

Kluwer Copyright Blog

German copyright reform: the first part of the third basket

Philipp Zimbehl (Rechtsanwalt Zimbehl) · Friday, October 18th, 2013



“Concerns have been expressed by the German blogosphere that this mere “Lex Google” will put bloggers and smaller news-aggregators under the risk of being targeted by mass legal procedures of the publishers and that quotation rights are undermined.”

It is no exaggeration to say that nearly the whole German copyright community is waiting for the next big round of amendments to the [German Copyright Act](#), the so called “Dritter Korb” (literally the “third basket”). Since not every reader might be familiar with the German legislation, I will begin with some remarks about the history of the major amendments the German Copyright Act has undergone in recent years.

The first big reform in 2003 carried out the (delayed) implementation of the European Copyright Directive (2001/29/EC) and held significant changes especially with regard to the right of private copying. In 2008 the second big reformation followed. It solved the long standing problem whether rights to yet not known forms of use could be granted under certain conditions. It held further changes to the right of private copying and minor changes concerning open source and open content licences as well as rules concerning “copy-on-demand” services and electronic reading stations in libraries, schoolbooks and some other minor amendments.

Now, in 2013, the third stage of amendments has arrived. They do not come in one basket like in 2003 and 2008 ,but in several bundles of changes. This might be a testament to the highly controversial character of the amendments.

On the first of August, the most controversial of them all, the neighbouring right for magazine publishers came in force. The newly introduced § 87f grants publishers of ‘press products’ the exclusive right to make the press product or parts thereof publicly available, with the exception of single words or the smallest text snippets. The definition of press products, the articles provides, translates to “the editorial-technical fixation of journalistic contributions as part of an periodic medium which is in view of the circumstances mainly typical editorial and not for the sole purpose of self-promotion.”

Some of the major newspaper publishers in Germany have expressed their view that they should participate in the revenues that Google acquires from Google News since Google benefits from their performance by displaying small parts of their articles – so called snippets – on their News site. Google's position on this was/is that the publishers rather benefit from its performance since it provides the Websites of the Newspapers with a steady stream of visitors and that the Newspaper Publishers could opt-out at any time by just changing their robots.txt.

The main criticism was that the new legislation had the rather obvious purpose to let newspaper publishers collect royalties from the largest news-aggregator Google News and that it hindered the free flow of information on the internet (see also [this](#) earlier blogpost). Concerns have been [expressed](#) by the German blogosphere that this mere “Lex Google” will put bloggers and smaller news-aggregators under the risk of being targeted by mass legal procedures of the publishers and that quotation rights are undermined. As far as I can see the reception of the proposed – and now in place – amendments was mainly criticised in the academic community with concerns reaching from a substantial threat to the freedom of information to the new right being just useless.

In the few months that the new paragraph has been in force, the latter seems to be the case. Google has changed its practice with regard to what is listed in Google News from an opt-out procedure via the robots.txt to an opt-in mechanism where publishers can opt-in if they want their websites to be included in Google News. Remarkably the biggest advocate for the new neighbouring right, the German Axel-Springer-Verlag with its two flagship newspapers ‘Welt’ und ‘Bild’, has opted-in to be included in the Google News service. At least, [stated](#) the publisher, until the necessary legal and technical steps are taken.

This has brought criticism and malice on the Axel-Springer-Verlag and others who have publicly advocated for the new neighbouring right, from commentators in the blogosphere and others. From their point of view the publishers just have erected new legal barriers for bloggers and news-aggregators which are not as powerful as Google. Now that the legislation is in force, the concerns seem to be justified at least in part. One example concerns the website rivva.de, a news aggregator that has been highly valued as an alternative to Google News, and that has locked out about 650 newspapers and Magazines from its index. The owner of rivva.de, Frank Westphal [indicated](#) that he is not able to seek the permission of every interesting source of information and that he himself is not capable to determine what is a snippet and what is not, since the legislation is as yet unclear.

Time will tell whether bloggers and smaller news-aggregators will be faced with a huge wave of cease and desist letters. It seems quite certain that the last word has not been written or said about this new piece of legislation.

A following blog blogpost will highlight the other proposed amendments (not yet in force) to the German Copyright Act, concerning orphaned works and a secondary exploitation right with regard to scientific publications.

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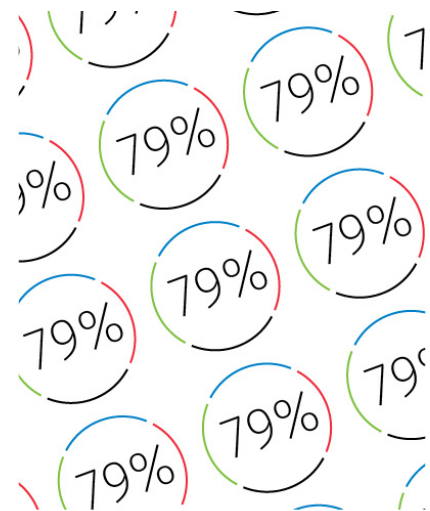
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