

[DE] Supreme Court Rejects Copyright Fee on Duplicators

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In a ruling issued on 17 July 2008, the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided that CD/DVD duplicators were not subject to a copyright fee.

The plaintiff, the Wort collecting society, which collects copyright fees for literary works, had demanded that the defendant, which sells such duplicators, pay a fee of EUR 1,227.10 per device sold. Duplicators can be used to copy data from CDs, CD-ROMs or DVDs without the use of a PC, but using burners. The plaintiff based its demand on Art. 54a para. 1 sentence 1 of the old version of the *Urheberrechtsgesetz* (Copyright Act - UrhG), since the case was to be judged according to the legal situation that applied until the end of 2007 (concerning the new law, see IRIS 2006-5: 11).

The BGH rejected this argument. It ruled that, under the disputed provision, the author of a work was entitled to compensation from manufacturers, importers and sellers of devices that were designed to duplicate the work through photocopying or a similar process. However, a duplicator could not be used to carry out such photomechanical duplication.

The Court also held that duplicators, which could be used to copy digital originals, did not perform a process similar to photocopying, which only concerned the duplication of analogue printed documents.

The Court also ruled out the possibility of extending the scope of the provision to include duplicators. Due to their high purchase price, duplicators were normally only used for commercial purposes and were only used to make copies for private use in exceptional cases. As a rule, such copies were made using photocopiers, which was why the legislature had applied a copyright fee to such devices. To extend this to duplicators under Art. 54a para. 1 sentence 1 of the old version of the UrhG was disproportionate to the extent to which these systems were actually used to copy protected works.

Pressemitteilung Nr. 137/2008 zum Urteil des BGH vom 17. Juli 2008 (Az: I ZR 206/05)

<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2008&Sort=3&nr>

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Press release no. 137/2008 on the BGH ruling of 17 July 2008 (case no. I ZR 206/05)

