[DE] Admissibility of Automated Rental of Pornographic Videos

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In a ruling issued on 22 May 2003 (case no. 1 StR 70/03), the Bundesgerichtshof (Federal Supreme Court BGH) decided on the admissibility under criminal law of renting out pornographic videos using automated video libraries.

The defendants run an automated video library in the form of a club. Around 30% of the videos available for rental contain pornographic material. The video dispensing machine is located in business premises which are not staffed and to which access is restricted. People wishing to rent videos must fill out a written application form. Using this form and the applicant's identity card, the video club operators check that the customer has reached the age of majority. Provided this is the case, the customer can buy a smart card, which enables them to gain access to the premises, and a PIN. Their thumb-print is also scanned and stored. Customers can only view the list of videos available on the screen and rent them out if they insert their smart card, type in their PIN and if their thumb-print matches. The room is also monitored by a video surveillance camera.

The video club operators were accused of breaching the Strafgesetzbuch (Criminal Code - StGB) and the Gesetz zum Schutz der Jugend in der Öffentlichkeit (Act on the Protection of Minors in Public), which has now been replaced by the new Jugendschutzgesetz (Youth Protection Act - JSchG, see IRIS 2002-6: 13). The BGH concluded that staff did not necessarily have to be present as long as the technical security measures in place were reliable and offered a comparable level of youth protection and age verification. This was particularly true in the light of the amended youth protection legislation, which entered into force on 1 April 2003. When the relevant Article 184 para. 1 no. 3 (a) of the StGB had been introduced in 1985, the legislator had assumed that minors could only be prevented from renting prohibited material from a video library if staff were in attendance. However, since technical progress meant that this was no longer the case, a reassessment was necessary. In conclusion, the BGH decided that the rental of pornographic videos using the system operated by the defendants was admissible under criminal law.

According to the aforementioned review of youth protection legislation, pre-recorded videos which have no age restrictions or which are classified as suitable for persons over 6, 12 or 16 years old under the terms of Article 6 para. 2 nos. 1 to 4 of the JSchG, may be made available from automated libraries outside of

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business premises as long as technical precautions are taken to ensure that they cannot be accessed by children and juveniles below the age for which they are suitable (Art. 12 para. 4 JSchG).

Urteil des BGH (1. Strafsenat) vom 22. Mai 2003 - 1 StR 70/03 -

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2003&Sort=3&Seite=2&Blank=1&linked=urt&nr=26393&file=dokument.pdf

Judgement of the Federal Supreme Court of 22 May 2003 - 1 StR 70/03 -

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