OSLO DISTRICT COURT

JUDGEMENT

Pronounced:	25 May 2009 at Oslo District Court
Case no.:	08-156741TVI-OTIR/01
Judge:	Deputy Judge Mari Kimsås
Nature of the case:	Main claim: Collection of payment for a news notification service on the Internet is unwarranted; cf. the Copyright Act, the Marketing Control Act, etc. Counter-claim: Claim for compensation for financial loss and relinquishment of net profit associated with a news notification service on the Internet without necessary clearance.

Meltwater News AS	Attorney Tord Eide represented by deputy advocate Christian Ludvig With
v	
Mediebedriftenes Klareringstjeneste AS	Attorney John S. Gulbrandsen

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JUDGEMENT

Nature of the case
This case concerns the questions of whether or not the plaintiff's digital news monitoring service has a clearance obligation. In the event that the news notification service has a clearance obligation, the case also concerns the extent to which the defendant can claim compensation and relinquishment of net profit – on behalf of the source owners of news articles available on the Internet – from the plaintiff, based on infringement of copyright.

Brief presentation of news monitoring and clearance
New monitoring has existed as a commercial service for many years. News monitoring, in the traditional meaning of the word, means that news monitoring agencies on a commercial basis have monitored news coverage and delivered paper copies of different media's coverage of customers or cases to clients. This monitoring could also be a matter of summaries or recordings of broadcast media's coverage of cases. The news monitoring in the traditional sense was manual and press clippings, etc. were often delivered by post, courier or telefax. This monitoring required the consent from the right holders. In practice, this was dealt with when the news monitoring agencies entered into agreements with the right holder organization Kopinor for payment of a fee (referred to as 'clearance').

Technical developments opened the doors to digital news channels, which entailed new opportunities and new ways of conducting news monitoring. Meltwater News AS (former Magenta News) was one of the first entities to perform digital media monitoring in Norway (2001). The growth of digital media monitoring resulted in the establishment of a right holder organization, Mediebedriftenes Klareringstjeneste AS (hereinafter "Klareringstjenesten"), in 2001 with the purpose of providing end-users with the necessarily permission for digital copying, in exchange for clearance. Klareringstjenesten is a non-profit organization where payment – after deducting administrative expenses, is returned to the source owner; i.e. the online newspapers. Through authorization by a number of media companies, Klareringstjenesten has through a proxy from a number of media enterprises a non-exclusive right to enter into agreements on their behalf regarding digital use of their works.

Brief presentation of the technical aspect of the service
Digital news notification services give users regular updates on news articles in online newspapers, etc. on the Internet that is relevant to the user. What is considered to be relevant to each user is predefined by the user through search criteria, such as company name, product name, etc. These predefined search criteria are called 'agents'.

For all practical purposes, MWN's service depends on the source material being indexed. An index is a collection of information that a search engine can use to find information efficiently. This can be described in detail by explaining the process. MWN uses a computer programme that is referred to as 'robot crawler technology'.

The programme conducts a machine/automated analysis of the material on the Web site in subject. The information on the page in question that is relevant is then transferred as selected data (Klareringstjenesten describes this as words, while MWN describes this as metadata) from the source document of MWN's indexing programme. This means that the words in the article are 'translated' into numerical codes (metadata) which computers can read, provided that they have MWN's software installed. Each numerical code corresponds to one word in a keyword list created by MWN. In connection with the indexing, information about where in the source document each word is placed is stored. When a search for relevant articles is performed, the index is used to connect the user to the correct document on the source page. Unlike other actors, like Google and Opoint, MWN does not save any copies of the Web page, so-called 'caches' or 'buffers'.

For all practical purposes, indexing is also necessary to prevent MWN's users from being 'updated' with old news – the software must know what it has already found in order to know if an agent hit is old or new.

Deep links are a direct link to the Web site's underlying pages. For example, this means that the user is directly referred to the article in question on VG's Web site, and not to www.vg.no's front page.

Until 6 March 2009, MWN offered its users in Norway updated news items, etc. through different types of services. The services can be summarized as follows:

a) Users receive regular e-mails with relevant deep links (if the wording corresponds to the headline of a document) to publicly-available information on the Internet together with a source reference. At the client's desire, together with the deep link it can receive a so-called 'hit phrase' (a few words in front of and behind the search term / agent) which can explain the further content of the document.
b) Users receive a dedicated user name and password which they can use to log on to their personal user account at MWN's Web site. Here, users can gain access to the same information as under a). Users can further decide to remove the source references, and search historical search hits. In the event that a source has been removed, the link will not work.
c) Users could receive access to perform searches in MWN's index themselves. Hits would appear as under point a). Neither would links to removed sources function.
d) The search hits MWN received based on the user's agents could be placed on the user's intranet, extranet or the user's home page on the Internet.

After 6 March 2009, MWN changed its service, so that hit phrase access and source references were removed. At the same time, some 17,000 words were removed from MWN's keyword list, so that these words are/were no longer indexed. This means that the new service only gives users access to a deep link with the heading of the article in question.

MWN currently has a market share of 60–70 % in Norway in digital news coverage.

Presentation of the case

On 22 March 2002, Klareringstjenesten contacted those who performed digital news monitoring in Norway at the time, including Magenta News AS (now MWN). The background was that Klareringstjenesten wanted to inform them that their new monitoring services constituted an infringement of copyright as long as the use was not cleared. A meeting was held between Klareringstjenesten and MWN in April/May 2002. The meeting was followed by a letter dated 25 October 2002 from Klareringstjenesten to MWN regarding an agreement about the right to deep link and digital copying. All those on the Norwegian market but MWN (ap. 6–7) had at this time negotiated agreements with Klareringstjenesten, and MWN ended up signing the agreement it was presented to.

After negotiations between Klareringstjenesten and MWN, a new standardized agreement was entered into between the parties on 1 July 2003. This standardized agreement (lump sum agreement) turned out to be poorly adapted to MWN's activities, and after further negotiations with Klareringstjenesten, a new agreement was entered into on 1 January 2005, built on the so-called ‘remuneration model'. The remuneration model consisted of two main components: a basic lump sum and a fee connected to the number of employees at the users.

MWN terminated the agreement of 1 January 2003 on 29 September 2006, effective 1 January 2007. However, the agreement was maintained until the end of 2007.

The reason for the termination was, firstly, that MWN found that Klareringstjenesten did not enforce the agreement as strictly as it had expected. This particularly applied to Klareringstjenesten’s handling of those MWN considered as its competitors, including Google News / Google Nyheter, Infospider, Sesam, Mylder and Overblikk.

It is Klareringstjenesten's view that these actors distinguish themselves from news monitors by offering private end-user lists an overview of relevant news free of cost, and does this on open Web sites. Further, these actors refer to Klareringstjenesten as a 'news aggregator'. Klareringstjenesten has not wanted to require clearance for the part of the service that is based on private use, and which is free of cost, but has pointed out that there is a clearance obligation for the part of these actors' service that addresses professional users / business users. For example, according to Klareringstjenesten, these are functions with a payment obligation where users can subscribe to updates/feeds.

Secondly, MWN explained the termination by saying that it could not see that Klareringstjenesten had a legal basis on which to demand clearance, and that the financial situation at MWN at the time indicated that the company could handle the risk associated with a potential lawsuit.

Klareringstjenesten contested that the legal aspect of the clearance obligation was unclear. The parties attempted to negotiate a new agreement, but the negotiations stranded on 14 October 2008.

MWN filed a claim against Klareringstjenesten on 16 October 2008 through its deputy advocate Christian L. With at Oslo District Court, requesting that Klareringstjenesten be found not to be entitled to collect payment for MWN's news notification services. Through attorney John S. Gulbrandsen, Klareringstjenesten submitted a timely response on 21 November 2008, requesting acquittal. The requests were later changed and the dispute was expanded with counter-claims, cf. below.

The main hearing was held on 11–13 March 2009 at Oslo District Court. The parties/representatives appeared with their legal representatives and of counsel, and made statements. Three witnesses were questioned, and otherwise such documentation was made as shown in the court records.

A decision was made before the main hearing for the defendant to account for the presentation of the case, and that the plaintiff would then be given an opportunity to supplement and correct the defendant's presentation of the case. This system has also been followed in the following.

The basis for the defendant's request

News articles must be considered an original work, cf. section 1, subsection 1, point 1, of the Copyright Act. A general rule is that the source owners have exclusive right to dispose of their works, cf. section 2 of the Copyright Act. This means that full or partial, direct or indirect, permanent or temporary reproduction (copies), or the making available to the public, of a work cannot take place without legal basis or permission from the source owner.

The author's exclusive right to dispose of his work has a long international history, cf. the Berne Convention for the Protection of Literary and Artistic Works of 1896. The international dimension of copyright is substantiated, among others, by all international conventions in the field have been adopted by the EU. When making discretionary assessments of what is considered a work in the sense of the Copyright Act, the court must consequently look to international practice, cf. Ole-Andreas Rognstad, *Opphavsrett* (2008 manuscript), page 39.

The court's reasoning must be that through its service, MWN conducts both a so-called 'visible' and an 'invisible' reproduction of the work.

The **invisible** reproduction of the work is related to MWN's indexing of the source owners' copyrighted works. MWN's indexing must be considered as a direct copying by each word receiving its own number, and this number being saved in the databases together with a numerical code in accordance to where in the document the word is located. Indirect copying takes place when a search is made in MWN's databases (keyword lists), and a hit is made. The

court reason must consequently be that the indexed product saved in MWN's databases must be considered a reproduction of the work, and an infringement of the source owner's exclusive right.

The **visible** reproduction of the work is connected with MWN's reproduction of the title, introduction and/or hit phrases, which meets the requirement of originality, in the product they offer their customers.

Visible reproduction of the work for third-parties in the public domain also constitutes a making available of the work to the public according to the Copyright Act. Loyal linking without reproducing the source text is a different matter. It is not contested that linking/deep linking without use of source text is not an infringement of copyright.

Only reproduction of the works and/or making the works available to the public can infringe the copyright. I.e., the writing must meet the level of so-called originality. In order for a work to meet the level of originality, **originality** must be a requirement. A specific assessment of whether the originality requirement has been met must be made, and in this context the court must look to the view on the creation of “double works” and the freedom of choice.

It is not the length of the work, but the content that is decisive when deciding if a work meets the requirement of originality. The court must particularly look to the Advocate General's opinion of 12 February 2009 regarding the Infopaq case. The fact that the Supreme Court has emphasised statements by the Advocate General is proved in the Finnanger judgement included in Rt. 2005, page 1365.

According to national and international legal sources both headings, introductions and hit phrases can meet the level of originality. It is not contested that certain headings, introductions and hit phrases, alone or combined, can lack originality. However, after presenting the evidence, the court's reasoning must be that the headings, introductions and/or hit phrases from the news articles essentially meets the level of originality. For headings in particular, the exceptions must be considered rare. The requirement of originality must not be confused with quality requirements.

Regarding MWN's service, no exception can be made to the source owners' exclusive right pursuant to the quotation right, cf. **section 22 of the Copyright Act**. The provision does not apply to this case. The purpose of the provision is not applicable to MWN's publication of headings, introductions and/or text extracts in a commercial context. Further, the argued 'quotes' have not been placed in a context, and the 'quotes' cannot be considered a contribution to social debate or similar lawful purposes.

The court's reasoning must be that neither the visible nor the invisible reproduction of the works can be considered lawful due to the plaintiff's argument that there is **tacit consent** from the source owners by the material being published on the Internet. Norwegian law does not

acknowledge such tacit consent, and the argument cannot succeed in any event due to the defendant's explicit refusal, cf. the defendant's demand for clearance of the service. It was further particularly pointed out that the defendant has done what was possible to give notice that it did not consent to MWN's reproduction of the works and making them available. Reference was also made to MWN’s refusal of stating the name of its 'user agent'.

In the event that the court decides that MWN's **new service** where certain 'stop words' are removed from the keyword list (so that they are not indexed) does not violate the right holder’s exclusive right pursuant to section 2 of the Copyright Act, the reasoning must **alternatively** be that the source owners' **databases** are protected, pursuant to section 43 of the Copyright Act. The legislator has consciously listed two alternative criteria for protection; meaning that both databases that "collate a large volume of information" *or* databases that are "a result of a substantial investment" are given copyright protection – independent of whether the content meets the level of originality or not. However, the source owners' databases meet both criteria. MWN has infringed the database protection by copying the words to its servers, and then saving them as numbers in an index database. The fact that certain stop words have been removed does not change the source owners' right of disposal, as the right of disposal also applies to reproduction of the works/making "substantial parts" of the content of the work available to the public, cf. section 43, subsection 1, of the Copyright Act.

The plaintiff's argument regarding **section 39h of the Copyright Act** cannot succeed as the provision only applies to the more explicitly exploitation of, for example, a database to which the user has lawful right of use, cf. Proposition to the Odelsting no. 85 (1997–1998), page 40.

In the event that the court decides that MWN's services have no clearance obligation pursuant to the Copyright Act, the reasoning must be that MWN has disloyally exploited the source owners' efforts (through direct copying). This conflicts with good business practice, cf. **section 1 of the Marketing Control Act**. The general clause in section 1 of the Marketing Control Act provides supplementary protection to the Copyright Act in cases where the actions do not fall in under the law's description of an offence, cf. Ole-Andreas Rognstad, *Opphavsrett* (2008 manuscript), page 69.

Freedom of expression does not prevent the defendant's claim for clearance against MWN, cf. the Human Rights Act, cf. the European Convention on Human Rights, annex 2, article 10, point 2. In this context, the court must look to the protection for immaterial rights pursuant to the protocol to the European Convention on Human Rights, annex 2, article 1 regarding protection of property, including immaterial property. Reference must also be made to the Human Rights Act, cf. the European Convention on Human Rights annex 4, article 15, point 1, litra c, regarding protection of spiritual and material interests that proceed from any literary work of which he is the author.

Section 10 of the Competition Act does not apply. The court must reason that MWN has the burden of proof, and that MWN has not presented evidence that show that the competition

have been prevented, limited or distorted. The exception in section 10, subsection 3, will in any case apply.

The claim against Meltwater

MWN must primarily pay compensation pursuant to section 55 of the Copyright Act, cf. section 54. In this context, the court must view compensation as a joint term for the type of compensation the right holder of intellectual property can claim following an infringement of the Copyright Act, which is a law of rights. This means that the compensation will not necessarily be limited to compensation for the author's financial loss, but that also the demand for compensation for the infringing use as well as relinquishment of enrichment (net profit) is covered, cf. Rognstad and Stenvik, 2002, "Hva er immaterialretten verd?", page 2 and following.

For the period 15 October 2008 to 6 March 2009 (payment is not claimed for the period of 1 January 2008 to 15 October 2008, when the parties were negotiating), Klareringstjenesten's financial loss must be set to that which Klareringstjenesten would have received, pursuant to the previous agreement between the parties. The compensation should be set to an average price of NOK 17,500 per day , and multiplied by a total of 143 days; resulting in a financial loss of NOK 2,502,500.

In addition, according to Lyseggen’s testimony, MWN's operating revenues for 2008 corresponds to the figures for 2007. MWN's operating revenues for 2007 were NOK 12,870,642 (i.e. revenue after MWN had paid the fee of approximately NOK 5 million), which corresponds to operating revenues of NOK 35,262 per day. For the period 15 October 2008 to 6 March 2009 (143 days), this corresponds to a net profit of NOK 5,042,466.

To identify the operating revenues for 2008, the payment that should have been made, but which was not disbursed, must also be taken into consideration. The amount that was paid and entered as an expense in 2007 was some NOK 5 million. This amount must therefore be added to the operating revenues for 2007 in order to identify what the 2008 operating revenues should be set as. This corresponds to some NOK 17.8 million in operating revenues for 2008 (NOK 5 million + NOK 12.8 million in operating revenues for 2007).

According to this, the court must reason that for the period 15 October 2008 to 6 March 2009, Klareringstjenesten must be awarded a total of NOK 7,544,966 (NOK 2,502,500 + NOK 5,042,466) in compensation from MWN.

Calculating the compensation for the new service that was effectuated on 6 March 2009 must be calculated according to the same principles and rates as mentioned above. In the event that the court decides that the indexing done after 6 March 2009 does not constitute an infringement of rights, but that the linking and the use of article headlines is such an

infringement, a discretionary deduction must be made for the limited number of cases where the headings do not meet the level of originality.

The court's reasoning must be that the above-mentioned calculations are done at a clearly conservative level.

<u>The defendant's demand for judgement:</u>

1. Mediebedriftenens Klareringstjeneste AS is acquitted.
2. Meltwater News AS is ordered to pay compensation to Mediebedriftenens Klareringstjeneste AS, measured at the court's discretion.
3. Meltwater News AS is ordered to pay its net profit to Mediebedriftenens Klareringstjeneste AS, measured at the court's discretion.
4. Meltwater News AS is ordered to pay Mediebedriftenens Klareringstjeneste AS' costs, with a supplement of statutory interest on overdue payment, from due date until payment is made.

The basis for the plaintiff's request

Klareringstjenesten has no legal basis to neither prohibit nor claim consideration for MWN's news notification service on the Internet. The court must reason that MWN's links to articles on the Internet, which the source owners themselves have made available to the public, do not conflict with sections 2 and/or 43 of the Copyright Act or section 1 of the Human Rights Act.

The court must look to Klareringstjenesten acknowledging the unclear legal situation when the parties entered into an agreement, cf. the parties' agreement of June 2003 on the right to deep linking and digital copying, etc., clause 16. MWN has never acknowledged any payment obligation, but entered into the above mentioned agreement out of fear of being shut off from the Norwegian market. MWN terminated the agreement with Klareringstjenesten effective 1 January 2007, de facto starting 1 January 2008, mainly because Klareringstjenesten did not treat the actors in the market on the same terms.

MWN's news notification service neither constitutes reproduction of works nor making available to the public, in the sense of **section 2 of the Copyright Act**. Both the new and the former news notification service can be divided into four stages: the research, indexing, notification and reading stages.

During the research stage, MWN performs an automatic search for new information on the source pages (online newspapers) using a so-called 'robot crawler'. This search engine analyzes the material in order to locate relevant articles on the source pages, to which links can be established. The URLs are saved, but no full-text copies are created of the document, as with Opoint nor a buffer as with Google.

MWN's search functionality is based on foregoing indexing. In other words, indexing is a prerequisite for users to be able to find the relevant links, using their predefined search terms.

In relation to the indexing stage, the court must reason that MWN has never saved copies or reproductions of the articles. MWN only saves numbers that reflect the metadata which in turn reflect the information from the article in the index. In other words, numbers that reflect specific words in the articles are not saved.

The extent to which indexing articles gives MWN a *theoretical* opportunity to reproduce the material is of no importance as long as this is not done. The service delivered prior to 6 March 2009 had such a theoretical opportunity for reproduction, but did not contain any *practical* opportunity, since the necessary software did not exist. . MWN has never developed the software necessary for such theoretical reproduction. Nor does the new news notification service from MWN contain any *theoretical* opportunity of reproducing the articles. A number of 'stop words' that will be vital for the content of the articles have been removed from MWN's keyword list. Only words that remain on the key word list will be able to be indexed. The court must reason that re-establishing never were, nor is relevant to MWN's service.

Further, it must be the court view that the alleged theoretical opportunity to re-establish the articles would in any case not result in a reproduction with sufficient similarities to the original document – i.e. no reproduction of a work.

In any event, the indexing must be considered permitted, pursuant to **section 39h of the Copyright Act**.

During the notification stage, users are provided with a link (shortcut) to the source documents. Linking in itself is not reproduction of the work or making available the work to the public. . The deep link, with the article's heading, brings the user straight to the relevant article on the source owner's web page. No reproduction is taking place within the meaning of the Copyright Act during the notification stage. Further, citing the headings of an article and hit phrases (the latter which was offered until 6 March 2009) is not a reproduction within the meaning of the Copyright Act since headings of news articles are not original works.

In the event that the court decides that headings from online newspapers' news articles *can* be original works, the basis must be that as a general rule, new article’s headings are not original works. News article headlines lack originality and uniqueness as they are often mere descriptions of facts, cf. the German Supreme Court judgement of 17 July 2003 ("the Paperboy judgement") and the Danish Supreme Court judgement of 5 October 1987 ("the online newspaper judgement").

If the court decides that the headlines are protected, pursuant to section 2 of the Copyright Act, an alternative basis must be that MWN can reproduce the headings, pursuant to the **quotation right, cf. section 22 of the Copyright Act**. Since neither the section 22 nor the preparatory works define what a quote is, the court must look to WIPO's definition, which states that: "A relatively short passage cited from another work to demonstrate or to make intelligible an author's own statement, or to refer to the views of another author in an

authentic manner". A restrictive interpretation of the quotation right in section 22 of the Copyright Act will conflict with the **freedom of expression**. MWN's use of quotes meets the terms for lawful quotes.

In relation to the quotation right, the court's principal basis must be that MWN places the quotes in a context and, alternatively, that there is no requirement for the quotes to be placed in a context.

During the reading stage, the user is on the source owners' Web pages and reads the article there. The article is never at MWN. Nor is the Copyright Act infringed at this stage.

In the event that the court decides that the indexing constitute a reproduction of the works within the meaning of section 2 of the Copyright Act, the basis must be that the source owners have given a **tacit consent** by making the articles available to the public on the Internet. In this context, the court must take into consideration that indexing by using 'robot crawling' is considered to be a normal mean of indexing, and is a prerequisite for the existence of search engines. Search engines must be considered a strictly vital tool for finding and making use of the information on the World Wide Web. Consent to indexing through publishing a page on the Internet cannot be withdrawn.

It is contested that the news notification service constitutes an infringement of the **database protection** in section 43, subsection 1, of the Copyright Act. When interpreting this provision, it must be taken into consideration that there is an inconsistency between the wording "or" in the Copyright Act, and the wording "and" in the text of the Harmonization Directive (EU database directive 96/9/EC). Section 34 of the Copyright Act must be interpreted as if the requirements are cumulative, so that there is no inconsistency with the directive.

The basis must be that there is no particular database protection for compilations that do not meet the investment requirement. In the event that the court finds the requirement of quantity and the requirement of investment to be alternatives, the online news papers cannot, regardless of whether or not the requirements are alternatives, be considered as 'databases' which receive protection under section 43 of the Copyright Act. Reference is made to the fact that the database neither compiles an adequate amount of information nor is a result of a sufficient investment related to the compilation itself. Further, MWN cannot be considered as having 'disposed' of the source owners' databases in full or in part, cf. above on section 2 of the Copyright Act. Neither does MWN produce any reproductions of works, nor is making works available to the public that could have conflicted with section 43, subsection 2, of the Copyright Act. Indexing does not constitute an action that harms the normal exploitation of the work or unreasonably sets aside the source owner's or users' legitimate interests. On the contrary, MWN does the source owners a favour by sending users to their Web sites, which in turn gives the source owners the opportunity for increased advertising revenue.

In the event that the court decides that the service is infringing the database protection in section 43 of the Copyright Act, the legal basis must be that the exception in **section 39h of the Copyright Act**, subsection 4, cf. subsection 5, is applicable. MWN's investigation of the database and creation of an index is normal exploitation of the 'computer programme' to which MWN has right of use to. Reference is made to the source owners' online newspapers having been published on the Internet and made available to the public, with the result that the source owners must be considered to having consented to such use, and that the legislator has meant to include such limited nature to be placed under this provision, cf. Proposition to the Odelsting no. 85 (1997–1998), page 31. The source owners cannot, due to lack of intellectual property protection, be considered to have withdrawn their consent by a unilateral placement of a ‘disclaimer’(robot.txt), cf. Mads Byrde Andersen, "Linking og robottering på Internett", 2006, page 6.

In any event, the court must look to the **freedom of expression** as a limit of interpretation for both the Copyright Act and the Marketing Control Act, cf. section 100 of the Constitution and article 10 of the European Convention on Human Rights. Reference is made to the fact that a possible infringement of the Copyright Act or the Marketing Control Act – in relation to MWN's service – in practice will limit MWN's opportunity of expressing itself, since a link is an expression. In practice, MWN must index in order to be able to provide its users with links.

Section 1 of the Marketing Control Act does not apply to MWN's news notification service. Reference is made to the fact that one must exercise caution of applying section 1 of the Marketing Control Act, where special laws are not applicable. There are no elements in MWN's service that have not already been assessed, cf. above. Reference is otherwise made to there not being any competitive situation or qualified disloyalty by MWN. MWN's linking is done loyally towards the source owners. In the event that the court decides that there is a competitive situation between the parties, the alternative basis must be that the consideration of healthy competition must have considerable weight attached to it, cf. the Iskremdommen included in Rt. 1998, page 1315.

The online newspapers' source owners at Klareringstjenesten must in any circumstance be considered to have established a coordinated arrangement with the purpose or effect of preventing, limiting or distorting competition, cf. **section 10 of the Competition Act**. This is an agreement infringes section 10 of the Competition Act and is therefore invalid, cf. section 12.

The claim against MWN

In the event that the court decides that Klareringstjenesten can demand clearance from MWN, it must be reasoned that there is neither a financial loss nor grounds for liability. If the court still finds that the terms for compensation pursuant to section 55 of the Copyright Act have been met, Klareringstjenesten cannot demand both that MWN covers the profit and the loss. The profit of the infringement can only be demanded where the author has not suffered any financial loss. The court must further reason that MWN cannot be held liable for

compensation for anything other than the specific works that may be infringed, cf. above about headings.

The plaintiff's request:

1. Mediebedriftenes Klareringtjeneste AS is declared unwarranted to claim compensation for Meltwater News AS' indexing, creation and publication of deep links with headings to published editorial material on the Internet.
   Alternatively, the following request is made
2. Mediebedriftenes Klareringtjeneste AS is declared unwarranted to prohibit Meltwater News AS' indexing, and creation and publication of deep links with headings to published editorial material on the Internet.
   The following request is made in addition
3. Meltwater News AS is acquitted of Mediebedriftenes Klareringtjeneste AS' claim for compensation associated with the news notification service, as performed until 6 March 2009.
4. Meltwater News AS is acquitted of Mediebedriftenes Klareringtjeneste AS' claim for compensation associated with the news notification service, as performed after 6 March 2009.
5. Meltwater News AS is acquitted of Mediebedriftenes Klareringtjeneste AS' claim for payment of net profit associated with the news notification service, as performed until 6 March 2009.
6. Meltwater News AS is acquitted of Mediebedriftenes Klareringtjeneste AS' claim for payment of net profit associated with the news notification service, as performed after 6 March 2009.
   The following request is made in addition
7. Mediebedriftenes Klareringtjeneste AS is ordered to pay Meltwater News AS' costs.

The court's assessment

According to section 1 of the Copyright Act, the one who creates a work has the copyright to the work. It is not contested that online news articles are such works.

The author of a work has the exclusive right to dispose of his work "by producing permanent or temporary copies thereof and by making it available to the public, be it in the original or an altered form, in translation or adaptation, in another literary or artistic form, or by other technical means", cf. section 2, subsection 1, of the Copyright Act. If anyone other than the author wants to produce copies or make the work available to the public, consent must be obtained by the right holder or someone who represents the rightsholder.

The legislative reason for the author's exclusive right is the consideration that whoever creates something shall also reap the fruits of it. The basic thought of copyright is that a high level of protection regarding use and exploitation is vital for the intellectual creation process. These basic thoughts were cornerstones of the Berne Convention, which Norway adopted in 1896, and for the Norwegian and international legislation on the field of copyright. The legal theory

has expressed this as : "The so-called reward perspective has been especially strong in continental European copyright: Copyright must give the author compensation for the effort that is at the heart of the work she has created. In close relation to this, the consideration of reasonableness may speak in favour of others not enriching themselves at the expense of the author," cf. Ole-Andreas Rognstad, *Opphavsrett* (2008 manuscript), page 39. The same reasoning is set out in the preface to EU directive 2001/29/EC about harmonization of certain aspects of copyright and related rights in information society. The EU directive has been implemented in Norwegian law.

Klareringstjenesten represents most Norwegian online newspapers and holds/manages a non-exclusive competency of consent for the works relevant for this case.

Klareringstjenesten is willing to give MWN necessary consent for use and exploitation of news articles on the online newspaper's Web pages – in exchange for clearance.

MWN argues that such consent is not necessary as there is no infringement of copyright. The question is the extent to which MWN's news notification service infringes the source owners' exclusive right to use and exploitation, as long as permission is not obtained, cf. section 2 of the Copyright Act. The court will first consider the service that MWN offered its customers until 6 March 2009, and then whether the matter is different for the changed service MWN offered its customers after this time.

The old service – until 6 March 2009

The court must assess the further content of the term "production of copies" (reproductions of works) in section 2 of the Copyright Act. The provision's wording indicates that the terms are meant to have a vast definition. The legislator has specified this in the following statement about production of copies, cf. Ot.prp.nr.46 (2004-2005), page 15:

> Authors have a vast exclusive right to produce copies pursuant to section 2 of the Copyright Act. This right covers everything from copying a work of art with one's own brush to scanning analogue copies, or digitally saving protected material on a server. Also temporary copies are covered by the exclusive right, even though this is not stated expressly in the wording in section 2.
>
> […]
>
> The exclusive right covers full and partial, temporary and permanent, direct and indirect production of copies in any way and in any form.

The term must thus be submitted to a broad interpretation and in light of the technological development.

The question arising from this is the extent to which MWN's indexing of the news articles, possibly the index, can be considered as full or partial, temporary or permanent, direct or indirect production of copies – that can be performed "in any way and in any form".

It is the court's experience that these issues have not previously been dealt with by any Norwegian court. Reference is further made to the Norwegian Non-fiction Writers and Translators Association, NFF, which in 2005 appointed a committee to review digital rights clearance. The committee stated that copying of source material which is available on the Internet in order to make the information searchable, in principle may conflict with the author's exclusive right to dispose of the work, but that the legal status in Norway "is still unclear", cf. the committee's report of 12 June 2006.

The court's basis is that the index for the word "News" will for example be expressed physically in the following manner:

Listing documents containg 'News' (in subindex with 250001 documents [i.e. Web sites])

doc: 8

positions: 133, 178, 754, 950 [i.e. that 'news' is mentioned four times in the article]

doc: 46

positions 66, 101

doc: 50

position: 303

Etc.

What then becomes vital is if the index in itself must be considered to contain copies of the works. In the court’s opinion it must in this context be determined whether the information in the index makes it possible to restore the article.

Considering the information in MWN's index, the experiment Klareringstjenesten's legal representative documented in court must be looked to. The experiment proved that if a person had a printout of the news article in front of him, the article could be reconstructed by logging on to MWN's Web pages and performing a search with hit phrases in MWN's databases. Kathrine Geard's article "Cutting service Meltwater News refuse to pay compensation to Klareringstjenesten. The case will now be tried before the courts. "was restored this way, cf. pages 211 and 212 of the trial bundle. Even if the search hits had to be edited to put the excerpts from the article in the correct order, the experiment indicates that all of the information necessary to reconstruct the articles is saved in the index.

The court view after the presentation of evidence is that MWN depends on having all of this information saved in its index both for it to be possible to retrieve documents in an expedient manner and for its computer programmes to be able to identify which search term hits are new and which ones are old. In other words, the information is necessary to prevent users from being provided with 'old news'.

It is not contested that the indexed material is saved in MWN's databases, and that the storing is not of a temporary nature. However, questions have been raised about whether MWN's index only contains numbers that reflect metadata, which in turn reflects information from the article, or if the index must be considered to be saving numbers that reflect specific words. It is the court's view that the first way of explaining the index will be a somewhat more technical description than the latter, but that the latter provides a better illustration of the thought. This was also supported by witness Klevland, who stated that it was "somewhat artificial" to call the article text metadata, as everything saved on a computer is saved as numbers. However, the court cannot see that the above-mentioned discussion regarding the description of the indexing process is vital to the question of production of copies. Reference is made to that production of copies can be made "in any way and in any form".

The plaintiff has acknowledged that in relation to the old service there was a theoretical possibility of restoring articles, but that this was not practically possible because MWN would have to have developed software in order to execute restores. MWN further argued that the plaintiff's experiment could not be considered to be of any particular significance, as the restoring would not have been possible without having the original document at hand.

The court’s view is that the lack of software cannot be conclusive. Neither the wording, the preparatory works or international legal sources appear to list any exceptions for the situations where the possessor of the saved copy lacks the necessary hardware or similar to have the work available in a more readable form.

A possible development of the necessary software to recreate the work cannot be considered an insurmountable obstacle. The following is quoted from page 44 of Ingvild Jørgensen's article "Internet Search Engines' Collecting and Processing of Web Pages", *Complex* 1/08:

> This software and the systems used to manage the database will allow for the search engine to 'put togheter' a web site again at an extremely rapid pace, because all of the words have been stored with an ID linking them to a certain document. This ID also contains information about where in the document the words were placed, the approximate font size and so on...

Further, it is the court’s view that the indexed material must for all practical purposes be considered unreadable for people, but that restores are also theoretically possible also for people (without having the original document at hand) – even though it would be a much more time and resource-consuming exercise for a person than for a computer.

Klareringstjenesten has argued that it must be taken into consideration that MWN itself having referred to the indexing/index as a copying of the articles cf. an e-mail of 7 November 2003 from Mr. Glittenberg of MWN to Geir Engen of Klareringstjenesten. MWN has argued that this cannot be interpreted literally. Mr. Glittenberg's view has naturally no legal importance in relation to interpretation of section 2 of the Copyright Act.

It is the court's assessment that it is the preparatory works of the law in particular that speak in favour of MWN's indexing of copyright-protected sources must be considered as production of copies, cf. section 2 of the Copyright Act.

However, it has been argued that other legal authorities may speak in favour of another conclusion. Reference is made to MWN's argument that the court must view indexing as not being considered as infringing section 2 of the Copyright Act cf. Trondheim district court's judgement of 17 March 2006 (the Supersearch judgement). The court’s take on the judgement is that the district court primarily assessed whether or not a meta service (a search service where users are not offered to search in databases that are owned by the search service, but are instead offered to search in open databases available at others’ web sites) can be considered an action of *making available* a work to the public. What is assessed in this case is therefore not concurrent to the Supersearch judgement.

In the copyright field, internationally harmonisation should be sought. Reference is made to the legislator's statements in the preparatory works regarding the significance of Nordic coordination in particular and international harmonization in general, cf. for example Proposition to the Odelsting no. 46 (2004–2005), points 2.3 and 2.5, and Proposition to the Odelsting no. 54 (1994–1994), points 2.2 and 2.3. Reference is further made to legal theory where it is stated that "in certain respects [it is] also required to involve source material of foreign and international origin when the Norwegian copyright regulations are to be understood and applied", cf. Rognstad, *Opphavsrett* (2008 manuscript), page 39. The question is thus if there are relevant international interpretation factors that should be taken into consideration weight.

MWN has argued that the court must look to the judgement of 17 July 1993 (Paperboy), where the German Supreme Court decided that the service of a digital news provider did not infringe any copyright regulations nor infringe the provision that corresponds to section 1 of the Marketing Control Act. The German Supreme Court stated that if Paperboy, following predefined search criteria, listed newspaper headings and short excerpts of topical publications, the author's exclusive right was not breached. This was explained by stating that reproduction of such excerpts from the articles could not be considered as making available to the public or reproduction copyrighted parts of the works. Consequently, the judgement has limited importance when it is undisputed that the indexed news articles are original works.

Neither can the court find that the decision by the Danish Maritime and Commercial Court of 24 February 2006 (the OFIR judgement) explicitly determine whether or not indexing/an index work is considered as reproduction. Reference is made to the web pages which were partly copied, and deep linked to, did not contain copyrighted material (property ads with factual information). According to the judgement, neither the web pages were protected as a database. The Danish court's statement that search services must be considered desirable and

necessary for the functionality of the Internet can therefore not be taken out of context and be taken into consideration in the current case, without reservations.

MWN has further argued that the Dutch court of first instance judgement of 22 August 2000 (the Kranten.com case) must provide guidance for the court in relation to the question of whether or not indexing constitutes a reproduction. However, in the court's view, the above-mentioned judgement has limited importance in this case. The reasoning for the Kranten case was that the online newspapers' lists of news article headings (contents) as a starting point were not original works, and in the event that certain headings as an exception were original works, the quotation right as an exception would apply. The current case is concerned with a different matter, ; whether or not a reproduction of the *entire* article, which is a original work.

The court is of the opinion that the Dutch judgement of the court of first instance does not change the view on the matter , and that MWN's indexing of source material must be considered a reproduction , within the meaning of section 2 of the Copyright Act. This conclusion is also supported by statements in legal theory, cf. page 46 of Ingvild Jørgensen's article "Internet Search Engines' Collecting and Processing of Web Pages", 2008, and page 237 of Ole-Andreas Rognstad, *Opphavsrett* (2008 manuscript). The following is quoted from the Rognstad book:

> “If one conclude that publishing links is *not* an action of making available to the public, this must also apply to links generated by search engines (Google, Yahoo, MSN, etc.). However, this does not mean that the operation of the search engines goes clear of the scope of section 2 of the Copyright Act. The indexing of the work that the search engines normally perform constitutes a reproduction of the work.”

According to this, the court must decide whether or not MWN's argument that the reasoning must be that the source owners, by making the news articles available online, must be considered to having given a tacit consent to reproduction of the works through indexing.

The defendant's legal representative has argued that Norwegian law does not acknowledge tacit consent. With reference to the Supreme Court's discussion of tacit consent in the judgement included in Rt., page 902, paragraph 12, the court cannot agree with the defendant's argument. Further reference is made to the Napster judgement, where the Supreme Court touched upon this issue, but decided the matter on a different basis, cf. Rt. 2005, page 41, paragraph 56.

The consideration of a well-functioning Internet must be taken into consideration when the significance of a possible tacit consent is assessed. However, the court finds that the tacit consent must be applied with great caution. Reference is made to the clear starting point that the author has the exclusive right to dispose of his work; i.e. that the Copyright Act is primarily a rights act, and not a 'refusal act'.

Trondheim District Court's "Supersearch judgement" states that the author himself has made a choice by making the database publicly available on the Internet, and that "functional changes by a meta service in order to operate it's a search service, […] which in principle is not contrary to the Copyright Act". A similar reasoning is made in the Paperboy judgement. In the Paperboy judgement, the German Supreme Court stated that when a party uses the Internet to disperse its offerings, that party must understand the consequences this can result in, due to the public's interest in exploiting the Internet and the opportunities attached to it. Further reference was made the fact that without the search services and its use of links, a meaningful use of the complex volume of information on the World Wide Web would b impossible.

Support for these perspectives is also found in Norwegian legal theory, cf. Rognstad, *Opphavsrett* (2008 manuscript), page 237:

> "In general, publishing copyrighted material on the Internet should be considered as consent to the formal and loyal linking and use of search engines, […]"

The plaintiff has argued that the tacit consent associated to the publishing of material on the Internet cannot be withdrawn. The court does not find a basis on which to apply such an understanding, and refers to the legislator's statements in Proposition to the Odelsting no. 46 (2004–2005), page 54, where the following is stated:

> "The Ministry is of the opinion that there is no basis for asserting that simply neglecting to explicitly assert one's rights pursuant to the Copyright Act will constitute that these are considered submitted in full or in part. […] In relation to making available through electronic networks and otherwise on digital carriers, such reasoning could lead to the assertion that works are only protected when the right holder actually has implemented technological protection systems to control the use. This does not correspond with the current legislation. […] … the development of alternative approaches to clearance that distinguish between commercial and non-commercial reuse – would make it easier to clarify through online editors' and right holders' more specific reuse notices on their web sites."

It has been stated in legal theory that "… to avoid this being too unreasonable, the access to withdraw consent in some relations, as with search engines, is granted without reservation", cf. page 55 of Ingvild Jørgensen's "Internet Search Engines' Collecting and Processing of Web Pages", 2008, page 55.

When the court arrives at the conclusion that the source owners cannot be considered to have given their consent to the indexing performed by MWN, this is done on the basis of the specific circumstances that speak against such a result. Firstly, reference is made to the letter of 14 October 2008 from Klareringstjenesten's legal representative to MWN's legal representative, where MWN was asked to desist from, among other things, indexing source material. Further, reference is made to the conditions and limitations for use that appear on the source owners' web sites, cf. pages 146–148 of the trial bundle. Further, Klareringstjenesten's view on the case itself must be considered to be manifested through the request to be provided

the name of MWN's 'user agent', in order to establish a technical/ethical barrier for indexing using a so-called 'robots.txt'. The request was denied by MWN in the written submission of 19 December 2008. In light of this, MWN's indexing of copyright-protected material on a commercial basis cannot be considered "loyal use of search engines". MWN consequently cannot build any right on consent.

It can be questioned if the underlying reasons for the regulations regarding the author's exclusive right are applicable to MWN's indexing of copyrighted material. MWN has argued that it must be in the society's interest to be able to exploit the work for the joy of the community. It has further been argued that indexing will contribute to promote further technological development, hereunder adaptations in order to make use of the information on the World Wide Web, and that preparations must be made for the operation of search engines etc. In this context, it is noted that MWN defines itself as a news notifier with a search engine, and has particularly made reference to the so-called E-Commerce Directive (2000/31/EC), which states:

> "… the Commission has encouraged Member States to further develop legal security for internet intermediaries. It is encouraging that the recent case-law (the Paperboy judgement) in the Member States recognizes the importance of linking and search engine to the functioning of the internet."

In legal theory, it has been stated that "the general rule is that the author has an exclusive right to all disposal of the work that cannot be deprived him due to compelling social reasons", cf. Wagle and Ødegaard jr., *Opphavsrett i en digital verden*, 1997, page 47. It is the court's assessment that the legislator has performed this assessment of these conflicting interests through the creation of the exceptions that are listed to the author's exclusive right. The question is therefore whether or not any of these exceptions are applicable to this matter.

Pursuant to this, the court must decide whether or not MWN's argument that it must be exempt from a clearance obligation pursuant to section 39h, subsection 4, of the Copyright Act, cf. section 5, which states:

> "Any person having a right to use a database may perform such acts as are necessary in order to access and make normal use of the contents of the database.
>
> No exceptions from the provisions of the second, third or fourth paragraphs may be made through agreement."

According to a natural understanding of the wording 'right to use', MWN's news notification service falls outside the scope of the provision. This is also supported by the preparatory works, which state that "the provision entails that it … will be possible for the user to conduct actions subject to exclusive right without the consent of the right holder through a database to which he has received a lawful right of use ... if this is necessary in order to be able to use the database in accordance with the purpose", cf. Proposition to the Odelsting no. 85 (1997–1998), page 40. The example referred to in the preparatory works is a loan of a CD-ROM from a library. MWN cannot be considered to have any rights to the source material

transferred to it, neither explicitly nor implicitly. After this, the court finds it clear that section 39 of the Copyright Act is not applicable in this matter.

The court has decided that MWN's indexing of news articles on the Internet, as conducted until 6 March 2009, must be considered a reproduction within the meaning of section 2 of the Copyright Act, and that MWN had a clearance obligation.

The new service – after 6 March 2009
The old service was changed on several points. However, the court will first review the change associated with the indexing, cf. section 2 of the Copyright Act. Reference is made to MWN removing the so-called 'stop words' from its keyword list, and that these words thus no longer are subject to indexing and storage in the database. As mentioned, it is not contested that MWN in total removed some 17,000 words. After the presentation of evidence, it is clear that the Norwegian language has a total of some 300,000 words, cf. Tanum's big Norwegian dictionary. This means that some 5.7 % of the words have been removed. This leaves the question if the material that can be restored from the data stored on MWNs database can be considered as “full or partial” reproduction within the meaning of section 2 of the Copyright Act.

With reference to the Supreme Court's emphasis on the Advocate General's preliminary ruling in the Finnanger judgement (Rt. 2005, page 1365), the court finds that in this context one must look to the Advocate General's preliminary ruling (judgement proposal) of 12 February 2009 in the so-called "Infopaq case". In the Infopaq case, the Judge Advocate General introductorily makes reference to it being necessary to have "‵a broad definition of these acts [right of reproduction] is needed to ensure legal certainty within the internal market’", cf. paragraph 57. It is further stated that is should be arranged for a golden mean between a technically-based interpretation, and the fact that the partial reproduction must have content. The Judge Advocate General then draws up several criteria that must be met. The following is quoted from paragraph 58 (freely translated from Danish into Norwegian):

> ”First, it is necessary to establish whether the reproduction in part is actually identical to a part of the original of the work (element of identification). In the case of reproduction in part of a newspaper article, that means specifically that it is necessary to determine whether the same words are found in the reproduction as in the newspaper article and whether those words are in the same order. Second, it must be established whether one can, on the basis of the reproduction in part, recognize the content of the work or determine with certainty that it is an exact reproduction in part of a given work (element of recognition).”

The court's basis is that it may vary from article to article how many words that will be missing. MWN has argued that some of the words that will be missing will be decisive to whether the article will make sense, as words like "not" can be missing. In the court’s opinion, this will not be decisive in relation to the two criteria drawn up by the Advocate General.

Firstly, it will be longer passages from the article that are completely identical with the original work, also in terms of the order of the words. Secondly, the reproduction, even without the stop words that may be found in the article, will easily b able to meet the recognition criterion. The court's assessment is also supported by the example that the defendant presented in court, where the stop words in the article were erased. The example showed that the reproduction would essentially be identical to the original work – and that it thus also was easily recognizable in relation to the original work.

On this basis, the court finds that MWN's indexing, also as executed after 6 March 2009, entails a reproduction within the meaning of section 2 of the Copyright Act. It therefore will not be necessary for the court to look at the importance of the other changes that were made after 6 March 2009. Reference is otherwise made to the court's discussion regarding the old service, which will also apply to the new service.

The old and the new services
Based on the above-mentioned conclusions, the court does not find any reason to make any assessment of the general clause in section 1 of the Marketing Control Act or the database protection in section 43 of the Copyright Act.

Regarding the issue of a possible conflict between section 43 of the Copyright Act and the text of the directive (i.e. whether the two conditions mentioned in the provision must be considered cumulative or alternative), the court must note that the conditions must be considered alternative – in accordance with the provision's wording and preparatory works, cf. the principle of legality. However, within the frame of the wording of the provision, interpretations that that entail avoids conflicts with the obligations pursuant to the directive should be sought to the least degree possible. In this context, reference is made to statements in the legal theory which states that the presumption principle cannot be stretched as far as to interpret away a clear conflict, where the provision in general regulates the legal relationship between private parties, cf. Lorentzen, *Sui-generis – vern av sammenstillinger*, 2002, page 58.

MWN has argued that through Klareringstjenesten's handling of the clearance obligation or lack of such, Klareringstjenesten must be considered to have made a decision on behalf of the source owners, or to have established a coordinated scheme, "which's purpose or effect to prevent, restrict or distort competition", cf. section 10 of the Competition Act. It is the plaintiff that has claimed the Competition Act's provision, and the burden of proof lies thus on this side.

Considering the relationship between copyright and the competition legislation, the court will make reference to statements on page 45 of the Proposition to the Odelsting no. 46 (2004–2005):

> "Clearance methods are not regulated in the directive [the EU directive on Copyright], but the preamble of the directive (18) specifies that the directive does not affect the member states'

> arrangements concerning management of exclusive rights, including compulsory licenses. The preamble (17) further points out that a high level of rationalization and transparency is necessary within management organizations, out of consideration of the competition rules. Case law in the EU shows that competition law is used to an increasing extent to regulate certain unfortunate consequences of exclusive right management within intellectual property law."

The issue can thus be relevant.

However, the court wants to point out that MWN's presentation of evidence related to this rather comprehensive topic is manly limited to Lyseggen's testimony. Lyseggen has explained that in his view, Klareringstjenesten treats the actors in the market differently; actors which Lyseggen considers as his competitors. Lyseggen further stated that Klareringstjenesten's distinction between 'news notifiers' and 'news aggregators' must be considered fabricated in this context.

Based on the presented evidence, the court does not consider it probably that the conditions in section 10 of the Competition Act have been met.

According to this, the court must determine whether the freedom of expression can limit MWN's clearance obligation, as argued by the plaintiff. In this context, MWN has stated that linking must be considered an expression, and that the clearance obligation thus applies limits on MWN's possibilities for expressing itself.

The court does not disregard the possibility that linking can be considered an expression, and that such an expression in principle can be protected. Reference is made to the statement in the preparatory works to section 100 of the Constitution: "Following an overall assessment, the Ministry believes that a constitutional provision regarding freedom of expression should provide protection against interventions based on private autonomy and for expressions that are non-political", cf. Recommendation to the Storting no. 270 (2003–2004), point 2.

However, the court's reasoning is that MWN can express itself "as much as it wants" by sending links to its users, as linking in itself does not require the source material to be indexed. MWN's indexing is connected with the search function, including the possibility of retrieving source material. In the court's view, MWN having to index the source material for all practical purposes related to its business must primarily be considered a side of commercial operation, and not a possibility option for presenting expressions. On this basis, the court cannot see that the clearance obligation can be considered a restriction of MWN's freedom of expression, cf. the Constitution section 100 and the European Convention on Human Rights article 10. Further, reference is made to intellectual property values also being protected under the European Convention on Human Rights, annex 4 to the protocol, article 15 (1) c.

The court accordingly finds that the freedom of expression does not set any restrictions on Klareringstjenesten's requirement for clearance.

Klareringstjenesten's claim against MWN
Klareringstjenesten has claimed compensation from MWN for the loss of remuneration that has resulted due to MWN's failure to clear the reproduction, pursuant to the previously negotiated agreement between the parties. In addition, Klareringstjenesten has demanded that MWN relinquish its net profit related to the period in which the copyright was infringed.

[Following paragraphs omitted]

After a discretionary assessment, the court has decided that MWN must relinquish a net profit of NOK 3,750,000 for the period of 15 October 2008 to 25 May 2009. Interest advantages are included in this amount.

Costs
[Following paragraphs omitted]

CONCLUSION

The Primary claim:

1. Mediebedriftenes Klareringstjeneste AS, represented by the Chairman of the Board is acquitted.

The counter-claim:

2. Meltwater News AS, represented by the Chairman of the Board, is ordered to pay NOK 3,750,000 – three million seven hundred and fifty thousand 00/100 – to Mediebedriftenes Klareringstjeneste AS within 2 – two – weeks of service of the judgement.

Costs:

3. Mediebedriftenes Klareringstjeneste AS is awarded the legal costs of the case and Meltwater News AS, represented by the Chairman of the Board, is ordered to make compensation for Mediebedriftenes Klareringstjeneste AS' costs amounting to NOK 520,000 – five hundred and twenty thousand 00/100 – exclusive of VAT within 2 – two – weeks of service of the judgement.*

Court is adjourned.

/sign/

Mari Kimsås