[DE] OLG Hamburg Rules on Heise Forum Judgment

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In a ruling of 22 August 2006, the *Oberlandesgericht Hamburg* (Hamburg Appeal Court - OLG) decided that an Internet forum operator must monitor its forum for illegal content if it has been alerted to infringements that have already taken place in the forum.

The dispute concerned a case in which a user had posted on the online forum of the Heise magazine publishing company an appeal for people to block the servers of an Internet service provider. The *Landgericht Hamburg* (Hamburg District Court - LG) had decided in the first instance that Heise was liable for this content, even if it had been unaware of it, and demanded that all online forums be monitored in advance of publication. The Heise publishing company had appealed against this decision.

In its ruling, the OLG Hamburg explained that the publishing company could not be considered to be either the perpetrator of or a participant in the publication of the offending content. It thought that contributions to Internet forums could not be compared to readers' letters in the print media. In the light of the principles laid down by the *Bundesgerichtshof* (Federal Supreme Court - BGH) concerning live TV broadcasts, the court held that, as long as an Internet forum did not create the impression that its content represented the views of its operator, the operator could not, as a rule, be held liable, insofar as it was only the posting of the content by a third party that was at issue.

The publishing company had fulfilled its duty to remove the unlawful content within a few hours of being alerted to its presence on the forum. However, it was duty-bound, as the operator, to continually monitor the content of the forum in order to see whether it contained any further appeals of this nature. It was reasonable to monitor an individual forum if there was a risk of further infringements.

In summary, the OLG Hamburg considered it reasonable to expect an operator to monitor a forum if the operator had either provoked foreseeable illegal postings by third parties through its own actions, or if it had been alerted to at least one fairly serious infringement on its forum and there was a real danger of further breaches being committed by individual users. Furthermore, it was more reasonable to expect a commercially operated forum to be monitored than privately run forums.

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Urteil des OLG Hamburg vom 22. August 2006, Az. 324 O 721/05

http://www.heise.de/recht/2006/olg-hh_28-08-2006_324-O-721_05_heise.pdf

Ruling of the OLG Hamburg, 22 August 2006, case no. 324 O 721/05

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