[DE] Digital in-store Radio Does not Quality as Radio

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Sonnia Wüst
Institute of European Media Law (EMR), Saarbrücken/Brussels

In its judgment of 13 September 2004, the Oberverwaltungsgericht (Administrative Court of Appeal) of North-Rhine Westfalia found that "in-store radio" does not qualify as radio within the meaning of the Inter-State Broadcasting Agreement and as such is not subject to licensing fees. In handing down this decision, the Court found that a grocery store operator was right to challenge the levying of radio licensing fees for the in-store radio played over loudspeakers in the grocery stores. The respondent in this case was Westdeutsche Rundfunk (WDR). The in-store radio consists of advertisements, music, horoscopes and weather reports. The programmes, which are produced by an outside company, are transmitted precisely to the individual stores using a digital distribution system via a telecommunications satellite. Because they are encrypted, they can only be unscrambled and reproduced by the appropriate receiver. The Court held that in-store radio does not qualify as radio because it is not intended for the general public and because it is not disseminated using broadcast technology. Since reception is limited to the parties that have signed a contract with the firm that produces the programmes, there is no wide-area transmission to an unspecified number of receivers. Customers and staff working in the subsidiaries cannot be classed as receivers, since they have no control over access to the programme in terms of turning it on or off. Only the individual parties that have a contract with the radio firm may be classed as receivers. Consequently, in-store radio constitutes individual communication, not mass communication, and as such no licensing fees apply. The fact that shop customers hear the programme may denote mass communication, but no broadcast technology is involved insofar as the programme uses sound waves, not electrical oscillations (Art. 2 of the Inter-State Broadcasting Agreement). The Court granted leave to appeal on a point of law to the Bundesverwaltungsgericht (Federal Administrative Court) on account of the principle inherent in this interpretation of a provision of the Inter-State Broadcasting Agreement.

OVG Nordrhein-Westfalen, Urteil von 13. September 2004; AZ:4 A 772/98

Administrative Court of Appeal of North-Rhine Westfalia, Judgment of 13 September 2004; AZ:4 A 772/98

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