[DE] Munich District Court rules on TikTok's duty to negotiate licences seriously

IRIS 2024-4:1/14

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On 9 February 2024, the *Landgericht München I* (Munich District Court I) decided that the digital platform TikTok had failed to take its legal obligation to negotiate copyright licences seriously. As a result, TikTok can be held liable if users upload copyright-protected films to its platform in contravention of copyright law.

Users had uploaded copyright-protected content onto the TikTok platform without holding the necessary exploitation rights, which are managed by the company Nikita Ventures. Nikita Ventures had reported this to TikTok and offered to license the content in return for payment. TikTok responded by blocking the reported content, although protected content initially remained accessible. Both parties then began negotiating a licence in January 2022. TikTok requested further information, which Nikita Ventures provided immediately. In the court's opinion, the subsequent negotiations were largely conducted unilaterally by Nikita Ventures, partly because TikTok did not suggest a price. The parties were unable to agree a licence by July 2022.

Consequently, Nikita Ventures filed a complaint against TikTok in which it claimed injunctive relief, information and compensation on the grounds that the disputed films had been made available to the public. TikTok claimed exemption from liability under Article 1(2) sentence 1 of the *Urheberrechts-Diensteanbieter-Gesetz* (Act on the Copyright Liability of Online Content-Sharing Service Providers – UrhDaG). The UrhDaG, which primarily transposes Article 17 of the Digital Single Market Directive (2019/790/EU), states that platform operators are not liable under copyright law for an act of communication to the public if they block unauthorised usage and conclude licensing agreements with the rightsholders. However, the Munich District Court ruled that TikTok did not qualify for an exemption under Article 1(2) sentence 1 UrhDaG because it had failed to meet its obligation to conclude licensing agreements in accordance with Articles 4(1) sentence 1 and 4(2)(1) UrhDaG. This provision requires service providers to "undertake their best efforts to acquire the contractual rights of use for the communication to the public of copyright-protected works" and to block reported content expeditiously.

The court considered that TikTok had failed to undertake "best efforts", within the meaning of Article 4(1) sentence 1 UrhDaG, to acquire the rights offered by Nikita

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Ventures. In principle, licence negotiations, including in accordance with the guidelines contained in Article 17 of Directive 2019/790/EU and Article 36 of the *Verwertungsgesellschaftengesetz* (Act on the Management of Copyright and Related Rights by Collecting Societies – VGG), which implements Directive 2014/26/EU, should be conducted fairly and expeditiously. Pursuant to Article 16 of Directive 2019/790/EU and Article 36 VGG, both parties should also provide each other with all the information required, reply without delay to enquiries made by the other party and inform them about what information they require in order to make a contractual offer. Rightsholders should clearly list the works and other protected material that form part of their catalogue. In return, service providers should provide information about the criteria they use to identify and pay for content that is used. In the case at hand, TikTok's conduct and the fact that the rightsholder was the only party that had provided any information suggested that TikTok did not want to expeditiously reach an outcome that was in the interests of both parties.

The court considered it irrelevant whether TikTok had also breached its obligation to block content in order to qualify for the liability exemption under Articles 4 and 7 to 11 UrhDaG. To be released from liability, TikTok needed to have met all the conditions cumulatively, which was not the case here. Rather, the rightsholder's share in added value, which the legislation aimed to protect, would mean nothing if a platform operator could choose between agreeing a licence and blocking content and then resort to qualified blocking (Article 7 UrhDaG) and simple blocking (Article 8 UrhDaG) if the requirement to obtain a licence was not met.

The claim against TikTok for injunctive relief, information and compensation was therefore granted. The amount of compensation is yet to be determined, and will depend on information to be provided by the platform about the use of the disputed film excerpts.

The decision is not yet final.

Landgericht München I, Urteil vom 09.02.2024, Aktenzeichen 42 O 10792/22

https://openjur.de/u/2481878.html

Munich District Court I judgment of 9 February 2024, case No. 42 O 10792/22

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