[DE] Fees Due for Use of Broadcasters' Programme Information

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In December 2009, two court rulings were issued in relation to whether programme providers can charge a licence fee for the use of their programme information in electronic programme guides (EPGs).

According to reports, the *Oberlandesgericht Dresden* (Dresden Appeal Court - OLG) ruled that this was the case on 15 December 2009 in an appeal procedure between the collecting society *Verwertungsgesellschaft Media* (*VG Media*) and the online programme magazine *tvtv.de*. It therefore upheld a first instance decision taken by the *Landgericht Leipzig* (Leipzig District Court - LG) in May 2009. The LG had decided that the operator of the EPG, which is only available via the Internet, was obliged to pay a licence fee of EUR 0.0002 per downloaded page for the use of content descriptions and images produced by the 36 broadcasters represented by *VG Media* (see IRIS 2009-7: 8). The LG had based its decision on the notion that the programme information was protected under copyright law because it was artistically created. The web service did not constitute reporting on events of the day and was therefore not entitled to use the additional programme information free of charge under Art. 50 of the *Urheberrechtsgesetz* (Copyright Act). The decision of the *OLG Dresden* is final.

On 23 December 2009, the *Landgericht Köln* (Cologne District Court) responded differently to the action brought by the *Verband Deutscher Zeitschriftenverleger* (association of German magazine publishers - VDZ) for a negative declaratory judgment against *VG Media*. The VDZ had demanded on the publishers' behalf that they be allowed to continue using programme information without restriction.

According to the VDZ, the court upheld its action because *VG Media* was not entitled to exercise the rights of the broadcasters it represented. The merger had only been authorised under the EC Merger Regulation in relation to the cable retransmission market, but not for the purpose of exercising rights related to the use of programme information in EPGs. The existing agreements with the broadcasters were therefore inoperative, pending the approval of the European Commission. However, regarding the fundamental question of whether programme information that extends beyond basic details can be protected under copyright, the court's decision matched that of the *OLG Dresden*. It was reasonable to expect publishers to obtain the rights to use the information from the rightsholders in advance.

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Urteil des OLG Dresden vom 15. Dezember 2009, Az. 14 U 818/09

Ruling of the Dresden Appeal Court of 15 December 2009, case no. 14 U 818/09

Urteil des LG Köln vom 23. Dezember 2009, Az. 28 O 479/08

Ruling of the Cologne District Court of 23 December 2009, case no. 28 O 479/08

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