[DE] Youth Protection on the Internet

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If content that is harmful to young people is available on the Internet, it then becomes necessary to ask who can be obliged, under what circumstances, to ensure that young people do not access the content concerned. This has been clarified in three recent court decisions.

Firstly, on 6 December 2007 (case no. 10 ME 241/07), the *Niedersächsische Oberverwaltungsgericht* (Lower Saxony Supreme Administrative Court - *OVG Lüneburg*) confirmed an injunction granted by the *Niedersächsische Landesmedienanstalt* (Lower Saxony regional media authority - NLM). The NLM had forbidden the provider of a portal containing links to numerous pornographic sites from operating the portal without appropriate technical measures designed to ensure that it could only be accessed by adults. The *OVG* upheld the NLM's decision.

Meanwhile, according to a decision of the *Landgericht Frankfurt a. M.* (Frankfurt District Court) of 5 December 2007 (case no. 2-03 O 526/07), an Internet provider cannot be forced to block its customers' access to a search engine simply because users are able to find, via the search engine, websites with pornographic content (involving animals) without any access restrictions. The Court ruled that the Internet provider was neither the perpetrator of, nor a participant in, a breach of competition rules by other service providers. It only provided the connections to a communication network. Neither did the Court consider that Art. 3 of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - UWG) had been infringed, since the Internet provider merely arranged a content-neutral telecommunications link.

Previously, in a ruling of 23 November 2007 (case no. 14 O 125/07), the *Landgericht Kiel* (Kiel District Court) had refused to order an Internet provider to block customer access to erotic content. In the Court's view, an Internet provider is not responsible for illegal websites that can be reached via its Internet service. The Court denied that the provider had acted as an accomplice because it had not breached any duty of care. It deemed it legally and practically impossible for the provider to prevent illegal content being posted on someone else's website. However, under a ruling of the *Landgericht Frankfurt a. M.* of 17 October 2007 (case no. 2-06 O 477/07), an Internet provider must block access to a specific pornographic website if it can be accessed without any age-related restrictions.

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The last two decisions mentioned above illustrate clearly that, even where the same party is involved, whether an obligation applies depends on the circumstances of the individual case.

Beschluss des niedersächsischen Oberverwaltungsgerichts vom 6. Dezember 2007 (Az. 10 ME 241/07)

Decision of the Lower Saxony Supreme Administrative Court of 6 December 2007 (case no. 10 ME 241/07)

Urteil des Landgerichts Kiel vom 23. November 2007 (Az.: 14 O 125/07)

http://www.schleswig-holstein.de/LGKIEL/DE/Service/DownloadMaterialien/Urteil__14__O__125__07,templateId=raw,property=publicationFile.pdf

Ruling of the Kiel District Court of 23 November 2007 (case no. 14 O 125/07)

Beschluss des Landgerichts Frankfurt a. M. vom 17. Oktober 2007 (Az. 2-06 O 477/07)

http://www.lg-frankfurt.justiz.hessen.de/irj/LG_Frankfurt_Internet?cid=5c0d6580ff37a7990ffcb2ed19c8e2dc

Decision of the Frankfurt District Court of 17 October 2007 (case no. 2-06 O 477/07)

Beschluss des Landgerichts Frankfurt a. M. vom 5. Dezember 2007 (Az. 2-03 O 526/07)

Decision of the Frankfurt District Court of 5 December 2007 (case no. 2-03 O 526/07)

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