

Copyright status of DIN Standards referred to in legislation confirmed once more

DIN Standards are protected by copyright and may be sold for reasonable compensation in order to finance the cost of standards work. This was the judgement of the Landgericht (Regional Court) Hamburg as of 31 March 2015, giving legal backing to the financing model of private publishers of technical rules.

This clearly puts an end to the claim that technical rules issued by private standards setters and which are officially referred to in legislation can be provided to third parties for free.

In this particular case, DIN had demanded that the defendant stop making DIN Standards available on his website for free. Without asking DIN for permission, the defendant had posted a total of 56 DIN Standards - as well as a number of standards published by other organizations - on his website so that people could download them for free. Because all of these standards are referred to in laws or regulations somewhere, the defendant claimed this was not an infringement of copyright. He argued that all mandatory rules (standards as well as laws) should be available to everyone for free. He also contested the copyrightability of DIN Standards, maintaining they do not have the required threshold of originality.

However, the Hamburg court was not convinced by the defendant's arguments and ruled in DIN's favour. The judgement applies to DIN EN Standards as well, and confirms DIN's status as copyright holder.

This recent judgement confirms the great need to protect the copyright to standards. DIN Standards make daily life easier in all areas and generate significant economic benefits. But standards are also the results of hard work. All those who take part in the standardization process not only contribute their knowledge, but also a considerable amount of time and effort in the development of standards - with the best possible results and the greatest amount of legal security. In the absence of other resources, the sales of the results of standards work will continue to be the main source of DIN's financing. The Hamburg court has now confirmed that the legal framework in Germany supports the copyright protection of standards and that intellectual property rights must be respected.

Summary of the reasons for judgement

The Court closely examined the prerequisites for the protection of works. A "literary work" is entitled to protection when it is the author's own intellectual creation. In the case of the matter of the dispute, DIN Standards, the Court saw sufficient leeway in the drawing up of such standards, and emphasized that even the simple sentence structure and texts which are always used can also be deemed as personal intellectual creation. The fact that all DIN Standards have to conform to the specified rules of presentation (as in DIN 820-2:2012-12, for example) is also not in conflict with the concept of copyright. These rules are only abstract provisions ensuring the document has a certain structure, thus enhancing understanding, and do not stand in the way of an individualized presentation of the actual standard.

Furthermore, the Court did not accept the defendant's argument that it is constitutional to interpret Article 5 (1) of the Urheberrechtsgesetz - UrhG (German Copyright Act), which states that official works do not enjoy copyright protection, to mean that the copyright of DIN Standards is abrogated where they are referred to in laws, etc. and that when complying with private standards there would be a legal presumption that the relevant laws have also been complied with. The publicity requirements under constitutional law according to Article 20 (3) of the Basic Law are satisfied by the fact that that DIN Standards can be purchased or be consulted for free in one of the over 100 standards repositories. The Landgericht Hamburg explicitly went along with a previous ruling in the same vein by the Federal Administrative Court of Germany (BVerwG 27.06.2013 – 3 C 21/12).

Likewise, the court does not doubt the active legitimation of DIN and DINs status as a copyright holder. The evidence submitted by DIN that it has been legally assigned the right of copyright - particularly also for DIN EN Standards - convinced the court. The court case once again demonstrates how important it is that there are clear rules governing the assignment of rights in the standards process in order to secure the funding of DIN's work for the public benefit.