[DE] No Liability Exemption For ISPs Who Breach Copyright

IRIS 2001-7:1/25

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In a ruling of 8 March 2001, the Oberlandesgericht München (Munich Court of Appeal - OLG) dismissed an appeal by an Internet Service Provider (ISP) against a judgment of the Landgericht München I (First Munich District Court - LG), which had decided in principle that the appellant was entitled to compensation from the ISP.

The case concerned the operation of an online forum for the exchange of MIDI files. MIDI files are digital recordings of synthesized music, usually pop music. Members of the forum were able to upload MIDI files onto the server or download them onto their own computers with complete anonymity. The ISP's employees checked the files for copyright notices. If there was no such indication in the appropriate place, the file would be made available for downloading. While inspecting the forum, the appellant had found three files which she had commissioned. However, as the rightsholder, the appellant had not given permission for the files to be made available on the Internet.

The First Munich District Court had ruled that, although Section 5.2 of the Teledienstegesetz (Teleservices Act - TDG) applied, the ISP was obliged to pay compensation for a breach of copyright regulations, principally under Section 97 of the Urhebergesetz (Copyright Act - UrhG). Section 5.2 TDG contains a liability exemption for ISPs which make third-party content available for use without knowledge of that content. The Court had based its decision on the fact that, although the ISP would have had to know about each individual piece of music in order to be liable, since such music was almost always protected by copyright, opening an exchange forum should be considered, to some extent, a deliberate act. The ISP could not, therefore, rely on the liability exemption.

Although it did not call the ISP's liability into question, the OLG ruled that Section 5.2 TDG did not, in principle, apply to breaches of copyright or related rights. The Court argued on the basis of the wording and origin of Section 5 TDG. Section 5.2 was to be interpreted as referring only to cases in which the admissibility of publishing content was actually questionable under public, criminal or civil law. Therefore, it could not apply to breaches of copyright or related rights. Since the Court found a causal connection between the opening of the forum and downloading of files in breach of copyright, the OLG largely upheld the District Court's decision.

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Urteil des OLG München vom 8. März 2001, Az. 29 U 3282/00

Judgment of the Munich Court of Appeal, 8 March 2001, case no. 29 U 3282/00

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