Kluwer Copyright Blog

What could – or should – be embraced by IPR monopolies – Is Germany on the way to a new neighbouring right for press publishers?

Till Kreutzer (iRights.info) · Thursday, March 10th, 2011

Due to massive lobbying of the German press publishers, the new conservative-liberal German Government declared in its coalition contract in late 2009: “Press Publishers shall not be discriminated against other disseminators of copyright protected works [e.g. film or music producers]. Therefore we aim at the introduction of a neighbouring right for press publishers to increase the protection of press publications on the Internet.”

At a first glance the demand of the publishers and the corresponding response of the politicians seem reasonable if not consequent: Different from other disseminators of copyrighted works (like e.g. film or music producers), press publishers have no own neighbouring right. And this is an international truth; neither the international copyright treaties nor the EU regulation or the national laws grant such right today (except maybe for the British “copyright for the typographical arrangement of published editions”).

But is this unjustified discrimination or – considering the facts – reasonable? Well, the opinions about this question are obviously divided. Legal scholars, the whole German industry (except from the press publishers) and the Internet community maintain that there is no need for such a right. The press publishers derive (mostly exclusive) exploitation rights in the articles from the journalists. This leads to a solid legal position that is nearly as strong as the author’s right itself. But there is even more to it: The aforementioned interest groups even vehemently oppose the publisher’s demand. It would impinge substantially upon the author’s rights of the journalists and to fundamental freedoms like the freedom of the press, the freedom of expression, the freedom of science and education as well as the communication and publication practises on the web. Why is that? Because it would either be useless or unjustified (as the German Association for Protection of Intellectual Property – GRUR argued). Useless would it be if it covered only uses that fall within the scope of copyright protection. Extensions of copyright – as claimed in the publisher’s own draft for such a new right – especially towards a protection of information or even the language itself would be unjustified.

The publisher’s argue on the other hand that an own neighbouring right would be a basic prerequisite to maintain “quality journalism” in the digital age. They demand to get entitled to a “fair share” of the profits made by the big players in the commercial Internet market, especially Google. According to the press publishers the news aggregators, like Google News, engaged in free–riding since they distracted the advertising revenue streams and by that gathered profits that

would be actually due to the content providers (like themselves).

The root of this “Battle of the Titans” (German press vers. German industry and all the rest) is once more to be found in the culture and generation clash that makes regulation in the digital age so difficult. Some (the Press) ask the legislators to cement the “old world”, i.e. their traditional business models. Others (in this case: the German industry) require politics to let the world move on and to let the market decide about economic feasibility in the information age. Hopefully the legislators decide wisely. It will turn out very soon that gambling with supposed minor issues of IPR can put fundamental assets at stake.

A more detailed analysis of this issue by the author will be published at the end of March in Computer Law & Security Review.

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