[DE] Internet-Based Video Recorders Infringe Copyright

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In a ruling of 22 April 2009, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that Internet-based video recorders regularly infringe copyright.

On its website, the defendant company offers an "Internet-based personal video recorder", which records television programmes, including those of the plaintiff (the broadcaster RTL), on the customer's instructions. The recorded programmes are stored in an area allocated to the individual customer on a server owned by the defendant, to be downloaded by the customer at a time of his choice.

The BGH began by considering the recording process itself and ruled that copyright would be infringed if programmes were stored on so-called "personal video recorders" on the customer's instructions. This would breach the broadcaster's right of reproduction. Since a fee was charged for the service, it did not constitute lawful reproduction for the customer's private use. However, if the recording process was automated to the extent that the customer could be considered responsible for making the recording, the BGH ruled that this would constitute lawful reproduction for private use. However, it thought that the broadcaster's copyright would be infringed by the retransmission of the programmes received from the service provider to the "personal video recorders" of more than one customer, since this would infringe the broadcaster's right to make its programmes accessible to the public.

The case was referred back to the appeal court, the Oberlandesgericht Dresden (Dresden Court of Appeal - OLG), which must now assess the legally relevant processes in this specific case, taking the BGH's ruling into account.

Pressemitteilung des BGH zum Urteil vom 22. April 2009

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2009&Sort=3&Seite=2&nr=47755&linked=pm&Blank=1.

BGH press release on its ruling of 22 April 2009

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