

PRESS RELEASE

Berlin Regional Court declares press publishers' suit against Google Inc. to be justified in part, submits to ECJ the question of whether notification requirement applies to ancillary copyright for press publishers

Berlin, 9 May 2017. The Berlin Regional Court resolved today to initiate a preliminary ruling procedure before the European Court of Justice as to whether the notification requirement applies to the ancillary copyright for press publishers, which took effect on 1 August 2013. In the announcement of its decision, the Berlin court stated explicitly that it considers the VG Media press publishers' lawsuit against Google Inc. to be at least partially justified. It further maintained, however, that the question of whether – contrary to the view of the Federal Government – the European Commission should have been notified of the law before its enactment, must still be examined.

On the decision of the Berlin Regional Court, Markus Runde, Managing Director of VG Media, comments: 'The Berlin Regional Court is to submit only if it views the substance of the lawsuit, in whole or in part, as justified. Only then does it come down to the question of notification; only in this case is submission called for. The Federal Government was under no inherent obligation to notify the European Commission of the introduction of the ancillary copyright for press publishers, as the ancillary copyright does not represent a technical regulation in terms of the applicable directive. Only regulations which ultimately and intensively restrict the commencement or execution of a service of the information societies are considered technical regulations in terms of the directive. This is not the case where an intellectual property right does not impede the rendering of a service, but merely leads to an obligation on the part of the search engine operators to pay compensation for the monetary benefit obtained. Unlike the Berlin Regional Court, the Federal Government assumed, and continues to assume, that there was no notification requirement with regard to the enactment of the ancillary copyright for press publishers, and that the law therefore applies. VG Media agrees with this understanding.'

Background:

The ancillary copyright for press publishers took effect on 1 August 2013 after passage by the German Federal Parliament. It provides that search engines and news aggregators must remunerate press publishers for the use of digital press products.

The subject of the lawsuit before the Berlin Regional Court is the enforcement of the ancillary copyright for press publishers against Google Inc. The Arbitration Board of the German Patent and Trademark Office initially decided that the ancillary copyright applies and that Google and others are categorically obligated to pay. The further enforcement by the court became necessary because Google categorically refuses to recognise the applicability of the law passed by the German Federal Parliament or the payment obligations which arise from the law. Antitrust questions regarding the abuse of market power by Google and the legality of its forced securing of consent are being decided on in separate proceedings before the Berlin Court of Appeal and the European Commission. These issues play a subordinate role in the course of this copyright-related lawsuit.

VG Media is the collecting society of the private broadcasting companies and press publishers, and is based in Berlin. It represents the copyrights and ancillary copyrights of nearly all German and a number of international private TV and radio broadcasters, as well as over 200 digital publishing offerings.

Contact

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