[DE] Providers of Twitch live streams must comply with youth media protection rules under broadcasting law

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In its judgment of 25 November 2020, the Administrative Court of Cologne (Case No. 6 K 2650/22) confirmed that streams that are broadcast live on the Twitch platform are to be classified as broadcasting and must comply with the relevant regulations for broadcasters on the protection of minors in the media.

In 2021, the plaintiff had broadcast the first eight minutes of the film *Mortal Kombat* on his live stream on the Twitch platform. This sequence contained fight scenes and depictions of violence that are not suitable for children and young people under the age of 16. The clip was shown before 10 p.m. The State Media Authority of North Rhine-Westphalia (LfM NRW) saw this as a violation of youth protection regulations under broadcasting law and objected to the broadcast in a decision dated 29 March 2022. The provider filed an action against this decision on the grounds that the Twitch platform provides for age labelling from 18 years of age and that the applicable youth protection regulations had been complied with.

The court has now ruled that mere age labelling is not sufficient. Despite its transmission via the Internet, the programme was a broadcasting service. Therefore, the legal requirements for the protection of minors in the media had to be ensured with the means available to broadcasters. This includes, in particular, the limitation of the broadcast time, i.e. broadcasting only after 10 p.m.

In its judgment, the court particularly emphasised the fundamental separation between broadcasting and telemedia in the State Treaty on the Protection of Minors in the Media (JMStV). While in the area of telemedia, the liability lies primarily with the parents to install suitable youth protection programmes, they can rely on the providers themselves to comply with the legal youth protection requirements in the case of broadcasting services.

The court discussed the categorisation of a Twitch live stream as broadcasting in detail. According to the Interstate Media Treaty (MStV), broadcasting is a linear information and communication service. It comprises the organisation and distribution of moving images or sound content intended for the general public and for simultaneous reception, according to a broadcast schedule by means of telecommunications. In a livestream, the recipient can neither choose the start

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time of the broadcast nor fast-forward the transmission in question, which characterises the criterion of linearity. For the further (decisive) characteristic "according to a broadcast schedule", it is sufficient that a recognisable sequence of content and timing of further broadcasts is intended. The livestream at issue took place live and, as a rule, every Friday from 6 p.m. on a weekly basis under the name *FREIAB18*, so that it was broadcasting for which the plaintiff was also formally the holder of a broadcasting licence from the defendant.

As the stream in dispute was a developmentally harmful offer, the provider had to ensure that it could not normally be viewed by children and young people in the age groups concerned. The provider can fulfil its obligation pursuant to Section 5 (3) JMStV by technically or de facto preventing access or making access more difficult for the age groups concerned, by providing the content with a readable age label or by limiting the distribution period. The Cologne Administrative Court came to the conclusion that the possibility of fulfilling the obligation to restrict access by means of readable age labelling was only open to telemedia providers in accordance with the meaning and purpose of the provisions for the protection of minors. Despite media convergence, the legislator maintains the separation between broadcasting and telemedia, as the MStV also shows. This distinction should not be softened by technical solutions for the protection of minors, as parents should be able to rely on the different liabilities. As the plaintiff's live stream is to be categorised as a broadcasting service, it had to ensure the protection of minors using the means provided for broadcasters. The age labelling was therefore not sufficient, especially as it did not exist for access via the Twitch app.

The appeal against the judgment was allowed due to the fundamental importance of the case, as it raises a question that requires clarification and is relevant to the decision, in particular whether broadcasters can also implement the protection of minors by means of readable age labelling.

Link zur Pressemitteilung des VG Köln

https://www.vg-koeln.nrw.de/behoerde/presse/Pressemitteilungen/24_16122025/index.php

Link to the press release of the Cologne Administrative Court

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