[DE] Munich Appeal Court on Internet Distribution of Harmful Media

IRIS 2004-9:1/14

Kathrin Berger
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a ruling of 29 July 2004, the OLG München (Munich Appeal Court) clarified the requirements governing the distribution of media that carry the warning "unsuitable for young people" (case no. 29 U 2745/04).

The parties in the proceedings were two mail-order companies that rent out film DVDs via the Internet. The applicant complained that the distribution method used by the respondent failed to ensure that DVDs categorised as unsuitable for under-18s did not fall into the hands of children or young people. Individuals wishing to rent the films, after registering their personal data on the respondent's web-site, had to prove their identity in person at a post office branch. Once their identity and age had been verified, a form was sent from the post office to the respondent, who then sent out the relevant films. Under this system, no further age checks were carried out when the films were actually delivered.

According to Art. 12.3.2 of the Jugendschutzgesetz (Youth Protection Act - JuSchG), films categorised as unsuitable for young people may not be distributed by mail-order. However, under Art. 1.4 JuSchG, this does not apply if technical or other means are used to ensure that goods are not sent to children or young people. If appropriate precautions have been taken, such goods may therefore be distributed. The court stated, however, that these measures must not only exist in principle, but should be effective.

In its decision, the court began with a detailed interpretation of the term "distribution to children and young people". It decided that "distribution" entailed not only the actual sending of the goods, but also their arrival at the recipient. Under the post office ID system, this involved their being posted through the letter box or handed over by the postman. In the court's view, there was no guarantee under this system that a minor would not open the parcel. The e-mail informing the customer that the goods had been sent was also therefore insufficient. The only way of effectively ensuring that the goods were not opened by children or young people was to send them by recorded delivery so that only the customer in person could receive them.

Similar problems arise in relation to youth protection in broadcasting and telemedia. Under Art. 5.3.1 of the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on Youth Protection in the Media - JMStV), telemedia providers and

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broadcasters must ensure through technical or other means that content harmful to minors cannot be viewed by children and young people, or at least that access is heavily restricted. However, the OLG München did not draw a legal comparison between the two situations, since it thought that the criteria for restricted user groups (see IRIS 2003-10: 14 and IRIS 2004-6: 8) set out in Art. 4.2.2 JMStV did not necessarily apply to the mail-order distribution of videos and DVDs.

OLG München, Urteil vom 29. Juli 2004, Az.: 29 U 2745/04

Munich Appeal Court, ruling of 29 July 2004, case no. 29 U 2745/04

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