

DFF

Digital
Freedom Fund

The Digital Freedom Fund (DFF) supports partners in Europe to advance digital rights through strategic litigation. This is one of a series of case studies, which highlight the work of DFF's grantees working to protect digital rights.

Key actors

Open Knowledge Foundation (OKF)

Open Knowledge Foundation (OKF) is a non-profit campaigning organisation based in Berlin, Germany. Its mission is to create a more open world where all non-personal information is open and free for everyone to use, build on and share. OKF defines 'open knowledge' as any content, information or data that people are free to use, re-use and redistribute without any legal, technological or social restriction. In OKF's view, open knowledge generates social and economic value and is indispensable for a functioning democracy. It strives to make open knowledge an integral component of the modern world, online as well as offline.

This case was brought by Arne Semsrott, a staff member at OKF and an expert in the domain of Freedom of Information (FOI). Arne is the project lead for FragDenStaat.de (a platform that supports members of the public to make FOI requests). He also works as a freelance journalist and engages with other NGOs in topics related to transparency and lobbying.

OKF is also working with advocacy partners, including:

- German Union of Journalists, a lobby group and journalist network that provides legal advice and training to its members;
- Wikimedia, a global movement whose mission is to bring free educational content to the world;
- Reporters Without Borders Germany, a leading non-profit working to defend and promote freedom of information.

Bundesinstitut für Risikobewertung v. Arne Semsrott (Open Knowledge Foundation Germany)

Case facts at a glance

Court:

District Court Cologne (Landgericht Köln)

Judgement date:

12 November 2020

Case outcome:

OKF successfully argued that German authorities were misusing copyright law as a way to censor information that should be freely available to the public. It made the case that this violated fundamental freedoms, such as the right to information, the freedom of the press, and freedom of expression.

Background to the case

In October 2018, OKF used a freedom of information (FOI) request to obtain a copy of a report written by Germany's Federal Institute for Risk Assessment (Bundesinstitut für Risikobewertung, BfR) about a controversial weedkiller called glyphosate. At the time there was growing controversy about the use of this herbicide, with concern that it had carcinogenic properties and could potentially cause cancer in humans. BfR released a copy of the report to OKF with a warning that if it published the report BfR would sue for copyright infringement. OKF felt that the report should be openly available for the public to read and so it proceeded to publish the report, despite the warning. BfR demanded that OKF take the report off its website, but OKF refused. BfR then obtained a court injunction for its removal and so this time OKF complied with the request.

OKF's view was that the German authorities were misusing copyright law as a way to censor information that the public had a right to see. But while OKF was prohibited from publishing the report itself, there was nothing to stop others from requesting it themselves. And so, OKF developed a tool to help members of the public submit an FOI request at the touch of a button. This generated a huge response and eventually BfR released the report. In November 2020, the court found in favour of OKF. BfR has since appealed.

“ This glyphosate report relates to a health issue of great concern to the people of Germany. They should be allowed to see it in full.

Arne Semsrott, OKF

A snowballing public awareness strategy

The key to OKF's success in this case was its innovative strategy to encourage the general public to request access to the BfR report through individual FOI requests. OKF widely publicised its FOI request website and worked with other civil society organisations to raise awareness about the case. OKF drummed up support from the media, MPs and academics. Arne was invited to speak about the case at an academic conference and a number of media bodies became advocacy partners helping to raise awareness about the case, including the German Union of Journalists, Wikimedia and Reporters Without Borders. OKF also recognised that there was a prominent environmental angle. It collaborated with Greenpeace, who spread the word about the FOI request website with its own supporters.

The widespread controversy surrounding the use of glyphosate in Germany meant that OKF was pushing at an open door. Many people were concerned about the potentially harmful effects of the weedkiller and wanted to take action. OKF managed to mobilise 45,000 people to request the report, and they flooded BfR with requests for access to the document. Eventually BfR made a formal decision to grant access to the report, which was announced in the official federal gazette. The concerted advocacy and outreach campaign certainly paid off for OKF. It was the sheer volume of FOI requests that was the secret to success in this case.

“OKF forced BfR's hand by having 45,000 people request the report almost overnight, which eventually led the court to rule in our favour

Raphael Thomas, Lawyer, Thomas Law Office

People power as a means for change

This case demonstrates a worrying trend where public authorities are using copyright law as a means of preventing activists and journalists from scrutinising and sharing government documents which have been lawfully obtained via FOI requests.

Copyright law should be used to protect the moral rights of the author of a report, not to protect a public authority from an unfavourable report. The use of copyright law in this underhand way effectively creates a slippery slope for unlawful censorship on the part of the authorities.

At its heart, this is a case about power. On the one hand, the power of the authorities to censor and clamp down on information that should be in the public domain. And, on the other, the tremendous power of people coming together to challenge and claim their right to view content that is in the public interest. OKF's role in mobilising the general public was vital to achieving success in this case. It illustrates the power of strategic litigation combined with concerted advocacy and public awareness raising in matters relating to freedom of expression.

As well as progressing with the litigation, OKF is continuing to work on advocacy and outreach. The ultimate aim is to achieve legislative change to copyright laws in Germany. OKF is hoping to achieve this by lobbying the German government and has an ever-growing support base from the German public thanks to its concerted advocacy campaign.

“This case serves as a deterrent for German authorities who want to use copyright law as a way to censor the public.

Arne Semsrott, OKF



DFF's role



Financial assistance

DFF provided OKF with the financial support they needed to proceed with the litigation.



DFF workshops

OKF staff participated in the Montenegro strategic litigation retreat and have attended several planning meetings to talk through the strategy for the case.



Making connections

DFF have provided OKF with valuable access to a community of practice and insights into different approaches in the field of strategic litigation. This experience has been empowering for the entire OKF team.

“Having DFF's support from the start made us feel a lot calmer about planning the litigation and gave us the confidence to proceed.

Arne Semsrott, OKF