[DE] BGH Rules on Deep Links Copyright Violation

IRIS 2011-1:1/15

Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a recently published decision, the Bundesgerichtshof (Federal Supreme Court - BGH) ruled that links to third-party content can breach copyright in some cases.

The plaintiff in the procedure concerned operates a website from which street maps can be downloaded. After filling in a search form on the home page, the user is taken to the requested map on a different page. The plaintiff charges a fee for commercial or long-term use of the service. When they visit the home page, private users are given a session ID that is valid for a limited period of time, enabling them to use the service free of charge. The defendant, a letting agency, enabled visitors to its website to access maps showing the location of homes available for rent using a hyperlink direct to the plaintiff's relevant web page, therefore bypassing the home page. The plaintiff considered this to represent a breach of its exclusive right to make copyright-protected works available to the public (Art. 19a of the Urheberrechtsgesetz - Copyright Act, UrhG) and instituted legal proceedings.

Unlike the courts of lower instance, the BGH upheld the complaint. In principle, the creation of a hyperlink to protected third-party works - including by means of a so-called "deep link", i.e., one that bypasses the home page - did not infringe copyright, since the work was made accessible to the public not by means of the link, but through the fact that it was published on the Internet (see IRIS 2003-8/32 concerning the "Paperboy" decision). However, it was a different matter if a deep link bypassed technical measures taken by the copyright holder to ensure that its protected works could only be accessed by certain users or through certain channels. In this connection, the courts of lower instance had wrongly assumed that the measures had to be effective technical measures in the sense of Article 95a(1) UrhG. Rather, in this case, the crucial element was the scope of the protection provided by Article 2 UrhG, which should not be confused with the much higher demands of Article 95a UrhG, which dealt with the protection measures themselves. The decisive factor was that the copyright holder had taken protection measures that could be recognised as such by third parties. By using the session ID, the plaintiff had taken a security measure, ensuring that users could only access the service after visiting the home page. The defendant had therefore made the plaintiff's street maps available to the public against the plaintiff's will. The defendant should have recognised this.

© European Audiovisual Observatory (Council of Europe) 2026

The BGH overturned the lower instance decisions, but referred the case back to the Oberlandesgericht (regional appeal court), which had not yet verified whether the maps were copyright protected.

Urteil des BGH vom 29. April 2010 (Az. I ZR 39/08)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&Seite=1&nr=53902&pos=40&anz=595

BGH ruling of 29 April 2010 (case no. I ZR 39/08)

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026