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Symposium on Electronic Rights in International Perspective: Introduction

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Symposium on Electronic Rights in International Perspective

Jane C. Ginsburg
General Editor

INTRODUCTION

Recent litigation in the U.S., Germany, the Netherlands, Belgium, and France has placed at issue the electronic publishing rights of employee and freelance journalists, contributors to print periodicals. In all five national controversies, the proprietors of the print publications, without securing the writers' express authorization, disseminated their articles in a variety of electronic media, including CD-ROM, third-party databases, and websites. Judicial resolution of the disputes required parsing the respective rights, under local copyright law (and in some cases, labor law as well), of the authors of the contributions to the periodicals, and of the copyright owners of the collective works to which the writers had contributed.

In the U.S., the federal district court for the Southern District of New York, in *Tasini v. New York Times*, after finding that the freelance writers' contracts with the periodicals did not grant rights to republish the articles in electronic databases, nonetheless held that the independent "privilege" of the copyright owner of the collective work to "revise" that work extended to the licensing of the collective work for inclusion in an electronic database containing multiple periodicals. In Germany, the first level court held the production of CD-ROM versions of the magazine *Der Spiegel* did not violate the copyrights of the photographers because CD-ROM versions of print publications were known at the time the photographers contracted to publish their work in the magazine. Moreover, the court continued, because CD-ROM versions were a normal complement to print publication, the publisher was not required to negotiate specially for the rights to republish the photographs on the CD-ROMs.

By contrast, the Brussels Court of Appeals held that the licensing of articles to a website containing articles from a cross-section of Belgian newspapers exceeded the scope of the contractual relationship between the writers and the newspapers. The Amsterdam District Court held that the nature of the electronic publication, in CD-ROM and on the newspaper's website, was qualitatively different from the print publication, and therefore could not be construed to come within the writers' implicit authorization to the periodical. The Strasbourg Court of Grand Instance, in a case involving journalist contributors to television programs as well as print journalists, held that both the copyright law and the journalists' collective bargaining agreements required the journalists' express authorization for the subsequent dissemination of their work. The court held that the Internet retransmissions of the television programs, and the website dissemination of the newspaper articles, constituted new disseminations of the work, exceeding the scope of the grant of rights from the journalists to their employers.

This Symposium on electronic rights in international perspective will analyze the U.S. and European decisions, and will conclude with some observations concerning the international implications of divergent outcomes in these controversies.

Contributors:

Alice Haemmerli, Associate Dean and Lecturer in Law, Columbia University School of Law, on *Tasini v. New York Times* (SDNY 1997), *appeal pending*

Bernt Hugenholtz, Associate Professor, University of Amsterdam, Institute for Information Law, on *Freelens v. Der Spiegel* (Regional Court of Hamburg, August 19, 1997), *appeal pending*, and *Heg, Mulder & Stam v. De Volkskrant* (Amsterdam District Court, September 24, 1997), *appeal pending*

Jane Ginsburg, Morton L. Janklow Professor of Literary and Artistic Property Law, Columbia University School of Law, on *General Association of Professional Journalists of Belgium v. Central Station* (Brussels High Court, October 10, 1996, and Brussels Court of Appeals, October 28, 1997), and *Union of French Journalists v. SDV Plurimedia* (Strasbourg Court of Grand Instance, February 3, 1998); and on *Ownership of Electronic Rights and the Private International Law of Copyright*.

English translations of edited texts of the German, Dutch, Belgian and French decisions appear in an Appendix to the Symposium