[DE] BGH Rules that Google Image Search Engine Does not Breach Copyright

IRIS 2010-6:1/18

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In a ruling of 29 April 2010, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that Google's image search engine does not infringe copyright law.

Google's image search engine enables users to search for images posted online by third parties by typing in a search item. In the subsequent search result list, the images are shown in thumbnail form.

In the case at hand, the plaintiff, an artist who runs her own website containing images of her works of art, had asked the court to prevent Google from showing such images of her work in thumbnail form.

The BGH rejected her request. It recognised that the works were protected by copyright and that the plaintiff had not authorised Google either expressly or tacitly to use them. However, unlike the appeal court, which had decided that the plaintiff's copyright had been illegally infringed but rejected her request for an injunction as an abuse of process in the sense of Art. 242 of the Bürgerliches Gesetzbuch (Civil Code - BGB), the BGH found that no illegal breach of copyright had taken place.

The thumbnail images had made the plaintiff's work accessible to the public in the sense of Art. 19a of the Urheberrechtsgesetz (Copyright Act - UrhG) and had therefore intruded on her copyright. However, the plaintiff herself had not taken any suitable measures, which were technically possible, to prevent people accessing the images of her work via the image search engine. The defendant had therefore been entitled to conclude that the plaintiff did not object to her works being shown in thumbnail form. Consequently, the defendant's intrusion on the artist's copyright had not been illegal.

Pressemitteilung des BGH zum Urteil vom 29. April 2010 (Az. I ZR 69/08)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&pm_nummer=0093/10

BGH press release on the ruling of 29 April 2010 (case no. I ZR 69/08)

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