[DE] Action to Prevent Re-use on CD-ROM Fails

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On 29 August 1997, the Hamburg Regional Court (Landgericht Hamburg) rejected an action brought by 70 members of FreeLens, a press photographers' association, against the news magazine Der Spiegel. The applicants complained at the re-publication on CD-ROM, without their specific permission, of photographs originally published in Der Spiegel between 1989 and 1993. Under the transfer of purpose principle (Section 31 (5) of the Copyright Act), the spatial and temporal scope of globally assigned rights is determined by the purpose specified in the contract. Provided that the use in question was known at the time when the contract was concluded and was thus included in it (Section 31 (4) of the Copyright Act), the global assignment of rights covers it as well. In its judgment 1 ZR 63/93 Re-use on Video III, the Federal Court ruled that knowledge of a use was not simply knowledge of its technical feasibility, but also knowledge of its economic significance and utility. In this case, the Hamburg Regional Court compared use on CD-ROM with the usual practice of making the whole year's issues available again, both in printed form and on microfilm, and accordingly decided that an unknown use within the meaning of Section 31 (4) of the Copyright Act was not involved. Since this meant that the photographers' further permission was not required, it rejected their application. Contrary to the judgment given by the Amsterdam District Court on 24 September 1997 (see IRIS 1997-10: 6), re-use on CD-ROM is thus permissible in these circumstances even without the author's express permission.

Urteil des BGH vom 26. Januar 1995, Az. 1 ZR 63/93

Judgment of the Federal Court of 26 Januar 1995, Az. 1 ZR 63/93

Urteil des LG Hamburg vom 29.August 1997, Az. 308 O 284/96

Judgment of the Hamburg Regional Court of 29 August 1997

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