[DE] Federal Supreme Court Bans Sale of CD-ROM Telephone Directories

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On 6 May this year, the 1st Civil Court of Appeal (I. Zivilsenat) of the Federal Supreme Court (BundesgerichtshofBGH), which hears cases concerning copyright and competition law, ruled that companies selling telephone directories in CD-ROM format require a licence to use information on subscribers contained in telephone books published by DeTeMedien , a subsidiary of Deutsche Telekom AG .

DeTeMedien , which also publishes its own electronic telephone directory on CD-ROM containing data provided by Deutsche Telekom , had sought an injunction against and damages from two companies selling CD-ROM electronic directories. In one case, more than 30 million entries had been scanned from the telephone directories, while in the other, the data had been copied from actual phone books by several hundred workers in the People's Republic of China. The Courts of First Instance had ruled differently in each case: whereas the complaint against the producer of the Tele-Info-CD had been rejected in the first and second instances, the one made against the manufacturer of the D-Info-CD had been upheld in both instances. The Federal Supreme Court explained that telephone directories were generally not protected by copyright, since neither the entries themselves nor the selection, organisation and arrangement of the data provided sufficient scope for a separate creation, which was necessary for a product to be protected by copyright. Nevertheless, the BGH decided that the plaintiff was entitled to apply for a future restraining order under copyright law because, since 1 January 1998, databases were protected uniformly across the European Community. Under the provisions of §87b of the Copyright Act (Urheberrechtsgesetz - UrhG), database manufacturers were granted copyright which included exclusive rights to copy, distribute or publicly reproduce complete databases or substantial parts of them. The Court ruled that this protection covered conventional telephone directories as well as electronic databases. However, it also granted the plaintiff's claim for retrospective damages. In this respect, it decided that the direct copying of data from telephone directories - whether by hand or by means of a scanner - constituted unacceptable competitive practice (§1 of the Unfair Competition ActGesetz gegen den Unlauteren WettbewerbUWG). The Court decided that the applicant company, which together with Deutsche Telekom had spent considerable effort and money in order to produce the telephone directories, should not have to put up with competitors directly copying its work in order to manufacture rival products without incurring the corresponding costs of collecting

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the individual data and, moreover, profiting from the good reputation which the plaintiff and Deutsche Telekom had acquired through the reliability and completeness of their databases. The legislator assumed that such a database was an economic asset which could be marketed independently, since the Telecommunications Act (Telekommunikationsgesetz) expressly stipulates that Deutsche Telekom or any other telephone service provider should make its telephone directories available, in return for payment, to any third party wishing to produce its own directory.

Urteile des Bundesgerichtshofs vom 6. Mai 1999, Geschäftsnrn. I ZR 199/96 und I ZR 5/97.

Judgements of the Federal Supreme Court, 6 May 1999, file nos. I ZR 199/96 and I ZR 5/97.

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