[DE] BVerwG Confirms Licence Fee Obligation for PCs

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In a decision of 27 October 2010, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) ruled that broadcasting licence fees should be paid for Internet-capable PCs.

The case concerned the obligation of the plaintiffs, two lawyers and a student, to pay the fees as owners of Internet-capable PCs. The three defendants, the broadcasters BR, SWR and WDR, claimed that the plaintiffs should pay the fees because their PCs could be used to watch programmes via a so-called live stream on the Internet. The plaintiffs, who had been asked to pay the fees for their Internet-capable PCs, which they used for their work, because they did not own any other registered reception device and were therefore not exempt under the "second device rule", argued that, since they did not use their PCs to receive broadcasts, but exclusively for professional research and activities, they should not have to pay the licence fees (see IRIS 2009-7/14).

The BVerwG rejected the three plaintiffs' appeals against the lower instance courts' decisions to reject their claim. It ruled that an Internet-capable PC was a broadcast reception device in the sense of the *Rundfunkgebührenstaatsvertrag* (Inter-State Agreement on Broadcasting Licence Fees - RGebStV). The licence fees applied to all reception device owners, regardless of whether they actually used the device to receive radio or television programmes. It did not matter whether the PC was connected to the Internet or not, but only whether it was technically capable of being connected.

Neither did the obligation infringe more fundamental rights, such as the right to freedom of information (Art. 5(1) of the *Grundgesetz* - Basic Law, GG) and the freedom to pursue a profession (Art. 12(1) GG). Public service broadcasters were permitted to intrude on these fundamental rights by charging licence fees for Internet PCs on account of the financing function of the licence fees, which was enshrined in constitutional law. Finally, the equal treatment principle (Art. 3(1) GG) had not been breached, since both monofunctional broadcast reception devices and multifunctional Internet-capable PCs were similarly capable of receiving broadcast signals.

Beschluss des BVerwG vom 27. Oktober 2010 (Az. 6 C 12.09, 17.09 und 21.09)

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http://www.bverwg.de/pdf/1338.pdf

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