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Copyrights/Royalties

German Court Questions Press Publishers' Copyright Law



By Jabeen Bhatti

A German court expressed doubts about the validity of a law forcing internet services like Google to pay publishers for use of snippets of news stories during a recent hearing (LG (Ger.), Az.: 16 O 546/15, hearing 2/7/17).

The dispute between Google Inc. and VG Media, a royalty collection society representing news publishers, could result in law being overturned, attorneys said.

The law on neighboring rights for news publishers—called “Leistungsschutzrecht”—may not be valid given that German lawmakers failed to notify the European Commission of the law when it was drafted, Judges from the Berlin Regional Court said during a Feb. 7 hearing.

Neighboring rights are related to but different from traditional copyright interests. Under traditional copyright, Google would likely not have to pay to use those snippets because they would fall under fair use or fair dealing exceptions.

A proposed European Union copyright directive seeks to create a similar right with a 20-year protection term, in all EU member countries. Critics have attacked that proposal as a “link tax” that violates the fundamental principles of the internet.

The court said it will investigate whether it needs to submit questions about the law to the Court of Justice for the European Union (CJEU) for review, or whether it can decide the law's validity on its own. A decision will be announced May 9.

If the court decides the law is invalid, “That would be a disaster for press publishers,” Urs Verweyen, a partner at KVLegal in Berlin, told Bloomberg BNA. “They pushed and lobbied really hard for this law.”

Controversial Law

The law on neighboring rights for news publishers was met with considerable controversy when the German parliament passed it in 2013.

“It was aimed basically at Google,” said Verweyen. “Publishers argued that Google was offering a news aggregator that used links and snippets from their publications, and they wanted a share of the money Google made from advertisements.”

But Verweyen said many copyright lawyers and academics were opposed to the idea of introducing neighboring rights that only applied to specific services such as Google News and a small group of news publishers who, in any case, arguably benefited from the added traffic Google and other search engines help direct to their websites.

“It's difficult to use this law in a proper, fair manner,” he added. “Because search engines helps these publishing houses generate traffic, there's a bit of an imbalance in the idea.”

In the current case, VG Media argued that the law on neighboring rights entitled it to compensation from Google for the snippets of copyrighted articles and pictures it displayed in its search results.

Questions on Validity, Definition

The court is questioning the law on procedural grounds, seeing “reasons to think the commission should have been notified of this law,” Nils Rauer, a partner at Hogan Lovells in Frankfurt, told Bloomberg BNA.

“If this was a law that needed notification and wasn't notified, then you cannot apply it,” said Rauer. “In that case, the claim will collapse, and the collecting society's case will be dismissed.” It would leave no existing regulations on neighboring rights for news publishers in Germany, he said.

The court also noted the law did not define what kind of text snippets would be covered by these copyrights.

Snapshot

- In Germany, court questions neighboring rights for press publishers
- Decision due in May, court could overturn law or ask EU court for review

"The court hinted that it thinks the law is too vague in the way it is formulated," said Verweyen. "If a single word or phrase does not fall under the law, the question then becomes what do they mean by 'smallest extract'?"

Although parties differ as to what this word limit should be before publishers can claim royalties—VG Media wants it set at six or seven words, Google says it should be higher—both sides would benefit from more legal certainty, attorneys said.

"It will be interesting to see what happens if the court says this is an invalid law," said Verweyen. In addition to news publishers appealing the decision, they will probably start lobbying to rewrite the law, he said.

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