

Buchpreisbindung versus E-Books

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Kapitel 1

Hinweis

Dieser Beitrag ist ein Vorabentwurf für die „Kommentare zum Literaturbetrieb in Zeiten der Digitalisierung“¹, an dem online² (auch kollaborativ) gearbeitet wird. Er ist weder vollständig noch abgeschlossen. Anlass für die Auseinandersetzung war eine Umfrage auf lesen.net³.

¹https://github.com/skreutzer/digitaler_literaturbetrieb

²<http://www.publishing-systems.org/expwp2/?p=6>

³<http://www.lesen.net/forum/e-books-e-reader-allgemein/allgemeine-diskussion/17364-umfrage-soll-die-buchpreisbindung-fallen/?postID=257287#post257287>

Kapitel 2

Buchpreisbindung versus E-Books

In Deutschland gibt es eine sogenannte „Buchpreisbindung“¹, welche eine staatliche Regulierung des Buchhandels darstellt. Das Buchpreisbindungsgesetz liefert die rechtliche Grundlage dafür und besagt, dass Buchhändler einen Buchtitel für eine Zeitspanne von 18 Monaten ab Erscheinen ausschließlich zu demjenigen Preis an Endkunden abgeben dürfen, welchen der Verlag festgelegt hat, was dazu führt, dass ein Titel bei allen Buchhändlern gleich viel kostet. Der Verlag kann den Preis innerhalb der 18 Monate beliebig oft neu festsetzen, den dann sämtliche Buchhändler unverändert an den Endkunden weitergeben müssen. Ein Buchhändler darf also nicht einfach den Preis erhöhen, um mehr Gewinn zu erwirtschaften oder Kostendeckung zu erreichen, sondern kann sich nur entscheiden, den Titel zum festgelegten Preis ins Sortiment aufzunehmen oder nicht. Ebenso darf der Preis nicht gemindert werden, um die Konkurrenz zu unterbieten.

Die Buchpreisbindung ist ein Instrument, um eine Vielfalt an Buchhändlern auf dem Buchmarkt zu erhalten. Diese Vielfalt ist wichtig, um eine Verödung des Literaturangebots zu verhindern. Wenn es in Deutschland nur ein paar große Buchhandelsketten gäbe und deren Filialen in den Städten die einzige Anlaufstelle für den Erwerb von Büchern wären, würde das Angebot zunehmend auf die kommerziell erfolgreichsten Titel begrenzt werden, während kleine, unabhängige Buchhandlungen über strategisches Preisdumping in den Konkurs getrieben werden würden. Mit der Preisbindung macht es für den Endkunden keinen preislichen Unterschied, ob in der Buchhandelsketten-Filiale oder in der unabhängigen Buchhandlung eingekauft wird, sodass die Wahl des Buchhändlers bei einem Kauf anhand anderer Kriterien getroffen werden muss als dem Kriterium des Preises. Es gelingt den großen Ketten nicht, Kundschaft durch stets niedrigere Preise abzuwerben und so die unabhängigen Buchhändler schlussendlich ganz zu verdrängen. Auch wenn diese Regelung den meisten Kunden nicht bekannt ist und es noch zahlreiche weitere Effekte gibt, die bei der Wahl des Verkäufers eine Rolle spielen, so obliegt es doch primär dem Geschick des Händlers, die Kundschaft in den eigenen Laden zu locken, damit derselbe Titel nicht bei der Konkurrenz gegenüber erworben wird. Obwohl die einheitliche Bepreisung natürlich nur da von Bedeutung ist, wo sowohl die Fi-

¹<http://de.wikipedia.org/wiki/Buchpreisbindung>

liale der großen Buchhandelskette als auch der kleine Buchhändler denselben Titel an den Kunden bringen möchten, bei an sich unterschiedlichen Sortimenten also nur dort eine Rolle spielt, wo ohnehin Übereinstimmung besteht, so ist doch die berechtigte Hoffnung, dass der Kunde im Laden auch die anderen ausgewählten, eventuell sehr spezialisierten Titel bemerkt, welche die zu schützende Vielfalt darstellen, für welche es also möglichst vieler unterschiedlicher Sortimente bedarf, die in möglichst vielen unterschiedlichen Buchläden nebeneinander koexistieren können sollen. Genau dafür sorgt die Buchpreisbindung, und zwar nicht ohne Erfolg.

Größtes Interesse an der Existenz einer Buchpreisbindung hat der Börsenverein des Deutschen Buchhandels², in dem neben Buchhändlern, die nicht durch Preisdumping aus dem Geschäft gedrängt werden möchten, auch Verlage organisiert sind, die ein Preisdiktat durch einen Buchhandels-Monopolisten und damit um den Zugang zum Publikum fürchten müssen. Weil die Exekutive besseres zu tun hat, als die Einhaltung der Preisbindung zu kontrollieren, gibt es mehrere Verbände, die im Auftrag von Verlagen und Buchhändlern Verstöße gegen selbige erst abmahnen und im Zweifel auch zur Anzeige bringen.

Dieses Konzept geht auf, solange es um gedruckte Bücher geht, die der physisch bedingten Knappheit unterliegen und in einem örtlichen Ladengeschäft zum Verkauf angeboten werden. Auf E-Books angewendet ist die Buchpreisbindung nicht nur unglaubwürdig, sie verfehlt nicht nur ihren Zweck, nein, sie richtet sogar einen gewissen Schaden an. Nun hat sich aber leider der Börsenverein des Deutschen Buchhandels in die Ansicht hineingesteigert, dass die Buchpreisbindung auch für E-Books gelten müsse. Rechtlich ist diese Position nicht zu beanstanden, da E-Books durchaus als Erzeugnisse betrachtet werden können, die gedruckte Bücher substituieren. Ganz wie beim dringend reformbedürftigen Urheberrecht auch wird eine entsprechende Klausel dafür heute einfach auf den neuen, gänzlich andersartigen digitalen Kontext angewendet, mit geradezu verheerenden Konsequenzen für die Brauchbarkeit des betroffenen Gesetzes.

Eine Reihe von praktischen Schwierigkeiten für die Buchpreisbindung liegen im Wesen des E-Books begründet. So kann die Buchpreisbindung ohne Weiteres ausgehebelt werden, indem man einfach eine andere „Ausgabe“ des E-Books herausgibt, für welche ein eigener Preis festgelegt werden darf und muss, der dann für alle Händler, die diese Ausgabe distribuieren, verbindlich ist. Mithilfe von Software kann man Ausstattung und Inhalt in ausreichendem Umfang variieren, dass ein Gericht vermutlich den Grad der Andersartigkeit als Grundlage für einen eigenen Preis akzeptieren könnte. Weil bei gedruckten Büchern eine unterschiedliche Ausstattung unterschiedliche Kosten verursacht (Taschenbuch und illuminierte Ledereinband-Goldschnitt-Ausgabe sollten nicht gerade denselben Preis haben müssen), ist es nur logisch, dass der Verlag einen jeweils eigenen Preis festlegen darf. Auch bei E-Books können bebilderte Ausgaben sowie zusätzliche Texte oder deren besondere Zusammenstellung und Gestaltung zu unterschiedlichen Kosten führen. Zwar können, wenn die E-Books per Software automatisch generiert werden, gleich viel in der Herstellung gekostet haben, obwohl sie sich sehr voneinander unterscheiden, weil aber das automatisch generierte Ergebnis nicht von einem manuell hergestellten Ergebnis zu unterscheiden ist, müsste ein Gericht den konkreten Entstehungsprozess ei-

²<http://www.boersenverein.de/>

ner E-Book-Ausgabe untersuchen, wenn die Kosten als Grundlage für einen eigenen Preis herangezogen werden sollen. Weil dies eine rein künstliche Festlegung wäre, sollte eine solche Entscheidung wohl bedacht werden, weil dann nämlich manche E-Book-Ausgaben einer Buchpreisbindung unterliegen würden und andere nicht, ohne dass ein prinzipieller Unterschied erkennbar wäre. Es wäre allerdings zu erwarten, dass die Ausgaben aus klassischer Verlagsproduktion tendenziell eher mit eigenem Preis versehen werden dürften, bei den Verlagen neuen Typs und Self-Publishern hingegen beide Varianten anzutreffen wären. Für E-Book-Distributoren würde das bedeuten, dass E-Books völlig unterschiedlichen Inhalts, Umfangs und ohne erkennbare visuelle Gemeinsamkeiten zu demselben Preis abgegeben werden müssen, welche der Kunde in manchen Fällen als kaum gerechtfertigt ansehen könnte, und das umso mehr, als dieser die Ausgabe selbst und individuell zusammengestellt hat. Auch dürften die Verlage sich einiges einfallen lassen bei der Preisfindung für sämtliche Ausgaben, die aus der Software-Generierung hervorgehen könnten. Die Vielfalt der E-Book-Händler sichert das keineswegs, weil sich gewiefte Teilnehmer in Handarbeit eine billigere Ausgabe als die Konkurrenz produzieren lassen könnten. Dass E-Books natürlich auch druckbar sind und sich auch vor Ort in der lokalen Buchhandlung, wenn schon vorerst noch nicht durch eine Espresso Book Machine³, dann doch infolge zunehmender Anbindung von Print-on-Demand⁴-Dienstleistern, gedruckte und elektronische Titel mit ihren gebundenen Preisen gegenseitig in die Quere kommen, findet bisher noch überhaupt keine Berücksichtigung, zumal auch die klassische Rollenaufteilung von Autor, Verlag und Buchhändler längst in der Auflösung begriffen ist.

Aber wie sieht digitaler Buchhandel überhaupt aus? Es wäre ja offenkundig fahrlässig, anzunehmen, dass sich der Offline-Buchhandel einfach nur online ganz genauso fortsetzt. Im Web braucht es nicht für jede Ortschaft einen eigenen Buchladen, sondern Buchhändler unterhalten eine einzige Online-Präsenz oder einen E-Book-Shop oder beides. Die Kunden sind nicht auf die Buchhandlungen ihres örtlichen Einzugsgebiets begrenzt, sondern haben im gesamten globalen Netz jederzeit Zugang zu sämtlichen Händlern. Was bedeutet Vielfalt in diesem Zusammenhang eigentlich? Sicher kann nicht eine Vielzahl von Online-Shops gemeint sein, denn online ist der Zugang zu einem vielfältigen Angebot nicht von der Menge der Händler abhängig. In der physischen Welt sind Regalmeter und Verkaufsfläche begrenzt, auf einer Webseite ist der Platz für die Präsentation von Produkten unbegrenzt. Sowie eine Vielzahl von Vollsortimentern keinen Vorteil mit sich bringt, so wenig brauchen kleine Online-Buchhändler mit einem Vollsortimenter mit dem Ziel des Erhalts von Vielfalt konkurrieren. Und nicht allein das: wo die Platz-Begrenzung eines gedruckten Katalogs den endlosen Weiten einer Webseite weicht, ist der Versand von gedruckten Büchern und die Distribution von E-Books mittlerweile eine Frage der zentralisierten, hochoptimierten Logistik geworden, wo ein Vollsortiment-Überbau die Vielfalt sichert und die Konkurrenz nur noch uneffektive Redundanz hervorbringen kann. Während einerseits das Web jedermann den Zugang zu einem Publikum eröffnet und quasi, solange es neutral, offen und frei bleibt, ein Garant für Vielfalt ist (neue Konkurrenz entsteht ständig und überall), wären andererseits die Investitionen immens, die zu tätigen wären, um selbst zum Vollsortimenter zu

³<https://www.youtube.com/watch?v=qJU1a8xJ5BM>

⁴<https://en.wikipedia.org/wiki/Print-on-demand>

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Kapitel 3

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Version 3, 19 November 2007

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¹<http://fsf.org/>

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17. Interpretation of Sections 15 and 16.

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