[DE] Requirements with Respect to Links to Pornographic Websites

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On 18 October 2007, the *Bundesgerichtshof* (Federal Court of Justice - BGH) ruled that making pornographic offerings accessible on the Internet by simply entering an identification card or passport number did not meet the demands of legislation on the protection of minors (Case no. I ZR 102/05). Nor was it sufficient to impose an additional requirement to effect an account transaction or state a postcode.

The parties to the dispute were both suppliers of age verification systems (AVSs) for operators of websites with pornographic content. The purpose of these systems is to prevent minors from accessing these offerings. The defendant developed system versions that make the granting of access dependent on the provision of an identification card or passport number or a name, an address and a credit card or bank account number. It also linked its homepage to its clients' pornographic offerings on the internet. The plaintiff, which developed a so-called "post-ident" procedure, applied for an injunction against the defendant for unfair competition, claiming that with its systems it had violated legal provisions for the protection of minors and breached the Criminal Code (sections 184a to 184c).

The *Oberlandesgericht Düsseldorf* (Düsseldorf Higher Regional Court) allowed the application, and the BGH confirmed that court's decision against the defendant, both with respect to its involvement regarding its clients' improper offerings, and the links from its homepage to the latter.

Under section 4(2) of the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on the protection of human dignity and minors in broadcasting and telemedia - JMStV), offerings of so-called soft pornography in telemedia are lawful, provided that the suppliers ensure that they are only made accessible to adults. According to the BGH, however, the systems developed by the defendant did not constitute such an "effective barrier" to the access of minors to telemedia. Simple and obvious ways of circumventing the requirements could not be ruled out. Young people could easily obtain data such as the numbers of identification cards from family members or adult acquaintances. The BGH stressed that its judgment did not make excessive demands and that access by adults was not unduly restricted since there were many other ways of developing reliable AVSs, such as the one-off personal identification of a user by a postman/woman, and user authentication each time content was called up. It also ruled that there was no

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discrimination against domestic suppliers of pornographic content in favour of foreign suppliers as German law also applied to the latter. The fact that it was potentially more difficult to implement German law in the case of offerings from abroad did not lead to a violation of the constitutional principle of equality.

The operation of a website can be prohibited by the regional media authorities if the site refers to suppliers of pornographic content that do not check or inadequately check whether the users are adults. This was confirmed by the *Verwaltungsgericht Lüneburg* (Lüneburg Administrative Court) in urgent proceedings concerning an injunction made by the *Niedersächsische Landesmedienanstalt* (Lower Saxony *Land* Media Authority - NLM), which had threatened to impose a fine of EUR 10,000 if the link page continued to be operated in the form that gave rise to the complaint.

Pressemitteilung Nr. 149/2007 des Bundesgerichtshofs vom 19. Oktober 2007

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=5c0b3301e530e5bb4d5e7cbcda0901d4&client=%5B%2712%27%2C+%2712%27%5D&client=%5B%2712%27%2C+%2712%27%5D&nr=41423&linked=pm&Blank=1

Press release of the Federal Court of Justice no. 149/2007 of 19 October 2007

Pressemitteilung der Niedersächsischen Landesmedienanstalt vom 18. Oktober 2007

http://www.nlm.de/78.html?&cHash=a80c1dedd6&tx_ttnews[backPid]=18&tx_ttnews[tt_news]=166

Press release of the Lower Saxony Media Authority of 18 October 2007

Bundesgerichtshof, Urteil vom 18. Oktober 2007 – I ZR 102/05

Federal Court of Justice, decision of 18 October 2007 – I ZR 102/05

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