[NL] Online news outlet's proceedings over suspension from YouTube monetisation programme

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Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 2 August 2024, the Amsterdam District Court (*Rechtbank Amsterdam*) delivered a significant judgment on YouTube's suspension of an online news outlet from YouTube's monetisation programme, over the channel's "misleading content", including on the climate crisis. Notably, the Court rejected the news outlet's claim that there had been a violation of its right to freedom of expression, and said YouTube had the freedom to create an "advertising-friendly environment", where certain channels are deemed "unsuitable for advertising" over misleading and harmful content.

The case involved Blckbx.tv, an independent news outlet based in the Netherlands that produces various current affairs programmes. The outlet makes its programmes available through its website and YouTube channel, with over 2,200 Blckbx videos hosted on its YouTube channel. Notably, in September 2020, Blckbx was admitted to YouTube's "Partner Program",a monetisation programme that gives channels access to monetisation features through YouTube, including revenue-sharing from ads being served on the channel. However, YouTube terminated Blckbx's participation in the programme in 2022, and refused to re-admit the outlet to the monetisation programme over "repeated violations" of YouTube's advertising-friendly guidelines. In particular, Google considered that various content on the channel was "unsuitable for advertising", such as unreliable content on vaccines and the climate crisis.

Blckbx initiated legal proceedings against Google over its suspension from YouTube's monetisation programme and sought an order from the Court for re-admission to the programme. In particular, the news outlet claimed that YouTube's refusal was a violation of the outlet's freedom of expression, as it was "unable to generate advertising revenue, which limits the financing of the production of new content" (Blckbx claimed over EUR 100 000 in lost income per year due to the suspension).

The Court first noted that Google has "broad discretion" in assessing which channels it considers suitable for realising an "advertising-friendly environment", in accordance with its own policy. The main question for the Court was whether how Google applied its policy was contrary to the "reasonableness and fairness" standards that govern the relationship between the parties. In this regard, the

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Court noted that Google explained it assessed the “advertising-friendliness” of Blckbx’s channel using a “holistic assessment”, and concluded that Blckbx’s channel contains "numerous videos stating that vaccines are dangerous”, that there is “no climate crisis”. Crucially, the Court held that Google acted within the policy freedom to which it is entitled, and it had not been made plausible that Google has denied Blckbx’s channel access to the monetisation programme in a “frivolous or arbitrary manner”. Google had “sufficiently substantiated” that it would “(too often) get into trouble with parties that purchase advertising space” from it if it were to place those advertisements on Blckbx’s channel.

The Court also considered Blckbx’s claim that there had been a violation of its right to freedom of expression, as it was “unable to generate advertising revenue, which limits the financing of the production of new content”. However, the Court rejected the claim, noting that YouTube hosted over 2 000 videos from Blckbx’ and made them available to the public. The Court ruled that only if Google's refusal to grant Blckbx’s access to the programme would have the effect of “preventing any effective exercise” of Blckbx’s freedom of expression, or of “destroying” the essence of that right, could there be grounds for intervening in the private-law relationship between the parties. The fact that BLCKBX was able to produce more than 2 000 videos, even without participating in the monetisation programme, and to distribute them via YouTube already showed that there was “no such drastic restriction of freedom of expression”.

Rechtbank Amsterdam, ECLI:NL:RBAMS:2024:4917, 23 augustus 2024

https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2024:4917

Amsterdam District Court, ECLI:NL:RBAMS:2024:4917, 23 August 2024

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