[AT] Digitization/Storage for Broadcasting Purposes Constitutes Reproduction

IRIS 1999-4:1/8

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At the end of January 1999, after a partial decision had been given by the court of first instance (see IRIS 1998-4:7) and an appeal upheld, the Austrian Supreme Court (Oberste Gerichtshof OGH) brought to an end the test case between a private broadcaster and a performing rights collecting society. The complainant (RADIO MELODY Gesellschaft mbH Radio Melody) holds a licence to broadcast a regional radio station under the terms of the Regional Radio Act (Regionalradiogesetz). The defendant (AUSTRO-MECHANA Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urherberrechte Gesellschaft mbH Austro-Mechana) is the performing rights collecting society which, amongst others, looks after reproduction rights for music stored in such a way that it can be played back repeatedly (except for advertising purposes). Radio Melody has organized its broadcasting so that pieces of music on sound carriers are initially copied from a record-player or CD-player onto a computer, whose sound card digitizes the analogue signals. The digitized signals are then stored in the form of audio files on the hard disk. Pieces of music can then be automatically retrieved and broadcast (after being transformed back into analogue signals) as often as the broadcaster wishes.

Radio Melody's main complaint was that the process described above did not fall within the scope of the Austro-Mechana as reproduction rights. The defendant applied for this complaint to be charges payable to dismissed.

The Supreme Court based its decision on the fact that a piece of music could only be considered a reproduction if it took concrete form, which was only possible if some form of sound carrier was used. However, the form and nature of the sound carrier (or storage medium) were irrelevant. Referring to Austrian and German doctrine, which are the same, the Supreme Court stated that: "When a piece of music is digitized, analogue signals are transformed into a binary code. The storage of this code (if it is retrievable) constitutes an action which indirectly [Ö] makes it possible to replay the piece of music." It held that both the initial storage (digitization) and the transfer of the digitized data from one store to another, should be considered as reproduction in the sense of Section 15.1 of the Austrian Copyright Act (Urherberrechtsgesetz).

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In justifying its decision, the Supreme Court also referred to the aim and object of reproduction copyright, i.e. to compensate authors for any uses of reproductions of their work (multiplication effect). The Court had no doubt that the storage of a piece of music on computer hard disk increased the number of possible uses. However, the process also enhanced sound quality, which suggested that digital technology would give rise to its own separate markets (e.g. for online uses via the Internet).

Incidentally, the Supreme Court pointed out that the concept of reproduction contained in the Austrian Copyright Act did not distinguish between different purposes: the same rules applied to digitization and storage whether it was carried out "for the purposes of a radio programme" or for any other reason.

Entscheidung des Obersten Gerichtshofs vom 26. Jnauar 1999, Aktenzeichen 4 Ob 345/98h.

Decision of the Austrian Supreme Court, 26 January 1999, file no. 4 Ob 345/98h.

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