[DE] BGH Rules Again on Thumbnail Admissibility

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On 19 October 2011, the Bundesgerichtshof (Federal Supreme Court - BGH) issued another ruling on the admissibility under copyright law of Google's online image search engine.

Google's image search engine enables users to search for specific 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 was a photographer, one of whose photographs had appeared in thumbnail form in the results of a Google image search. The search engine had stated that the image had been found on two Internet sites whose operators had not been granted usage rights by the plaintiff. The plaintiff argued that this breached his copyright and demanded, inter alia, that Google stop showing his photograph in thumbnail form.

The BGH rejected this claim, referring to a decision it had taken in 2010, in which it had ruled that a copyright holder who posted an image of his work online without taking technical measures to block access to it via an image search engine should be assumed to have no objection to thumbnail versions of it being made publicly available (see IRIS 2010-6/18). The same applied if the image was posted on the Internet (without technical protection) by a third party with the copyright holder's permission.

Although the plaintiff in this case had not granted the right to use the image of his work to the operators of the websites mentioned, he had granted such a right to a third party. His consent to the online publication of the image in thumbnail form was not limited to copies that he had expressly permitted. This was evident from the fact that automatic search engines could not distinguish between legal and illegal copies.

In this case, the copyright holder was still entitled to take legal action for breach of copyright against the parties who had posted the images on the Internet without his consent.

Pressemitteilung des BGH zum Urteil vom 19. Oktober 2011 (Az. I ZR 140/10)

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BGH press release on the ruling of 19 October 2011 (case no. I ZR 140/10)

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