[DE] Internet Pornography

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In a criminal law ruling of 31 January 2003, the Landgericht Düsseldorf (Düsseldorf District Court - LG Düsseldorf) assessed the rules governing the dissemination of pornography on the Internet with regard to the protection of minors.

In Germany, prior to the entry into force on 1 April 2003 of reforms on youth protection in the media, pornographic content could be disseminated on the Internet, provided "technical precautions are taken to ensure that the content or its dissemination in Germany can be restricted to adult users" (Article 3.2.2 of the Gesetz über die Verbreitung jugendgefährdender Schriften und Medieninhalte (Act on the dissemination of written material and media content harmful to minors - GjS)). In the case in question, the provider's homepage referred unambiguously to the site's pornographic content and invited users to download a dialer. In order to download the dialer and therefore gain access to the pornographic content, users merely had to provide an identity card number. The number was checked digitally via a computer programme.

According to the LG Düsseldorf, this combination of a download, automatic verification of an identity card number and the fact that a charge was made for the service (DM 3.60 per minute), was sufficient to protect children and young people from Internet pornography. Until now, the law had not required that steps be taken to ensure that only adults could access such material; it was sufficient that it should merely be possible to restrict users in this way. For only after the aforementioned reforms entered into force (see IRIS 2002-6: 13) would the dissemination of pornography via telemedia be prohibited unless the provider "guaranteed" that the content could only be accessed by adults (see Article 4.2.2 of the Staatsvertrag über den Schutz der Menschenwürde und den Jugendschutz in Rundfunk und Telemedien, Jugendmedienschutz-Staatsvertrag (Inter-State agreement on the protection of human dignity and minors in broadcasting and telemedia - JMStV)). In the Court's view, charging a fee and verifying the user's age was "currently the most effective method of protecting minors". It should also be remembered that thousands of pornographic web-sites operating from abroad had no protection mechanisms whatsoever. Young people who had sufficient experience of using the Internet to obtain identity card numbers would also be aware of these sites and be able to bypass other protection mechanisms. In the Düsseldorf Court's opinion, the defendant had not committed an offence by advertising pornography. The references on the homepage were no different from

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the window displays of a sex shop. It should be borne in mind that, while people might be exposed to sex shop displays simply by walking past, it was unlikely that users would stumble across the web-site in question purely by chance.

The court of first instance, the Amtsgericht Neuss (Neuss District Court), disagreed. It had ruled on 19 August 2002 that the defendant had committed an offence by offering pornographic Internet content to under-18s and making it accessible to them. The automatic verification of identity card numbers was insufficient to meet legal requirements for the protection of minors, since such numbers were available on the Internet. This process provided only illusory protection and could easily be circumvented, even by children. The defendant had known that this system of verification was much less effective than human control measures used at kiosks or video shops, for example.

Landgericht Düsseldorf, Urteil vom 31. Januar 2003, Az.: XXXI 34/02

Düsseldorf District Court, ruling of 31 January 2003, case no. XXXI 34/02

Amtsgericht Neuss, Urteil vom 19. August 2002, Az.: 7 DS 70 Js 6582/01 - 18/02

Neuss District Court, ruling of 19 August 2002, case no. 7 DS 70 Js 6582/01 - 18/02

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