[Docket No. 2011–10]

Comment submitted electronically by Robert M. Kunstadt (R. Kunstadt, P.C.) on behalf of co-authors Robert M. Kunstadt and Fritjof Haft

Table of Contents

1 About the Co-Authors 2

1.1 Fritjof Haft 2

1.2 Robert Kunstadt 3

2 Summary of Recommendations 3

3 New Legal Procedures for Small Cases 4

3.1 Basic Rules for Implementing "Simple Justice" 4

3.2 Adaptation to Small Copyright Cases 6

3.3 Lessons from the German "Streitwert" System 6

4 Implementation of Automated Workflow for Small Cases 7

4.1 Computer-based Forms for Very Simple Cases 7

4.2 Common Case Structure for Small to Medium Cases 7

4.3 Portal-based Tools and Machine-to-machine Communication: Two Alternatives for Judicial Information Exchange 8

4.4 Ideas from the GAIUS Research Project 8

4.4.1 Basic Ideas of Workflow Software 9

4.4.2 The Normfall Manager 10

4.4.3 The GAIUS Project 11

4.4.4 Large Cases and Small Cases 12

4.4.5 Adaptation to the Needs of Copyright Cases 13

4.5 “One-Write" System 15

4.6 Preparing a Checklist of Pleading Elements for Use in Automated Forms 15

4.7 Compatibility with Law-Office Automation Programs via a Common-Interface Standard 16

These comments are prepared in response to the Copyright Office's Notice in the *Federal Register* of October 27, 2011, calling for suggestions about the handling of small copyright claims [Docket No. 2011–10].

1 About the Co-Authors

These comments have been prepared jointly by the co-authors[1]:

1.1 Fritjof Haft

I am Professor of Law and Legal Informatics at EBS Law School in Wiesbaden, Germany. I studied law at Ludwig Maximilian University in Munich, received a doctorate in law at the University of Gießen, Germany. I completed my post-doctoral studies (habilitation) in Legal Informatics and Criminal Law at the University of Munich from 1975 to 1980. From 1982 to 2005, I held the Chair for Criminal Law, Criminal Law Procedure, Philosophy of Law and Legal Informatics at the Law Faculty of the Eberhard Karl University in Tübingen. I am author of scholarly publications regarding legal informatics, alternative dispute resolution, criminal law and philosophy of law. I am the founder of the Tübingen Negotiations Seminar and was involved in the creation of the Mediation course of study at the distance-learning University of Hagen (starting in 1998). I am member of the examination committee for the Mediation distance-learning course in Hagen and a member of the executive committee of the German Society for Mediation. I am also a Research Fellow of the Gruter Institute for Law and Behavioral Research, Portola Valley, California.

Since 1968 I have been active in the field of Legal Informatics ("Rechtsinformatik"). In 1988/89 I started the LEX Project, a joint research project of the University of Tübingen and IBM aimed at building a natural-language-based expert system in law. I am a founding member of Artificial Intelligence and Law, an international forum for the dissemination of original interdisciplinary research. In 1995 I initiated the Normfall Project at the University of Tübingen. In 1999 I founded Normfall GmbH with its head office in Munich, as a spinoff from the University in Tübingen. We develop software for lawyers based on academic research, for practical use in law firms and courts. Our main product, Normfall Manager, is a content-neutral computer tool that is used in law firms and courts in different branches of the law. It combines tree structures (which play a central role in the processing of information in Continental legal systems based on Roman Law) with the use of spreadsheets (which facilitate comparison of cases in Common Law systems).

---

[1] The authors wish to thank Mr. Martin Rollinger of SINC GmbH and Ilaria Maggioni, Esq. of R. Kunstadt, P.C. for their suggestions on review of the draft for this comment.

In my capacity as professor of law, I initiated a research project named "Gaius". The idea is that in order to promote efficiency, lawyers should not work against each other but together in a software-assisted "one-write" method. We are working in a team with software companies (SINC GmbH, Wiesbaden; Microsoft Germany; Oracle Germany; Technum Steinbeis-Unternehmen für Prozesstechnologie, Darmstadt, and ra-micro/jurasoft (a leading German developer of management software for law firms)), as well as with judges and government administrators, lawyers from the Hessian Bar Association and computer scientists from the Technical University Darmstadt. The initial applications have been in a case concerning the environmental and building permits for the Staudinger coal plant in Hesse; and a case concerning inbound flight routes at Frankfurt airport. Both cases are burdened with a large document load and a strict schedule due to intense media attention and the political importance of the issues at stake.

1.2 Robert Kunstadt

I am the Managing Attorney of the law firm R. Kunstadt, P.C. (New York, N.Y.). I am a graduate of Yale University and the UCLA School of Law. I studied intellectual property law (including copyright law) under the late Professor Mel Nimmer at UCLA, founding author of the treatise *Nimmer on Copyright*. I was awarded a national prize in ASCAP's Nathan Burkan Competition in 1975. I held a post-graduate research fellowship at the Max Planck Institute for Patent, Copyright and Competition Law in Munich, Germany from 1975 to 1977. At that time, the Institute was under the co-direction of Prof. Dr. Dr. h.c. Eugen Ulmer, the leading expert on German copyright law.

In 1978, I commenced work as an attorney at the New York office of the IP firm Pennie & Edmonds. I worked at Pennie & Edmonds, in the capacity of associate and subsequently partner, until 1997. While at Pennie & Edmonds, I was on the team that obtained summary judgment for ITT in a leading case on copyright in utilitarian objects, *Norris v. ITT*, 696 F.2d 918 (11 Cir. 1983).

In 1997, I established the firm R. Kunstadt, P.C. in order to leverage the benefits of new technology to provide prompt and efficient service to intellectual-property clients. These comments represent the opinion of the undersigned, but are not presented on behalf of any clients of the firm.

2 Summary of Recommendations

To handle small copyright cases efficiently, a two-pronged approach is needed.

The first prong is to institute special procedural rules to expedite such cases. The procedural rules must be designed so that the desired effect is achieved automatically, by "social engineering". It must be in the parties' own best interests to follow the rules so that the court's time is not needed to detect and punish attempts at evasion. A set of such rules for efficiently handling

small business disputes has already been proposed by co-author Kunstadt, and they were published under the title "Half-hour Trials, as on TV" in the *National Law Journal* of March 13, 2000, p. A22. They may readily be implemented for the handling of small copyright cases.

The second necessary prong is use of computer-automation to facilitate the preparation and disposition of small copyright cases by easing the workflow for parties and judges. Work on such automation is already underway and it has been implemented in Germany by co-author Haft, in connection with NORMFALL software for expedited case-handling on a "one-write" basis.

3 New Legal Procedures for Small Cases

3.1 Basic Rules for Implementing "Simple Justice"

By implementing a few modest rules changes, courts can achieve fast, simple and inexpensive justice in many small business cases, including small copyright cases. Such disputes often cannot find a satisfactory resolution because the cost and delay of litigation outweigh the amounts at stake. In contrast, what is needed for small cases is a user-friendly, inexpensive environment so simple it can truly be called "Simple Justice". The rules of Simple Justice are (naturally) simple:

- The hearing lasts no longer than one day.
- The hearing officer actively questions parties and witnesses to develop the facts.
- Parties may employ counsel or not at their discretion.
- Each party must bring to the hearing the witnesses and documents that support its case and the unfavorable witnesses and documents that the hearing officer will likely need to see in order to determine the facts.
- Obstructionist tactics – like not bringing relevant witnesses or documents to the hearing – create an inference of a weak case.
- A final, non-appealable decision issues immediately at the end of the hearing.
- The maximum damage award is $100,000.
- Injunctive relief is effective only after a 90-day transition period.
- Proceedings and rulings are private and confidential.

These rules were originally designed for use in a voluntary proceeding to resolve small business disputes. Hence, they are even-handed in order to make them attractive to both sides. Simple Justice is faster than arbitration because there is only one hearing lasting one day. As a result of its speed, it is also inexpensive. The parties don't need their own attorneys but if they do retain counsel, the bill for the trial cannot be for more than a one-day proceeding and the upfront preparation. "Vacuum-cleaner" discovery is not provided. In that respect, the proceeding resembles typical German litigation -- in which discovery is circumscribed compared to typical proceedings in the U.S. Discovery maybe disproportionally excessive in U.S. litigation, especially in cases where the amount at stake is small.

Experience shows that the reason court proceedings and arbitrations become protracted, and legal bills mount, is that the amounts at stake naturally drive the parties and their attorneys to ever greater efforts to succeed. While some ascribe this to the greed of lawyers, it is actually the natural result of a system that rewards both preparation and persistence. Neither the lawyer nor the client want to lose, and the higher the stakes become the greater the effort that is made to succeed. The plaintiff's persistence and the threat of a monstrous soaking for the defendant at trial are what permit the plaintiff to extract a favorable settlement in those cases that do settle. Lawyers can't be blamed for high costs in high-stakes litigation or arbitration, because working hard is what achieves successful results. A moment's thought to other competitive situations makes this clear: no one is surprised that the bills for mechanics and auto parts are higher when preparing a car for the Daytona 500, than preparing it for driving to the corner store.

The insight behind the Simple Justice procedure is recognition of the logical converse, meaning that the natural way to lower litigation costs is to lower the stakes. If the plaintiff is willing to lower its expectations up front by agreeing to limit the maximum recoverable damages to $100,000, then the parties don't have to proceed on a "leave no stone unturned" basis. Smart plaintiffs will be willing to accept this cap. In many cases, experience tells them that this is all they are likely to be left with anyway -- two or three years down the road -- after their attorneys profit in the meantime by accruing large hourly bills.

The plaintiff gives up the ability to bludgeon the defendant into submission, but the tradeoff for the plaintiff is a guaranteed savings in legal fees and lost business time alongside and the knowledge that the basic underlying infringement complaint will be addressed promptly. While the plaintiff won't be able to get injunctive relief until after a 90-day transition period provided by the Simple Justice rules, this is about as fast as it could be obtained through the courts even on a preliminary basis (except in the most urgent cases calling for an immediate temporary restraining order). The fastest "rocket docket" does not afford a trial for six months, and in most areas the wait for trial is two or three years.

Similarly, if the defendant knows that damages are capped and that even an injunction cannot have immediate devastating effect - due to the important Simple Justice rule that injunc-

tive relief is effective only after a 90-day transition period - then the tone of the dispute becomes less frenzied and defendant can be satisfied with a Simple Justice hearing. The defendant knows up front that Simple Justice will quickly and inexpensively remove the cloud over defendant's operations (best case) or result in only a modest setback (worst case) rather than a corporate debacle.

Even a major case like *Apple v. Microsoft*, 35 F.3d 1435 (9 Cir. 1994) (in which the issue was copyright in the Mac interface and screen display) might have been better resolved through a Simple Justice proceeding. If Apple won, it would have gotten injunctive relief after only 90 days and with a minimal expenditure for legal costs. If (as actually happened) Apple lost, it would at least have saved massive legal fees. From the point of view of Microsoft, it also would have saved on fees and would have promptly cleared Windows from the cloud raised by Apple's dubious copyright infringement charges. Had Microsoft lost, its liability would have been limited to $100,000.

3.2 Adaptation to Small Copyright Cases

One impediment to quick and inexpensive resolution of a copyright case is the need to register the copyright prior to filing suit. Since most small clients do not register copyright on a routine basis, an immediate hurdle impedes relief for them. It should be possible to institute a Simple Justice proceeding to enforce a copyright even without registration (whereby this would require a change in the statute). The plaintiff would need to understand that there would not be any presumption of copyright validity in such circumstances.Iin many cases, however, validity is not at issue; and the infringement is blatant. The defendant may just have been gaming the system by knowing that without a registration, the plaintiff is largely helpless to get relief. The suggested reforms would make such defendants think twice before infringing.

3.3 Lessons from the German "Streitwert" System

In Germany, the plaintiff sets a value on each case, called the "Streitwert" (literally: “disputed value”), that determines the amount of attorneys' fees to be awarded based on a statutory sliding-scale. The U.S. might consider to adapt such a system, along with a tariff for attorneys' fees awards. In Germany, however, the system can be abused by wealthy plaintiffs who set the Streitwert so high that small defendants cannot bear the risk of having to pay attorneys' fees at the resulting high tariff-value. The fees under the tariff may exceed the real amount in dispute if the Streitwert has been set artificially high by a plaintiff who wishes to play a high-stakes game and who can afford to risk sitting at the table while the other party cannot. Still, if the Streitwert system of tariffs were instituted only as part of a Simple Justice proceeding for small copyright disputes (by definition, disputes under $100,000), this might prove be less of a concern. The Copyright Office would need to determine whether to allow parties to “opt-out” of the set fee tariffs by paying their own attorneys a higher fee, even though the reimbursable fee would be the tariff amount.

4 Implementation of Automated Workflow for Small Cases

The proposed changes in procedure can be enhanced in effect by offering parties and courts an easily structured software interface to present and substantiate their claims and a workflow system which simplifies information flow between courts and lawyers.

The concepts and the software developed by the participants in the GAIUS research project, which are largely based on concepts for judicial communication and court management already existent in the German E-justice reality, can be used as a basis for such systems.

To do a thorough job and to satisfy their clients, attorneys may bloat their submissions with unnecessary facts and opinions, thereby costing the time and attention of the hearing officer.

In addition to the unnecessary quantity of submitted material, the hearing officer is faced with the task of correlating the parties' positions.

Our basic idea is to facilitate the juxtaposition of the parties' positions to ascertain facts in a way that the task of the hearing officer is greatly simplified and which enables the hearing officer to conduct the hearing in the short time span proposed above.

The strategies – modified versions of a one-write-approach – that we propose for consideration in this context are:

4.1 Computer-based Forms for Very Simple Cases

Very small cases – judged by the amount to be awarded – are more often than not also those cases where the relevant facts can be described in few words, making them "very simple" cases.

For these cases, the juxtaposition can be effected by supplying an electronic form which the parties can compile. These forms can be designed for a certain number of standardized cases, enabling both parties to enter the relevant facts and arguments into corresponding fields.

4.2 Common Case Structure for Small to Medium Cases

For cases of low to medium complexity, juxtaposition of the underlying facts and positions remains the main task at hand, yet to alleviate the burden on attorneys and hearing officers the facts need to be laid out in a certain order to make them manageable.

We propose a hierarchical structure as an order for these cases. The structure is proposed by the plaintiff and can be modified on request of the defendant, thereby creating a common structure without involvement of the court. This again contributes to the goal of simplifying the hearing officer's task. Lack of cooperation between the parties in finding a common structure can be sanctioned as obstructionist tactics.

The case structure serves solely as a means to order the discovered information; it has no legal importance of its own. The parties' positions and documents or document excerpts are juxtaposed at the correlating branches of the structure, enabling the hearing officer to achieve a quick overview of the issues at stake.

4.3 Portal-based Tools and Machine-to-machine Communication: Two Alternatives for Judicial Information Exchange

Both the form-based and the structure-based approach require an exchange of information between the parties, their attorneys and the court.

In our view there are two basic ways to effect this communication: portal-based exchanges and machine-to-machine communication.

Portal-based exchanges feature a central information store which holds one version of the data relevant to the case. Participants in the litigation process such as parties, attorneys, judges, clerks, etc. can view and in some cases simultaneously change the content of the store, but the store always displays a coherent and holistic view of the content, at least the content released by the creator, to all users.

Machine-to-machine communication entails that every participant, i.e. law firm, court, etc. has its own content store which holds all content relevant to that participant. These content stores can be partially synchronized, meaning that a participant can select parts of the content and transmit it to another participant in machine-readable form so that it can be automatically imported into the recipient's content store.

In the context of the common structure discussed above, this would enable the plaintiff to compile all documents and its structure in its or its attorney's system and then transmit it to the defendant. Using a partial synchronization method, plaintiff could select which of the selected documents, excerpts, texts or annotations to submit to the defendant and the court, keeping e.g., special remarks or annotations private.

4.4 Ideas from the GAIUS Research Project

The automation concepts proposed here are largely influenced by the GAIUS research project in Germany.

The research being conducted in the context of the GAIUS project encompasses both alternative forms of communication. It is based on the XJustiz[2] standard for judicial communica-

[2] http://www.xjustiz.de/

tion, an XML-based framework employed by all German judicial institutions and most law firm management tools for the exchange of case and file data.

It is also based on the Normfall Manager software already in use by many courts and legal offices in Germany for the purpose of structuring content. This software is customized in the project to facilitate the use of structure by multiple parties without access to a central store. The exchange formats for structured content will however remain XML-based in order to ensure non-discriminatory access to the project for software vendors.

The Normfall Manager software has the advantage of offering a number of plug-ins for the most common document formats and their respective creation tools, such as Microsoft Office or Adobe Acrobat. The functionality of these plug-ins is to create document excerpts from selected text portions and to display these in a tabular view. This enables the parties not only to add documents to the structure, but also to extract the relevant parts of the document and display these parts specifically to the hearing officer, retaining the link to the specific anchor in the original document. The opponent or hearing officer can now easily jump to the specific part of the submitted document by clicking on the excerpt in the tabular view.

4.4.1 Basic Ideas of Workflow Software

People become quickly overburdened when managing complex tasks and large quantities of information. In the modern world these difficulties appear with increasing frequency in all professions. Complex circumstances and information "avalanches"need to be overcome everywhere. This requires a new "cybernetic" way of thinking in "interlinked systems". Human capabilities have their limits. The mind and language were created by evolution as the "hardware" and "software" of human action when the world was simple. Since then they have fallen behind today's modern developments. With an eye on patent litigation, Chief Judge Randall R. Rader from the United States Court of Appeals for the Federal Circuit remarked in his recent speech at the E.D. Texas Judicial Conference about “The State of Patent Litigation”: “In the electronic age, discovery procedures designed for the 19th and 20th centuries just do not work for complex patent litigation. For example, blanket stipulated orders requiring the production of all relevant documents leads to waste. Courts must control the cost and efficiency of electronic discovery” (Page 5).

Recent experience shows that modern IT can provide a way out of this dilemma.

For example, the Normfall software solution with which co-author Haft is familiar, is based on employing computers in such a way that their application is tailored to human abilities when dealing with complexity and large quantities of information. The way human beings process information is supported by Normfall. The range of human information processing is likewise enlarged. It is not necessary to adapt oneself to a new technical system or attend specialized

training. On the contrary, the system can be adapted to humans, thereby allowing users to - after a short introduction to the individual functions - immediately begin working with the tool.

Normfall was developed for lawyers. The legal profession has had to overcome complexity and large quantities of information for a long time. Lawyers have therefore developed techniques of human information processing to allow them to deal with this task within the context of what is humanly possible. Normfall's distinctive feature is that the software is adapted to the way lawyers work. At Normfall the question is not if technical solutions exist that are applicable to the legal profession. Rather, the question is where in the legal profession is IT support meaningful. With this question in mind, the Normfall tools were developed. Tools of this type may be adapted beneficially to support the resolution of small copyright cases.

4.4.2 The Normfall Manager

After many years of scientific research at Tübingen University the first version of Normfall Manager was built in the 1990's, when co-author Haft was working not only as professor but also as defense attorney in major criminal cases of alleged corporate bribery. Since in such cases the sheer volume of documents (paper and increasingly digital documents) could no longer be handled by lawyers and judges, the team converted all data into digital formats (e.g., PDF) which in large cases reached terabytes. What was lacking was an IT-system which could help find needed information even in such data volume within seconds, i.e., during the questioning of a witness in the courtroom. Since automated text retrieval (which is possible in the Normfall Software for all types of documents) and document management systems (DMS – which only lead to documents, not to information hidden in large masses of documents) were (and still are) not helpful for this special legal task, Normfall Manager had to be custom-designed based on Microsoft technology (Visual Basic at that time). Since most lawyers and judges were familiar with MS-Office, Normfall Manager uses a GUI similar to Outlook so that no extensive training is necessary.

The first version appeared in 1999. It was used by an increasing number of law firms. One of them, Reimann Osterrieth Köhler Haft (ROKH) in Düsseldorf specializes in IP-law and uses the Normfall software for handling all its cases including big cases, such as Nokia's patent dispute with Apple. In 2008, the Ministry of Justice in Hesse bought the software for all courts in their state as did the neighboring states of Lower Saxonia, Saxonia-Anhalt, Bremen and Saarland. In 2010, the Normfall software was tested in Baden-Württemberg, Thuringia and Northrhine-Westfalia and will probably be introduced there in 2012 as well. In the same year the state of Bavaria will follow. In Northrhine-Westfalia, which is the largest state in Germany, Normfall and its partner the SINC Corporation, won an open competitive bid for the human-engineered digital files against major competitors (IBM, Adobe, HP and the like).

The software is already successfully in use in the practice of many higher courts in Germany (i.e., Bundespatentgericht, Bundesverwaltungsgericht, Bundesgerichtshof, Oberland-

esgerichte in several states), in departments of public prosecution (i.e., Generalbundesanwalt), in police departments, in the Federal Trade Commission, and in many law firms, in legal departments in companies and even in non-legal businesses. So it can be expected that the whole German justice-system will use the Normfall software as a core system on the way to "E-Justice". Other countries may follow. The Obergericht in Zürich, Switzerland, has started a test of Normfall, and the anti-corruption department of public prosecution in Vienna, Austria, uses Normfall since 2009.

In 2009, a reengineering of the Normfall Manager was started using the most current Microsoft technology (DOT.NET and C#). The new version Normfall 6 will be rolled out in January 2012.

4.4.3 The GAIUS Project

The GAIUS research project at EBS Law School in Wiesbaden (named after the Roman legal scholar Gaius, author of the *Institutes*), which aims at IT-supported communication between legal practitioners and legal authorities, was launched in March 2011 and presented to the public on November 2, 2011 by the Minister of Justice of Hesse, Mr. Jörg-Uwe Hahn. The project explores how adversary procedures (civil and administrative trials) can be implemented more efficiently and be better structured than before. A first step will test how and to what extent it may make sense and be feasible to place the task of collecting material facts – even including evidence – either in part or entirely in the hands of lawyers (and corporate legal departments). This is not now typically done in Germany to the extent it is in the U.S. Collecting material facts, typically the most difficult part of a legal dispute, could be substantially simplified by the use of appropriate software. Instead of providing the courts with differently-structured procedural documents, which the courts then subject to extensive processing to sort out the correlation between the various factual allegations, an electronic document prepared based on the filed complaint could essentially be used in a so-called "one-write approach", meaning each party enters the material facts in the same template form as the filed complaint.

Leading-edge information technology can also be used to better structure court activity and make it more efficient; e.g., verbal negotiations such as web conferencing, and "cloud computing". There is a broad spectrum of technological solutions that to date have not found their way into the legal world, let alone have been properly implemented.

The "one-write" approach presupposes a new form of standardization in communication between the parties to a dispute. This requires a model structure, i.e., a detailed specification of both the communication process and the respective information. Based on these details we can look at and decide on an IT-based support solution for specific parts of the communication process. Such basic systems are currently on the market, but need to be adapted and extended to meet the specific requirements of the legal system (as discussed below).

The aim of this practice-driven research is to relieve the burden on the parties involved in the legal dispute. Information technology used for the benefit of all should increase efficiency all around. Increasing efficiency means not only saving time, but also significantly improving results.

At first sight, such IT-supported processes may seem useful primarily for the "geeks" among us. Such processes, however, are not only welcome support in major legal disputes, for instance where construction law is concerned. The use of information technology can also provide tangible benefits in repetitive issues involving small claims such as unfair dismissals, tenant complaints against rent increases, and simple payment claims. This is certainly also true for small copyright claims.

The advantages of using information technology in the legal system have so far been barely recognized. This is because in order to facilitate the real work of lawyers and judges, systems need to be developed based on a scientific understanding of legal procedures and the daily reality of court cases.

EBS Law School's project partners to date are the Hesse Ministry of Justice, the Hesse Lawyers Association and qualified IT development companies with practical experience in legal applications. The project will be conducted using not only a legal theory and legal doctrine approach, but also from an empirical perspective based on suitable cases and testing new IT tools.

The performance of these IT tools will be systematically evaluated to gain a deeper understanding of their success factors and to explore the level of satisfaction in using them. One cooperation partner, the ask-Institut in Osnabrück, a company equipped with the relevant experience in legal documentary research, will empirically investigate these issues.

Should the project produce positive findings, it could lead to a legal policy proposal for small copyright claims that (from the legal perspective still loosely formulated) could be conceived like this:

> "The Copyright Office is authorized by statutory order to predefine electronic templates for common use by the disputing parties and which can be used in the appropriate legal proceedings. Should these ‘simplified legal proceedings’ come before a court, the court is required to take a decision within the time stipulated in the statutory order."

4.4.4 Large Cases and Small Cases

The Normfall Software was initially developed for large cases. Its first practical test (apart from the above-mentioned criminal cases) was a case involving building a third runaway at Germany´s largest airport in Frankfurt/Main. Many cities, counties, companies and private

persons in this densely populated area sued the government at the Hessische Verwaltungsgerichtshof in Kassel, and legions of consultants supported them. The judges of the court used the Normfall software and were able to reach decisions in a fraction of the amount of time they otherwise would have needed.

This software is useful also in small cases, for two reasons. One reason is that the use of software, even such a user-friendly software as Normfall, benefits from practice. Otherwise it would be the same as if a person uses a car only for a few times and had to think every time, where the brake is and where the gas pedal. The other is that – with rare exceptions - small cases are complex too. There is no truly simple case in the world. The judges in Kassel like many lawyers use the Normfall software therefore for small cases as well as for big cases. Their experience is that they roughly shave off a quarter of the time compared with their traditional working methods.

4.4.5 Adaptation to the Needs of Copyright Cases

Normfall Manager Version 5 (and Version 6 at the beginning of 2012) is a content-neutral computer tool that is already used in many law firms and courts for different tasks. It combines tree structures, which play a central role in the processing of information in a continental law system based on Roman Law, and the use of spreadsheets which are central to the comparison of case precedents in common law systems. It therefore combines the best of two legal worlds.

Due to its nature as a content-neutral tool, every lawyer and every judge can use it to build a structure in copyright cases as well as in other cases. Of course, templates can be developed and used advantageously according to the needs of copyright cases.

A project can be accessed by all participating lawyers for any copyright case. The project is the totality of data which one can display and edit in a Normfall application window and save within one file or on the database server. A project consists (always) of a structure as well as (usually) references to the attached files (Word, PDF, e-mails, etc.).

The software exists in an English version as well as in a German version. It comes together with an integrated PDF-Viewer which is more powerful than the Adobe Reader and offers all features which are needed for use with the Normfall Manager except OCR capability (which is however already integrated in most modern scanners). Add-ons exist for all MS-Office applications, for PDF-files, for databases and URLs. Further Add-Ons can easily be programmed for law firm automation software like ra-micro/Jurasoft (the market leader in Germany) and others like PROLAW (see below).

The following text first describes the Outliner (Tree Structure) and secondly the Relation Module. The Normfall software is a sophisticated tool which offers many features, i.e., produc-

ing structured word documents or building a knowledge management system. These cannot all of course be described in this paper. A free demo is available at http://www.Normfall.de.

The Outliner is a well-known tool which is the key to mastering complex subjects and navigating through large quantities of data in a matter of seconds. The structure nodes form together with all sub-nodes, partial structures which are also called “branches”. A structure node is an element of the Normfall structure. One can name a structure node using a word or a combination of words.

The Reference List shows for each structure node the documents and document passages "attached" to it. The list entries are called reference rows. For each reference row, the respective date, title and comments can be recognized. It is also possible that reference rows are empty and thus remain mere comment rows where one can add notes without referring to a document. A reference which opens to a specific target is a reference that not only refers to a whole document, but rather refers to a certain passage so that the site is displayed immediately after the opening of the document. This is an important feature which a standard DMS does not have.

The Project Folder for a given Normfall project is the folder in the file system that contains all documents that are attached to the project. If one is not working with a database server, the project folder will also contain the project file in which all data of the project (i.e. the structure, reference rows and comments) is saved. So it is not necessary to use a DMS. All data are stored once in an auto-file and from there linked to structure nodes.

The Root Folder (project root folder) is the folder in the file system that contains the project folders of all projects that one is managing with Normfall Manager. Naming this folder is recommended, such as for example "Normfall Projects" and creating a project folder for each project with a corresponding name (e.g., "Trial Johnson v. Jones").

The specification of the Relation Module resulted from a strategic partnership between Normfall GmbH and the Justice Ministry of the state of Hesse in order to optimize the existing software for its use in civil proceedings. Users can benefit from the module in a copyright case. The Relation Module supports lawyers and judges when using the "Relationstechnik" ("relationship technique"), a German legal technique of applying law to facts. The module allows the user to compare and comment texts in a simple manner. One can work with original file excerpts as well as with one’s own comments and annotations; one may even combine both methods.

In the Normfall PDF Editor one can highlight the text to be attached by dragging it with the mouse. In the structure view, one selects the node to which the text should be attached. Then, one clicks on the attach button. The software has pasted the text and displays a juxtaposition of all texts at the given structure node. In a manner of speaking, the handling is self-explanatory. Each element of the software supporting the comparison of contents indicates this by differently-

colored buttons which serve to select the track one would like to work with at the moment. All attached text passages are directly ready for full-text search. Add-Ons like the Microsoft Indexing Service are not required. File excerpts and/or own annotations can be output in table form at any time for a single topic, a partial structure or the whole file.

4.5 "One-Write" System

For use in "Half-hour-trials" of copyright cases, workflow software can immediately be employed on a "One-Write" basis to conduct the proceedings.

The plaintiff starts by naming and storing a project, building a first case structure and adding all relevant documents. The documents can be linked to issues; and *vice-versa* issues can be linked to documents; in either a one-to-one or a many-to-one basis, as appropriate for the given case.

The defendant receives the project (via E-Mail or Internet) and accepts or changes the structure. Defendant can link new documents or other relevant passages to new or existing nodes.

Both are working on the structure of the case and make clear where they agree over the facts and/or the law and where they do not agree. Since they are working only on the formal structure of the case and not with regard to the merits, they may have a good chance of coming to an agreement. At the end of this part of the work, they use the Relation Module for a juxtaposition of each factual allegation in the case and the law applicable to every issue in the case. Thus, they can manage complexity in a way they never would be able to accomplish by traditional working methods.

In the next step the parties present their structured case to the hearing officer. Since all documents are visible by a mouse click, the hearing officer can easily question all attending parties and witnesses about the facts. It is possible to record the oral hearing and link the audio data to the relevant nodes of the case. It is not necessary that the parties meet personally. They can have a telephone conference and see all relevant data via Internet on the computer screen within seconds. (This is the way the above-mentioned law firm ROKH in Düsseldorf manages their international cases, e.g., Nokia against other IT-companies). This produces enormous savings in terms of time and money for all parties.

4.6 Preparing a Checklist of Pleading Elements for Use in Automated Forms

The Copyright Office might undertake a study of 100 randomly-selected sets of complaints and answers in copyright cases filed over the last several years, to identify recurring issues pleaded and asserted as defenses. From the resulting selections, form paragraphs could be generated as a checklist for plaintiffs and defendants using the one-write system. This would save time and effort for the litigants and their attorneys. Use of these form paragraphs on a

check-box basis need not be mandatory. Even if optional, they would promote standardization and save cost.

4.7 Compatibility with Law-Office Automation Programs via a Common-Interface Standard

The law firm R. Kunstadt, P.C. has invested over $30,000 in office automation technology. Our principal office automation program is PROLAW. PROLAW is a SQL database which works on the "one-write" principle, as do many relational databases. When data is entered into the program for any purpose it is immediately accessible at the press of a button, to be reused for any other purpose. For example, when a trademark application is prepared we do not re-type the client's name, address, state of incorporation, etc. All that information resides in the "contacts" module of the database, and is available for use in the "matters" module for the preparation of a trademark application. Similarly, the database fields for international class, goods, client address of record, etc., are filled in once for an application. The application form is then automatically generated by PROLAW, at the push of a button, drawing upon the information resident in the database.

The great advantage of a state-of-the-art office automation database such as PROLAW is that a managing attorney can be assured that having once checked the data, it will be correctly replicated for all purposes both throughout the database and in any document it generates. This leads to a savings of time and consequent savings for our clients. Hence, it is essential that any automation procedures adopted by the Copyright Office and the courts, be compatible with standard office-automation programs used by law firms. Otherwise, the Copyright Office and the courts may gain efficiency only at the expense of the ultimate clients, if law firms are required to undertake duplicative efforts because their work has to be typed by hand into *sui generis* online interfaces. For example, the TEAS interface now used by the U.S. Trademark Office for e-filing of trademark applications is inefficient because it is designed on the assumption that it will be used like a typewriter with all needed information filled out by hand in an online version of a 1950's-era paper form.