

Die Linke, Bibliotheken und E-Books

Inhaltsverzeichnis

| | |
|---|------------|
| Inhaltsverzeichnis | iii |
| 1 Die Linke, Bibliotheken und E-Books | 1 |
| 2 Lizenzbestimmungen | 5 |
| 2.1 GNU AFFERO GENERAL PUBLIC LICENSE | 5 |
| 2.2 Preamble | 5 |
| 2.3 TERMS AND CONDITIONS | 6 |
| 2.4 How to Apply These Terms to Your New Programs | 15 |

Kapitel 1

Die Linke, Bibliotheken und E-Books

Die Bundestagsfraktion Die Linke hat einen Antrag¹ mit dem Titel „Verleihbarkeit digitaler Medien entsprechend analoger Werke in Öffentlichen Bibliotheken sicherstellen“ in Vorbereitung, der mehr Fragen aufwirft als Lösungen bietet. Die Annahme, dass man immaterielle Güter und materielle Güter gleich behandeln könne, ist aber grundverkehrt und leider typisch für die prä- und undigitale Urheberrechtsgesetzgebung unserer Tage.

Der Erschöpfungsgrundsatz als Ausnahme im Urheberrecht setzt sich damit auseinander, dass ein materieller Gegenstand auch einen immateriellen Anteil hat, welcher beim Buch aus reinem Text, Illustrationen und dem Layout besteht. Er schränkt die Rechte des Rechteinhabers ein zugunsten der Rechte des Eigentümers des Gegenstandes, damit der Rechteinhaber den Eigentümer des Gegenstandes nicht daran hindern kann, den Gegenstand beispielsweise weiterzuverkaufen, Materialgüterrecht sticht hier Immaterialgüterrecht. Der Gesetzgeber erkennt an, dass sich solche Weiterverkäufe der Kontrolle und des Einflusses des Rechteinhabers gänzlich entziehen. Der Rechteinhaber wird dafür nicht kompensiert, sondern hat beim Erstverkauf den Preis so festzulegen, dass die potentiellen Ausfälle durch Weiterverkauf mit abgedeckt werden, während der Erstkäufer bei erhöhtem Preis einen Teil davon beim Weiterverkauf wiedererhält. Weil beim Verleih der Gegenstand wieder zum Verleiher zurückkehrt und erneut verliehen werden kann, der Gegenstand also einem weiteren Nutzerkreis zur Verfügung gestellt werden kann als beim Weiterverkauf, gibt es besondere Regelungen für die Anwendung des Erschöpfungsgrundsatzes seitens öffentlicher Bibliotheken. Die Öffentlichkeit bezahlt einen gewissen höheren Betrag dafür, dass das Buch verliehen werden darf, der Anspruch auf Kompensation der potentiellen Einnahmeausfälle infolge des Verleihs werden damit abgegolten.

Wenn jetzt der Erschöpfungsgrundsatz in Form einer Ausnahme für den Verleih von E-Books durch öffentliche Bibliotheken eingeführt werden soll, müsste man die prinzipielle Gegenständlichkeit von E-Books annehmen, sodass die öffentliche Bibliothek Eigentümerin des E-Books werden würde und nicht mehr nur Lizenznehmer. So ein Präzedenzfall wäre freilich auch übertragbar auf andere digitale Güter wie Software, Online-Webseiten, Datenbankwerke,

¹<http://www.petra-sitte.de/2015/04/zum-welttag-des-buches-und-des-urheberrechtes-am-23-april-2015>

Musikdateien und so weiter (man denke an die Urteile zum Widerrufsrecht bei E-Books und die Rechtmäßigkeit des Weiterverkaufs von Einzellizenzen bei Software-Volumenlizenz-Verträgen, die in diese Richtung deuten), ebenso bräuchte diese Annahme auch nicht auf öffentliche Bibliotheken beschränkt bleiben, sondern könnte den Weg weisen für ein Eigentumsrecht der Leser und Nutzer. Im Allgemeinen haben sich die Rechteinhaber bisher große Unglaubwürdigkeit verschafft, weil einerseits die Befugnisse durch den Missbrauch des Urheberrechts diesen gar nicht weit genug gehen können und andererseits aber wieder der Mehrwertsteuersatz für E-Books dem der gedruckten Bücher angeglichen werden sollen, wo dies der Rechteinhaber-Industrie zum wirtschaftlichen Nachteil im grenzüberschreitenden Verkehr gereicht.

Doch was ist eigentlich ein E-Book genau? Technisch gesehen sind E-Books kaum mehr als Web-Dokumente, die zu einem Zip-Archiv zusammengepackt werden, damit sie auch offline und mobil gelesen werden können. Daher kann man sie wie andere Dateien auch unmöglich verleihen, sondern nur immer weiter vervielfältigen, sodass es dem jeweiligen Nutzer obliegt, wie er mit seiner Kopie umzugehen gedenkt. Es ist ferner keineswegs möglich, das Sperren oder Löschen des E-Books nach Ablauf einer Frist sicherzustellen oder insbesondere das Anfertigen von eigenen Kopien zu verhindern, denn wenn mit der heute üblichen Leihpraxis der Einsatz von DRM gemeint sein soll, was auf Verschlüsselung basiert, dann ist zum Lesen stets die Entschlüsselung erforderlich. Damit DRM überhaupt halbwegs funktionieren kann (vom analogen Abgriff mal abgesehen), muss besondere, künstlich beschränkte Hardware oder ein komplexes Software-System mit hoher Abhängigkeit (von einem Online-Server eines bestimmten Anbieters etwa) aufgeföhren werden. Offenkundig sorgen diese Vorrichtungen dafür, dass Quellen nicht allgemein zugänglich werden oder bleiben und man sich nicht frei unterrichten kann, was auch gegen den Auftrag der Bibliotheken verstößt. Sollte Die Linke am Plan festhalten, die heute übliche Leihpraxis weiter zu etablieren, wird das Gegenteil von dem erreicht, was angeblich das Anliegen des Antrags ist. Im Moment ist der „Kauf“ eines E-Books genau genommen der Erwerb einer einfachen, sehr eingeschränkten Nutzungslicenz für eine E-Book-Datei, letztere wird quasi kostenlos zur Verfügung gestellt und ist nicht weiter von Bedeutung. Eine Grundregel der Digitalökonomie lautet, dass das Anfertigen einer Kopie nichts kostet und man daher auch keine Kopien mehr verkaufen kann, die Buchbranche ist aber noch genau in diesem Geschäft des Einzelexemplar-Verkaufs von digitalen Kopien und versucht, dieses überholte Geschäftsmodell unter Missbrauch des Urheberrechts noch ein wenig am Leben zu erhalten.

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²<https://archive.org/>

³<https://unglue.it/>

Kapitel 2

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Version 3, 19 November 2007

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¹<http://fsf.org/>

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The GNU Affero General Public License is designed specifically to ensure that, in such cases, the modified source code becomes available to the community. It requires the operator of a network server to provide the source code of the modified version running there to the users of that server. Therefore, public use of a modified version, on a publicly accessible server, gives the public access to the source code of the modified version.

An older license, called the Affero General Public License and published by Affero, was designed to accomplish similar goals. This is a different license, not a version of the Affero GPL, but Affero has released a new version of the Affero GPL which permits relicensing under this license.

The precise terms and conditions for copying, distribution and modification follow.

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- c) Convey individual copies of the object code with a copy of the written offer to provide the Corresponding Source. This alternative is allowed only occasionally and noncommercially, and only if you received the object code with such an offer, in accord with subsection 6b.
- d) Convey the object code by offering access from a designated place (gratis or for a charge), and offer equivalent access to the Corresponding Source in the same way through the same place at no further charge. You need not require recipients to copy the Corresponding Source along with the object code. If the place to copy the object code is a network server, the Corresponding Source may be on a different server (operated by you or a third party) that supports equivalent copying facilities, provided you maintain clear directions next to the object code saying where to find the Corresponding Source. Regardless of what server hosts the Corresponding Source, you remain obligated to ensure that it is available for as long as needed to satisfy these requirements.
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17. Interpretation of Sections 15 and 16.

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