[DE] Pornography on the Internet

IRIS 2004-6:1/14

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The Oberlandesgericht Düsseldorf (higher regional court of Düsseldorf, OLG) annulled the decision of the Landgericht Düsseldorf (regional court of Düsseldorf) dated February 17 2004 regarding legal requirements to be fulfilled to comply with protection of minors against the distribution of simple pornography on the Internet.

The regional court of Düsseldorf decided in 2003 that it was sufficient to comply with requirements of on-line child protection by querying a personal ID number whose conclusiveness was verified by a computer program in connection with an offer subject to costs (see IRIS 20034: 12).

In contrast to this, the OLG judged that systems based solely on the verification of personal ID keys even in connection with an offer subject to costs are not appropriate instruments to ensure protection of minors in the area of the Internet age verification also. Rather, more precautions must be made for distribution of pornographic content on the Internet to regularly prevent minors from accessing such pornographic content, just as for broadcasting facilities that distribute such content. An `efficient barrier' should be installed between the pornographic content and the minor to be protected. A corresponding provision has been drawn up by the administrative courts for the field of broadcasting (see IRIS 2002-10: 6 and IRIS 2002-3: 7).

The OLG sees this protection of minors' adjudication to be applicable to the Internet as well. The medium plays no role when it comes to the fact of distribution of pornography having criminal relevance. This barrier must be as efficient on the Internet as for pay-TV offers or video rentals. Age verification systems based solely on the specification of a personal ID number or credit card number thus do not represent an efficient barrier between the content of an Internet page and an under-age user. The case was remitted to another criminal division of the regional court of Düsseldorf to be heard again and decided.

Urteil des Oberlandesgerichts Düsseldorf vom 17. Februar 2004, Aktenzeichen III-5 Ss 143/03 50/03 I

Judgment of the Oberlandesgericht Düsseldorf of 17 February 2004, reference number III-5 Ss 143/03 50/03 I

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