[BE] User Punished for Child Pornography on the Net; ISPs Not Convicted

IRIS 2001-4:1/25

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In a judgment of 17 November 2000, the Hasselt Criminal Court convicted a person who was found in possession of pictures and software containing images of sexual behaviour of a pornographic character featuring minors aged under 16. He was convicted under Article 383bis of the Criminal Code. Two Internet Service Providers (ISPs) whose infrastructure and services had been used to distribute and receive the illegal content on the Internet were not convicted.

The Court referred to the basic rules of the Belgian Collaboration Protocol to Help Stamp Out Illegal Acts on the Internet (see IRIS 1999-7: 4), according to which ISPs are not under a general obligation to systematically search for illegal content on the Internet. As both ISPs had shown their readiness and availabilitily to cooperate with the judicial authorities in order to prevent the criminal use of the Internet, there was no indication of their guilt or complicity. The Court emphasised that if ISPs were to be automatically considered responsible for illegal messages distributed over their servers, this would force them to actively control all of the messages received and transmitted by means of their infrastructure. According to the Court, such a form of prior control could be considered a threat to freedom of expression and information on the Internet.

Cour d'assises de Hasselt, 17 novembre 2000. Voir Auteurs & Media 2001/1, Numéro spécial : "Internet et l'environnement numérique / Internet en de digitale omgeving"

Hasselt Criminal Court, 17 November 2000. See Auteurs & Media 2001/1, Special Issue: Internet et l'environnement numérique/Internet en de digitale omgeving

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