[US/DE] : Provider Liability - a Tale of Two Judgments

IRIS 1998-6:1/3

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On 28 May, in criminal proceedings against the former managing director of the Internet server, CompuserveGermany, the Munich District Court (Amtsgericht München - AG) imposed a two-year prison sentence, which was later suspended on payment of a fine of DEM 100,000. The judge found that the accused had, in 1995 and 1996, wilfully given users access to child and animal pornography via the parent company in the United States.

The unlawful material had been stored in so-called newsgroups on computers operated by the parent company. The prosecution had asked for an acquittal, believing that the main proceedings had shown that there was no reasonable technical means of detecting the pornographic material and barring access to it. This had been stated by an expert from the Federal Office for Security in Information Technology, who had added that this was also impossible at national level in the present state of technology. The judge did not agree, however, and held that the accused had indeed been guilty, with others, of disseminating pornographic material.

The judgment took no account of the Information and Communications Services Act (Informations- und Kommunikationsdienste-Gesetz - IuKDG, see IRIS 1997-8: 11), which came into force on 1 August 1997 and which states, in Section 5 (2) of the Tele-Services Act (Teledienstegesetz - TDG), that access providers are liable for material from other sources only when they are aware of it, have the technical means of preventing its use, and can reasonably be expected to do so. The judgment is not final.

On 22 April, the District Court of Columbia gave summary judgment in the civil action brought by Sidney Blumenthal, a White House aide, and his wife against Matt Drudge, author of the Drudge Report, and the online provider AOL, to which he was contracted. The judge granted AOL's application for summary dismissal of the claim against it.

In his report, available on Internet, the co-defendant Drudge had spread rumours concerning the plaintiff's allegedly violent treatment of his wife and fellow plaintiff. On being challenged by the plaintiff's lawyer, he had withdrawn his defamatory allegations and published an apology. A claim for damages had also been brought against AOL, since it paid Drudge $3,000 a month to distribute the

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report and had also, under its contract with him, secured extensive powers concerning content.

In his summary judgment, the judge pointed out that it was the legislator's clear intention that an interactive service provider was not to be regarded as the publisher of information originated by third-party users. Under Section 230(c) of the Communications Decency Act (see IRIS 1997-7: 10), service providers enjoyed civil immunity in federal law in respect of information originated by others. This meant that they could not be treated like ordinary publishers, and that lawsuits seeking to hold them liable for their exercise of a publisher's traditional functions - deciding to publish an item, withdrawing it, etc. - were barred. The judge decided that the plaintiff had failed to substantiate his claim that AOL was not simply an access-provider, but also, in this case, a content-provider, because of the possibility given it by contract of influencing the information contained in the report. He also rejected the argument that AOL, if not liable as publisher, should at least be liable as distributor of the information. Congress had clearly not wanted to make this distinction. On the contrary, it had wanted to ensure that service providers would not face liability every time they received notice of a potentially defamatory statement. Such liability would make it possible to suppress controversial opinions and would stop providers from making their own rules on the dissemination of objectionable material.

Judgment of the United States District Court for the District of Columbia of 22 April 1998 - Civil Action No. 97-1968 - Blumenthal v. Drudge and American Online Inc.

Urteil des Amtsgericht München vom 28. Mai 1998 -- Az.: 8340 Ds 465 Js 173158/95 --, nicht rechtskräftig

Judgment of the District Court of Munich of 28 May 1998 -- Case No. 8340 Ds 465 Js 173158/95-, not final

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