[DE] Constitutional Complaint concerning Copy-protected DVDs and CDs Inadmissible

IRIS 2005-10:1/14

Kathrin Berger
Institute of European Media Law (EMR), Saarbrücken/Brussels

The Constitutional Court (BVerfG) refused to issue a ruling concerning a constitutional complaint on the ban on producing private back-up copies of legally acquired but copy-protected DVDs and CDs (AZ: 1BVR 2182/04).

The complainant asserted that as a result of the ban on circumventing copy-protected systems in articles §§ 95a and 95b of the UrhG his personal right of ownership was violated.

So as to protect data, he regularly made a digital copy of newly acquired CDs and DVDs. More recently he was banned from making a back-up copy, when the original product came with a copy-protection system. Furthermore, because of the ban on equipment able to get round copy-protection systems, it was no longer possible in Germany to obtain software which could be used to produce back-up copies.

The court viewed the constitutional complaint as inadmissible. It did not fulfil the principle of subsidiarity of the constitutional complaint, since the private rights of the complainant had not been immediately affected.

For the complainant there would be no discernible legal effects from the ban on circumventing copy protection. Furthermore individual private copies were admissible. What was more, the circumventing of copy-protection for private purposes was not subject to warnings of penalties or fines; only civil proceedings could be instigated. The possibility of recourse to civil proceedings however did not justify the admissibility of a constitutional complaint immediately directed at the law.

The regulations coming under criticism did not lead to the complainant suffering an actual loss. As a matter of fact, it could be assumed that he still had in his possession equipment enabling him to circumvent copy-protection. Furthermore, the downloading of such software from the Internet was neither subject to fines nor penalties, as long it was only used for private purposes.

The court finally pointed out that on account of the inadmissibility of the constitutional complaint the question, whether there was a right to a private digital copy, did not have to be debated. However it spoke volumes that regarding the digital copy, even a ban backed up by a penalty would not constitute a

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violation of ownership law but only a violation of the content and limits provision within the meaning of ownership law from article 14 Paragraph 1 line 2 of the Basic Law.

Entscheidung des BVerfG, 1 BvR 2182/04 vom 25. Juli 2005, Absatz-Nr. (1 - 21)

http://www.bverfg.de/entscheidungen/rk20050725_1bvr218204.html

Decision of the Constitutional Court, 1 BvR 2182/04 of 25 July 2005, paragraph no. (1 - 21)

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