

Newspapers succeed against online clippings providers

in: *World eBusiness Law Report*, 14 November 2002

In a procedure instigated by several publishers of Dutch newspapers against four online newspaper clippings providers, a court in Amsterdam has ruled that the providers should discontinue their services and pay damages to the publishers.

The providers scanned about 600 newspaper articles every day. Articles were then placed in a database, which could be accessed by users who could either download clippings or request that they be sent by fax, e-mail or post. Clients were charged a monthly subscription and a fee per clipping, but the publishers received no compensation. The publishers argued that their copyright and database rights were being infringed.

The providers argued that:

- traditional clipping services have existed for years and thus the publishers' rights have already been forfeited;
- newspapers and magazines should not be defined as 'databases' under the Database Act;
- the clipping services have been validated by a previous Supreme Court ruling that allowed non-commercial clippings and legal exceptions contained in the Copyright Act; and
- the clipping services should not be forbidden because of the public need for free flow of information.

Although the court conceded that database rights do not apply to newspapers or magazines, it determined that the clipping services infringed the publishers' copyrights, which in this case, outweigh the public interest. The court also held that (i) the copyright exceptions of "personal use" and "press use" did not apply, and (ii) the earlier Supreme Court ruling did not apply as the services under consideration were commercial in nature.

For other examples of clippings controversy, see Felix H. Thomann, 'Berne court delivers controversial decision on clipping service', in: *World eBusiness Law Report*, 25 January 2002 and Peter Lind Nielsen, 'Newsbooster ordered to stop deep linking, for now ...', in: *World eBusiness Law Report*, 11 September 2002.

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