[DE] Cologne Appeal Court finds Tagesschau app unlawful

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In a ruling of 30 September 2016, the Oberlandesgericht Köln (Cologne Appeal Court - OLG Köln) decided that the Tagesschau app, in its version available on 15 June 2011, was unlawful (case no. 6 U 188/12) and banned the public service broadcasters from distributing it in this form. Several German newspaper publishers had applied for an injunction against the association of German public broadcasters, ARD.

The plaintiffs had claimed that the app infringed Article 11d of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV), which prohibits public service broadcasters from using telemedia to offer “press-type services that are not related to a specific programme”. The ban is, at least partly, designed to protect publishing houses by limiting the Internet-based activities of public service broadcasters. After the OLG Köln had initially rejected the claim on the grounds that the responsible NDR Broadcasting Council had not classified telemedia as a press-type service and had therefore allowed the app, the BGH (Federal Supreme Court) had held that the Broadcasting Council’s decision was not binding on the Appeal Court and had asked the OLG Köln to decide for itself whether the app should be considered press-like. The BGH also explained that the app should not be primarily characterised by written text and still images, but by radio- and television-like content (see IRIS 2015-7/6).

In its assessment, the OLG Köln decided that the content of the app on 15 June 2011 should be considered press-like. It held that the paper copies of the app’s content submitted by the plaintiffs were sufficient to justify the examination requested by the BGH. The judges found that the home page of the app, which users saw first, consisted entirely of text and still images. It mainly contained links to pages of text, some of which contained images. Virtually all of these articles took the form of self-contained news reports. Since written text and still images were therefore primary elements of the app, it was press-like according to the BGH’s definition. The Tagesschau app had therefore infringed Article 11d RStV and was unlawful in its version available on 15 June 2011.

Pressemitteilung des Oberlandesgerichts Köln vom 30. September 2016 (Az.: 6 U 188/12)

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Press release of the Cologne Appeal Court of 30 September 2016 (case no. 6 U 188/12)

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