

Is the state a scientist? Cologne Regional Court confirms BfR's copyright protection for scientific work - BfR obtains injunctive relief

Communication No 036/2020 from the BfR of 5 August 2020

Cologne Regional Court has confirmed that the German Federal Institute for Risk Assessment (BfR) is generally entitled to the rights to its scientific works under the Copyright Act. The BfR took legal action due to the online publication of its Addendum I of 31 August 2015 to the revised Renewal Assessment Report (RAR) on glyphosate and the German-language summary of this addendum. The legal dispute is not about free journalistic reporting; it is about the issue of whether third parties may publish and distribute another party's intellectual property without its consent. In its ruling passed on 31 July 2020 (ref no.: 14 O 470/18), Cologne Regional Court granted the BfR's claim for injunctive relief relating to Addendum I and generally affirmed the protectability of the copyright. The petition of the BfR for the summary was rejected. The ruling is not final.

The BfR's Addendum I of 31 August 2015 to the revised Renewal Assessment Report (RAR) on glyphosate as well as the summary, a six-page German-language summarised opinion of the addendum of 4 September 2015, were prepared during the scientific reassessment of glyphosate. Addendum I as well as all technical conclusions have been freely available to the public since autumn 2015.

<https://www.efsa.europa.eu/de/press/news/151119-0>

The BfR's work is characterised by its scientific, research-based approach, which pervades all fields of activity at the BfR. Against this background, it is of fundamental significance for the BfR to establish who has the right of first publication to its intellectual property.

In its ruling (ref no.: 14 O 470/18), the Regional Court concluded that both the addendum and the summary are in general copyright-protected works produced by BfR employees as part of their work, to which the Institute has been granted exclusive rights of use. Even after the publication of the addendum by the European Food Safety Authority (EFSA), the BfR continued to be the holder of rights of use. The defendant unlawfully altered the addendum and made it publicly available. In contrast to the version published by EFSA with the consent of the BfR, this publication could only make a minor claim to scientific respectability. The court granted the BfR injunctive relief.

The legal situation was judged differently in the case of the summary. With regard to the summary of the addendum the BfR had granted access to electronic files to a variety of people by way of a general ruling. Therefore, according to the court, the BfR could no longer refer to copyrighted rights of use of the document. In this respect, the BfR is considering lodging an appeal with Cologne Higher Regional Court.

Further information on the subject from the BfR website

<https://www.bfr.bund.de/cm/349/no-cancer-risks-concealed-all-professional-conclusions-reached-by-the-bfr-have-been-publicly-accessible-for-years.pdf>

This text version is a translation of the original German text which is the only legally binding version.