[DE] Federal Constitutional Court Decides Not to Rule on Complaint Against Art. 97a(2) of Copyright Act

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On 12 February 2010, the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) decided not to rule on a complaint about the constitutionality of Art. 97a(2) of the *Urheberrechtsgesetz* (Copyright Act - UrhG).

The disputed provision limits claims by victims of simple copyright infringements to the reimbursement of the cost of hiring a lawyer to warn the offender to EUR 100. The aim of this rule is to avoid excessive legal fees in cases where the offender is accused of only an insignificant copyright infringement.

The plaintiff in the case concerned sold second-hand goods via an Internet auction platform. For this purpose, he spent a lot of money taking photographs of the products he was selling. Other users of the platform copied these photographs without the plaintiff's consent and used them for their own selling purposes. The plaintiff took legal action against this unauthorised use of the photographs and hired a lawyer to issue warnings, some of which were settled successfully out of court.

In his complaint to the Constitutional Court, the plaintiff argued that Art. 97a(2) UrhG, which came into force on 1 September 2008, violated his basic right to intellectual property. He claimed that the provision substantially restricted his right to the reimbursement of money spent fending off infringements of his intellectual property rights.

The BVerfG ruled that the complaint was inadmissible and therefore decided not to issue a decision on the matter. In particular, it stated that the plaintiff, who had not mentioned a single concrete example, had failed to prove that his rights were being directly and currently infringed by the disputed provision itself (see Arts. 23(1)(2) and 92 of the *Bundesverfassungsgerichtsgesetz* - Federal Constitutional Court Act). Furthermore, the plaintiff had neglected to take his case to the specialist courts, in accordance with the subsidiarity principle, before appealing to the BVerfG.

Beschluss des BVerfG vom 12. Februar 2010 (Az. 1 BvR 2061/09)

http://www.bundesverfassungsgericht.de/entscheidungen/rk20100120_1bvr206209.html

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