[DE] Recording Device Tax applicable to CD-Writers

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In a decision of 4 May 2000, the German Patent and Trademark Office's arbitration service for the exercise of copyright and related rights proposed a settlement in the dispute between the Zentralstelle für private Überspielungsrechte (Central Office for private copying rights

- ZPÜ) and Hewlett-Packard GmbH. The case concerned the controversial question as to whether, in accordance with Article 54.1 of the Urheberrechtsgesetz (Copyright Act - UrhG), the tax on recording appliances should apply to CD-Writers. The Act protects authors by imposing a special tax on manufacturers or importers of appliances intended for the reproduction of video or audio recordings for personal use. The tax already applies in particular to video recorders, fax machines and scanners.

The arbitration service agreed with the ZPÜ's argument that films as well as music could be copied with a CD-Writer, which meant that the tax was applicable. It rejected Hewlett-Packard's view that CD-Writers were mainly used for data storage and its legal argument that the regulations set out in Article 53 UrhG did not apply to digital reproduction. According to Hewlett-Packard, the ban on private copying of computer programs and electronic databases meant that, in principle, private digital reproduction was forbidden, and that the tax was therefore unjustified.

However, the arbitration service emphasised that Article 53 UrhG applied to both digital and analogue reproduction. In view of the legal and practical difficulties of monitoring a ban on private copying, and especially of checking whether it was being complied with, an author's interests could not be protected by such a ban. The arbitration service also did not consider that the standards enshrined in Article 9.2 of the Revised Berne Convention for the Protection of Literary and Artistic Works and in Articles 9 and 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) had been breached, since Article 53 UrhG fulfilled the conditions for an exception in domestic law. The level of the tax was fixed at DEM 17, which was lower than the figure sought by the ZPÜ.

Now that the arbitration service has published its conclusions, claims may now be brought before the courts.

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Entscheidung der Schiedsstelle nach dem Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten beim Deutschen Patent- und Markenamt vom 4. Mai 2000.

Decision of the German Patent and Trademark Office's arbitration service for the exercise of copyright and related rights, 4 May 2000.

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