[DE] Temporary End to Dispute with Google over Full Text Searches

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At the end of June 2006, a case brought before the *Landgericht Hamburg* (Hamburg district court) against the Internet search engine operator *Google* following an alleged breach of copyright ended when the Darmstadt-based *Wissenschaftliche Buchgesellschaft* (WBG) - an academic organisation that functions as a publishing company - withdrew its application for a temporary injunction during oral proceedings on the advice of the court.

The legal dispute followed an argument between WBG and Google concerning the scanning, reproduction and publication of book content.

Last year, Google launched a project in which millions of books from the collections of different libraries across the world were to be scanned, digitised and made available online. As a result, books whose copyright has expired have since been made available in full at http://books.google.com/ , while excerpts of works that are still under copyright can also be viewed online. In order to carry out this project, Google signed co-operation agreements with different university libraries in the USA concerning the digitisation of books in their collections, which were then made available for full text searches via a search portal. When publishing copyright-protected passages, Google follows the opt-out model. This means that rightsholders must expressly state that they do not want their protected works to be published, which in turn means that they must be aware that there are plans to publish them. This system has been heavily criticised by a large number of publishing companies and authors' associations all over the world. The critics argue that no books should be included in Google Book Search without prior permission (opt-in). Google, however, refers to the "fair use" principle of US copyright law, under which certain non-commercial uses of protected content are permitted, such as for educational or academic purposes.

WBG, some of whose books have been digitised by Google without its permission and made available via full text searches, hoped that the court would ban the search engine operator from publishing its works without permission. WBG's request received the backing of the Association of German Publishers. However, Google refused to agree to this request and the *Landgericht Hamburg* ruled in favour of the Internet search engine provider. According to the court, when the application was made there was no longer any breach of copyright, since Google

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had complied with WBG's request and removed the disputed publications from its service. The question of whether Google could have acquired from American university libraries licences to reproduce books and publish them online remained unresolved, as the court held that this could only be clarified in the USA.

In fact, proceedings concerning the digitisation project were brought against the search engine operator in the USA in autumn 2005 by the US authors' association known as the Authors Guild and by the Association of American Publishers (AAP). Just as in the proceedings brought against Google in early June 2006 by French publishing group *La Martinière* before the *Tribunal de grande instance de Paris,* the American case is still pending.

Pressemitteilung der WBG vom 28. Juni 2006

http://www.wbg-darmstadt.de/WBGCMS/php/Proxy.php?purl=/de_DE/wbg/second/Presse/show,657.html

WBG press release, 28 June 2006

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