[DE] Forum Operators Responsible for User Submissions

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The *Landgericht Hamburg* (Hamburg District Court - *LG*) ruled in a recently published judgment that operators of Internet forums are responsible for illegal content posted on their fora from the moment it becomes accessible to the public rather than when it is actually read.

The defendant in the case at hand was the on-line news service *Heise* , which regularly publishes articles relevant to the IT sector and operates Internet fora in which readers can post their views on current issues. Following an article concerning the business practices of a particular company, several forum participants had encouraged readers to download a program that was suspected of containing a camouflage program from the company's website in order to disrupt the company's server and prevent the program from being distributed. After the company concerned had obtained a temporary injunction, *Heise* argued, *inter alia* , that the enormous number of postings meant it was impossible to bring any influence to bear on the forum's content. However, the on-line news service did not consider such content to be its own.

The *Landgericht Hamburg* confirmed the temporary injunction obtained by the company and accepted a claim for an injunction under Articles 823.1 and 1004.1.2 of the *BGB* (Civil Code).

This decision was based on the notion that anyone who provides a service by which large numbers of comments can be disseminated is maintaining a source of danger which, because it is difficult to control, is subject to increased liability.

The court decided that the provider of such a platform remained liable, even if it was unable to control the content posted on the forum concerned. In principle, it was technically possible to exercise such control, since fora could be set up in such a way that the legality of its content was verified before being published. In fact, the *LG Hamburg* stressed, there was an obligation to carry out such controls, since the providers of services by which content was distributed in press format were obliged to take precautions to ensure that no illegal content was distributed via these services.

The Court ruled that companies running Internet fora must be structured in such a way that their material and human resources were sufficient to control their business activities. According to the *LG* , this meant in practice that, if the number

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of fora and postings was so large that the forum operator did not have sufficient staff or technical means to verify the legality of these postings before they were published, it should either increase its means or scale down its activities, such as by reducing the number of fora or limiting the number of postings.

Urteil des LG Hamburg, Az. 324 O 721/05, vom 2. Dezember 2005

http://www.heise.de/recht/2006/lg-hh_02-12-2006_324-O-721_05_heise.pdf

Ruling of the Hamburg District Court, case no. 324 O 721/05, 2 December 2005

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