

Translated from the Icelandic

(From the Records of the Icelandic Supreme Court)

Thursday, 19th September 2002.

No. 124/2002.

Mál og menning Ltd.

(Represented by Halldór Þ. Birgisson,
Supreme Court Advocate.)

versus

the National Land Survey

of Iceland (Landmælingar Íslands),

represented by Erla S. Árnadóttir,
Supreme Court Advocate.)

Copyright. Maps. Fees.

M purchased three coverages of L's digital map base. Under the terms of purchase that M signed, the publication, reproduction or distribution of the materials, processed or unprocessed, was prohibited except under licence from L; publication rights, rights of use and copyright were to be in accordance with the National Land Survey of Iceland and Map-making Act, No 95/1997. It was not disputed that M had published maps without obtaining a publication licence in order to do so. It was disputed whether such a licence was necessary for the publications in question, and if so, then what a suitable fee would be for such a licence. M maintained that Article 10 of the Act No. 95/1997, which provides for funding to the National Land Survey of Iceland, did not, in 2000, provide for the charging of a fee for the use of materials in this way. Furthermore, M argued that Iceland could not hold copyright in the coverages referred to, and consequently that no special fee should be paid for use of the materials. The Court concluded that Iceland's rights regarding these digital materials were subject to Article 50 of the Copyright Act as amended by the Act No. 60/2000. L based its fees on the National Land Survey's Scale of Charges, No. 323/1999, which was published before Article 10 was amended by the Act No. 171/2000. The Court took the view that L had had an authorisation in law to charge fees for the sale of data and for their use. Furthermore, the scale of charges could only be understood as specifying a particular fee for each publication, and the fee categories depended on the size of the map and how much map data, text, graphics and other materials from L the published material contained. The Court considered that L had demonstrated its right under Article 50 of the Copyright Act, and that it was entitled to charge M a fee for the use of the materials that M received; from the outset, L had reserved the right to charge a fee for the use of materials it provided. The Court considered that M had not demonstrated that L had determined too high a fee according to its scale of charges or that the fee it charged was excessive in any other way. Consequently, the District Court judgement was upheld.

Supreme Court Judgement.

This case is being judged by Supreme Court Justices Guðrún Erlendsdóttir, Garðar Gíslason, Haraldur Henrysson, Hrafn Bragason and Pétur Kr. Hafstein.

The appellant brought this appeal before the Supreme Court on 12th March 2002. It demands, principally, that it be acquitted of all the plaintiff's claims, and as a secondary demand, that the plaintiff's claims be reduced. In addition, it requests legal costs at the District Court level and before the Supreme Court, and as a secondary demand, that legal costs be waived.

The plaintiff demands that the District Court judgement be upheld, and requests the payment of legal costs before the Supreme Court.

I.

On 2nd July 1995, the appellant purchased three coverages of the plaintiff's digital map base, IS 500V. These were contour-line, hydrology and road-system bases. Under the terms of purchase signed by the appellant, all distribution of the materials to a third party without the written permission of the defendant was prohibited. Nor was it permitted to publish, reproduce or distribute materials, whether processed or unprocessed, without the defendant's permission. On 29th January 1998 the appellant received and paid for a licence for the publication of two maps in the scales of 1:600,000 and 1:300,000. On 26th February 1999 it received a licence for the publication of four maps (a total of 10,000 copies) in the scale of 1:300,000, and paid for this, stating a reservation with reference to its previous correspondence with the defendant's lawyer, in which it had questioned the justice of its being required to obtain licences for its publications and expressed doubts about the obligation to pay for such licences. Since then, the appellant has not applied for publication licences from the defendant. The claim before the Court is for publication fees for maps of all four quarters of Iceland in the scale of 1:300,000, a book of maps in the scale of 1:300,000, a travelling map of Iceland in the scale of 1:600,000 and a geological map of Snæfellsnes in the scale of 1:100,000. According to the pleading by the parties, there is no dispute about the fact that the appellant has published these maps without obtaining permission to do so. On the other hand, the parties disagree as to whether publication licences are necessary for these publications. Should the Court conclude that licences are necessary, then it must address the dispute concerning an appropriate fee for such licences.

II.

The defendant's demands are in accordance with two invoices, the first of which is dated 8th December 2000, and is stated as being for publication licences for the year 2000, and the second of which is dated 5th October 2001 and is stated as being for the same period, being issued in connection with corrections to the appellant's print-run figures. The three coverages received by the appellant during 1997 were from the defendant's digital database, Ísland Vektor 1:500,000, this database being based on the defendant's travelling map in that scale. The main purpose of the database is to provide data on the relief, hydrology and road systems of Iceland as a whole. This material can be used in various types of map production and processing in geographical data systems. The defendant's travelling map was produced over a seven-year period, and was first published in 1978. The basis of that map were the contour lines, hydrological features and coast lines of the Atlas Maps in the scale of 1:100,000 that were produced by the Danish National Land Survey (Geodætisk Institut) in Copenhagen; the defendant had received these basic materials under agreements with that institution.

The defendant is a state body under the Ministry for the Environment. Its role is to work at projects in the spheres of geographical surveying and map production. Under Article 8 of the National Land Survey of Iceland and Map-making Act, No. 95/1997, Iceland is the owner of all rights that the National Land Survey of Iceland has acquired, and the National Land Survey is to defend the interests of Iceland in the spheres of copyright and right of use of all materials that it has acquired, produced or published in connection with surveying, maps or images of Iceland. The Article states that other matters concerning copyright are subject to the Copyright Act, No. 73/1972, with subsequent amendments. Under Article 9 of the same Act, the National Land Survey of Iceland is to disseminate data and grant access to materials in its keeping, and is authorised to grant the right to use all the data in its keeping in the field of geographical surveying and map-making, with the condition that the origin of such data is to be acknowledged and its reliability is not to be compromised.

It was part of the defendant's official functions to preserve and cultivate the materials referred to in this case and to provide the appellant with the data it requested, and this it did. The appellant paid for access to the data. It also signed conditions for the delivery of the data, as is described above, and undertook not to publish or reproduce the data it received, either processed or unprocessed, without having obtained a special licence. Those conditions contained a statement to the effect that the right of publication was subject to the National Land Survey of Iceland and Map-making Act. The appellant obtained a publication licence for its publications in 1998, and to some extent for 1999, paying a "publication fee" for this. These licences were for specific maps, and according to their wordings they

applied only to the print-runs specified in them. The appellant questions whether the charging of this fee was permitted in law, and has refused to make further payments. It alleges that Article 10 of the Act No. 95/1997, which provides for the financing of the National Land Survey of Iceland, contained no provision in 2000 for the collection of a fee for the use of the materials in this way. The appellant also argues that Iceland is not able to own copyright in these coverages, and consequently that no special fee should be paid for the use of the materials.

III.

The appellant chose to obtain the materials in question from the defendant, and accepted them subject to certain conditions. Under these conditions, publication rights, rights of use and copyright were to be subject to the Act No. 95/1997. The appellant's obligation to make payments is subject to that Act. This case concerns materials that were owned by Iceland and that the defendant was obliged by law to preserve. They had been produced from a map in which Iceland owned the copyright under paragraph 3 of Article 1 of the Copyright Act. It has not been disputed that these digital data, which the appellant was permitted to use, cost considerable sums of money to produce. Iceland's rights concerning such data are subject to Article 50 of the Copyright Act, as amended by the Act No. 60/2000; the defendant's invoices were issued after the commencement of that Act on 26th May 2000, and there no evidence to suggest that the print-runs of the maps in question were not printed after that date. The Court must conclude that in this case, the defendant is entitled to claim payment for these rights.

The defendant based its fees on the National Land Survey of Iceland's scale of charges No. 323/1999. At the time when the scale of charges was issued, paragraph 1 of Article 10 of the Act No. 95/1997 contained provisions stating that the National Land Survey of Iceland was to raise income in the following ways: 1. By the sale of specialised services and data. 2. Through service fees for making materials available. These fees were to be determined in a scale of charges to be approved by the minister. Apart from these sources of income, the cost of running the National Land Survey of Iceland was to be paid by allocations from the State Treasury. The defendant sold specific data to the appellant and made relevant materials concerning that data available to it. The Court must take the view that the defendant had an authorisation in law to charge a fee for the sale and use of data. As was described in the District Court judgement, this provision has subsequently been amended by the Act No. 171/2000.

It has not been disputed that the invoices were issued according to the scale of charges referred to. The appellant argues, on the other hand, that a scale of charges can not apply to general earned income, but only to service charges, which may not exceed the costs ordinarily incurred by the institution when providing the service (*cf.* Articles 40 and 77 of the Constitution). The appellant argues that this was not the case, since the fee charged was far in excess of the cost ordinarily arising from the service, and was immoderately high. It has been stated above that the production of these materials cost considerable sums of money. The defendant argues that the scale of charges was designed with this expense in mind. The director of the defendant's Administrative Division stated before the Court that the prices charged by the same sort of institutions overseas were taken into account when the price base of the scale of charges was determined. As is stated above, the dispute between the parties in this case concerns payment for the right of use of materials, and not for services provided. The scale of charges can only be understood as stating a specific fee for each publication, with price categories being determined by the size of the map and how much map data, text, graphic material or other material from the National Land Survey of Iceland the material printed in the final published version contains. The defendant has charged fees in accordance with the second price category, which is based on 30-60% of the appellant's maps consisting of material from the defendant. The appellant has rejected the claim that the amount of material from the defendant is as great as is assumed in the invoices, and maintains that the maps should have fallen into the third price category in the scale of charges, which is based on 10-30%, or less, of the published material consisting of basic material from the defendant. The appellant has not submitted any assessment by court-appointed expert witnesses or any other sufficient materials in support of this assertion, and must suffer the consequences of this in the light of how the case has been presented to the Supreme Court.

In the light of the foregoing, the Court considers that the defendant has demonstrated its rights under Article 50 of the Copyright Act and that it had an authorisation in law to charge the appellant a fee for the use of the data that it received. From the outset, the defendant reserved the right to receive recompense for the use of data it provided. The appellant has not demonstrated that the defendant set its fees too high in terms of its scale of charges or that the charging of fees according to the scale of charges was excessive in any other way. For these reasons, the Court must uphold the District Court judgement.

In accordance with this conclusion, the Court considers it right that the appellant pay the defendant its legal costs before the Supreme Court as determined further in the judgement below.

Conclusion:

The District Court judgement shall stand unchanged.

The appellant, Mál og menning Ltd, is to pay the defendant, the National Land Survey of Iceland, ISK 250,000 in legal costs before the Supreme Court.