Value-Added Information Services and Copyright

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Value-added Information Services

Products or services, that are based on pre-existing information products and satisfy a different or more specific information need.

- Examples:

  - Searching of or opening access to existing information products (search engines or document copy and delivery services)

  - Combining or repackaging of pre-existing information products (press-clipping services or follow-on developments of databases)
Legal Framework

- Largely provided by Copyright
- supplementary: Unfair Competition Law
- or Antitrust Law
  (esp. in cases of sole-source products)
Limitations of Copyright

The limitations of copyright balance the interests of authors and rightholders with the conflicting interests of users and the general public. They are set mainly by the exemption provisions of §§ 45 et seq. German Copyright Act.

Examples:
- § 49 C.A.
  Exception regarding the use of newspaper articles.
- § 53 C.A.
  Private-use exception.
Recent Case Law by the German Federal Supreme Court (BGH)

- BGH, January 16th 1997 - CB-Infobank I+II
  The making of copies by a third party and the delivery of those copies to a user is permitted by § 53 C.A. (private-use exception). The combination with an enquiry service, however, may lead to a higher intensity of usage and exceeds in that respect what the legislator intended with the private-use exception.

  § 53 C.A. allows the making of file-copies for the purpose of archiving. This however does not include copies in digital format, even if the archive is used only inhouse.
Recent Case Law by the German Federal Supreme Court (BGH)

- BGH, February 25th 1999 – Copy and delivery services
  In view of the intention of the private-use exception (open access to information) a copy and delivery service of a public library is permitted by § 53 C.A. However, because of a higher intensity of usage in a digital environment (online-catalogue, delivery via email) the court granted the rightholder a claim for reasonable renumeration.

  Inhouse press-clippings in digital format are permitted by the copyright exception of § 49 C.A., as long as the press-clippings can not be used to build up digital archives. Commercial press-clipping services however would exceed the scope of § 49 C.A.
Guidelines for Future Jurisdiction

- As such, the format used (digital/analog) is not a valid criteria;

- The exception-clauses are not necessarily subject to a narrow interpretation. If different constitutional values are in conflict they have to be considered according to their actual relevance;

- However, the higher use of intensity may justify restrictions regarding digital exploitations;

- If possible, rightholders may be compensated with additional remuneration claims.

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Value-Added Information Services in the Internet

The supply of value-added information services within the internet is still afflicted with many legal uncertainties.

Examples:

- The scope of database protection
- The legal treatment of hyperlinks
Database Protection

- What is a database?

“… a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.”

(Art. 1 (2) EU-Database Directive)

- What is protected?

Protected are databases which, “by reason of the selection or arrangement of their contents, constitute the Author’s own intellectual creation…” (Art. 3 (1)), or databases which show “that there has been a qualitatively and/or quantitatively substantial investment” (Art. 7 (1))
Database Protection

- The protection includes:

  “…the extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the content of that database.” (Art. 7 I)

- also:

  “…the repeated and systematic extradiction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database…” (Art. 7 V)
Hyperlinks & Search Engines

- Surface-links
- Deep-links
- Inline-links and frames
- Search engines
- Meta-search engines
Defendant operated a website and e-mail service containing a search engine (Paperboy).

Paperboy browsed several on-line versions of newspapers in search for current articles on the basis of predefined search words.

The results were presented as a list of deep-links with short fragments of the articles.

After defining his fields of interests in form of keywords, the user could get such a list of links every morning as a 'personal newspaper' or press-clipping.
High Regional Court Cologne:

- On-line versions of newspapers were considered to be databases.
- The court assessed the download of the articles through the user as a repeated extraction of insubstantial parts.
- However this extraction was not considered to be systematic.
- Even if considered as systematic: No conflict with “normal exploitation” or “legitimate interests” of newspaper publisher.

- Moreover: Considering the general interest in fast and direct access to information, the use of deep-links by paperboy was not deemed to amount to unfair competition.
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