[DE] Temporary Legal Protection for Bertelsmann

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The Bertelsmann media giant has been granted temporary legal protection in Germany from a claim for compensation filed in the USA in connection with its support of the Napster Internet file-sharing service. On 25 July 2003, the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) granted the company's claim for such protection in emergency proceedings.

Bertelsmann's competitors EMI and Universal had lodged a joint claim in the USA for USD 17 billion in compensation for copyright infringements related to Bertelsmann's stake in Napster. However, the Second Chamber of the BVerfG prohibited the Oberlandesgericht Düsseldorf (Düsseldorf Regional Appeal Court - OLG), the responsible authority, from serving the company with the joint claim during the next six months or until a decision is taken in the main proceedings. According to the BVerfG, it is not yet established whether such a move is compatible with the German principle of the rule of law.

The President of the OLG Düsseldorf had decided that the writ issued by the plaintiff complied with the Hague Convention on Jurisdiction and Foreign Judgments. Bertelsmann had then appealed to the BVerfG.

The Constitutional Court explained that the German authorities were indeed, in principle, obliged under the Hague Convention to serve writs coming from abroad. However, German constitutional law and in particular the principle of the rule of law might be breached if proceedings before state courts were blatantly misused in an attempt to make a competitor submit under pressure from the media and the threat of conviction. However, whether this was the case in the present circumstances should, in the BVerfG's view, be determined by the court that was dealing with the main proceedings.

Following the BVerfG's decision, the proceedings can be taken no further in the USA, since under USA law the writ must be served in order for proceedings to begin.

Beschluss des Bundesverfassungsgerichts vom 25. Juli 2003, Aktenzeichen 2 BvR 1198/03

http://www.bundesverfassungsgericht.de/entscheidungen/rs20030725_2bvr119803

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