[DE] Internet Search Engine for Press Articles and Use of "Deep Links" Given Green Light

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On 17 July 2003, the 1st Civil Chamber of the Bundesgerichtshof (Federal Supreme Court - BGH) issued a verdict following a claim by the publishing group Handelsblatt GmbH for an injunction concerning " Paperboy ", an Internet search engine for press articles. It decided that the plaintiff's copyright had not been infringed and that the use of so-called "deep links" was not anticompetitive.

The plaintiff publishes the " Handelsblatt " and " DM " newspapers. It also publishes individual articles from these newspapers on its Internet site. The defendant operates a so-called meta-search engine for current press articles, which searches numerous web-sites. Internet users can use this search engine free of charge to call up a list of all articles containing a certain word or to receive daily e-mails listing all articles containing that word published each day. For each article listed, a hyperlink is provided in the first line, offering direct access to the web page containing the actual article and bypassing the home page of the particular Internet site (known as a "deep link"). Further information is given below the hyperlink, including the headline, parts of sentences and key words, to enable the user to evaluate the relevance of each article.

The plaintiff considered that, by reproducing article excerpts and providing links that bypassed its home page, the defendant had infringed its copyright as well as competition law. However, the BGH disagreed. Firstly, the rightsholder made it possible for the defendant to use its work by making it publicly available on the Internet without any technical protection mechanisms. Secondly, the use of hyperlinks was not a process that should be reserved only for rightsholders or the originators of the databases used by the search engine. Users who knew the URL (Uniform Resource Locator), ie the address of the page on the World Wide Web, could also go directly to such a page without a hyperlink. A hyperlink was merely a technical facility, since clicking on it had the same effect as typing in the URL in the address field of the browser. The BGH did not address the question of "deep links", which bypass technical barriers to pages that can normally be accessed only via the rightsholder's home page.

There was also no breach of competition law just because the plaintiff lost advertising revenue on account of its home page being bypassed. The plaintiff could not expect hyperlink technology, which was extremely useful for all Internet users, to remain unused, especially since the source of the articles was not

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disguised by the use of hyperlinks. Without search engines and hyperlinks providing direct access to web pages, it would be virtually impossible to make any meaningful use of the vast wealth of information available on the World Wide Web. The plaintiff should therefore accept the drawbacks inherent in publishing its articles on the Internet, since its own interests were secondary to the general interest served by the functionality of the Internet.

Urteil des Bundesgerichtshofes vom 17. Juli 2003, Aktenzeichen I ZR 259/00

Ruling of the Federal Supreme Court, 17 July 2003, case no. I ZR 259/00

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