handelsblatt" newspaper and economic magazine "Wirtschaftswoche" and also operated an economic database. The defendant used these publications as part of her occupation, which was the subject of the action. The defendant received from her customers original copies of these publications and then digitalised certain articles, chosen by the customer, which she transferred to an archive system also provided by the customer and, if necessary, indexed. The end product was then delivered to the customer in printed form, as a computer fax or on disk.

In the lower instance, the Düsseldorf Court of Appeal had granted the appellant's demand for an injunction preventing the defendant from making " Handelsblatt" or "Wirtschaftswoche" articles available in computerised format. In the Court's opinion, a claim of unfair competition under Section 1 of the Unfair Competition Act was valid insofar as a competitive advance had been made by means of an infringement of the law. The Federal High Court opposed this view. It held that any claim based on Article 1 of the Unfair Competition Act in relation to an infringement of copyright law was invalid unless there were particular circumstances, besides copyright protection issues, which rendered the disputed action unfair.

The case was only referred back in order for the Court to clarify whether there was also a valid claim that the appellant's own copyright had been infringed and whether this was therefore a matter of dispute. The High Court gave some indications as to how the case should proceed. The Federal High Court considered that there had been an infringement of copyright law under Article 97.1.1 of the Copyright Act. Company archives in which computerised articles were electronically stored were not covered by the copyright restrictions set out in Article 53.2.2 of the Copyright Act. Under this rule, the reproduction of individual pieces of a work for insertion into a company's own archive was legal, provided it was necessary for this purpose and provided the company's own piece of work was used. In its decision of 16 January 1997 (file no.1 ZR 9/95 CB-Infobank I) the

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Federal High Court had stated that the exception mentioned in Article 53.2.2 of the Copyright Act only applied if the material was acquired exclusively for back-up and internal use. In a further judgement delivered on the same day (file no.1 ZR 38/96 CB-Infobank II), the Federal High Court had summarised the area of application of Article 53.2.2 of the Copyright Act, stating that the rule did not cover cases where an information department carried out searches before reproducing material. In its current ruling, the Federal High Court followed this precedent and held that electronic press archives were not exempt under Article 53.2.2 since, although the use was internal and searches were not carried out by the defendant, the possible uses of the material far exceeded what the legislator had intended to exempt. Unlike libraries, which stored their data on microfilm, for example, and did not exploit works in any other way, electronic press archives made it possible, according to the Court, to reproduce and disseminate information in a quick, inexpensive and more or less unsupervised way. The Court held that this might result in the defendant's customers cancelling, in full or in part, their multiple subscriptions.

Bundesgerichtshof, Urteil vom 10. Dezember 1998, Az. I ZR 100/96.

Federal High Court judgement of 10 December 1998, no. I ZR 100/96.

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