[DE] Transmission of Electronic Press Reviews via E-Mail

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The Oberlandesgericht Cologne (Regional Court of Appeal - OLG) has granted a temporary injunction against the transmission of electronic press reviews via E-Mail on the grounds that it is incompatible with copyright law.

The defendant collecting society "Wort" had concluded an agreement with a company using an electronic press review on its in-house communication system for the payment of copyright dues. The collecting society was prohibited from concluding agreements with third parties providing for the scanning and storage of press reviews and their dissemination via E-Mail as it was deemed to infringe copyright law. The OLG found a violation of § 97 para. 1 of the Urhebergesetz (Copyright Act - UrhG) that could not be justified under § 49 of the same. As an exception, § 49 of the UrhG had to be narrowly defined and was found not to apply in the present case as electronic press reviews entailed a far greater infringement of user rights than is the case of press archives in paper form. Computers were deemed to provide general access to stored information and thus permitted a different and more rapid use of articles when compared with press reviews in paper form. In particular, individual contributions when placed on line could be freely used by anyone in unlimited numbers. The circle of users could not be said to be limited as is the case in respect of traditional press reviews. For these reasons, reference to the traditional newspaper was largely rejected. Furthermore, any possible re-use of the texts could not be excluded in the light of modern technology, which was also a violation of the Copyright Act. The primary aim and function of the Copyright Act was to permit a critical discussion of already published articles. Electronic transmission via E-Mail, however, sought merely to inform readers and as such was considered to fall outside the Act's protective provisions.

Urteil vom 30. Dezember 1999, Az. 6 U 151/99.

Judgment of 30 December 1999, file No. 6 U 151/99.

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