[DE] Court decisions on the Right to Information under Section 101(9) of the Copyright Act

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The Cologne *Landgericht* (Regional Court – LG), in a decision of 2 September 2008, and the Düsseldorf LG, in a decision of 12 September 2008, are the first German courts to reach decisions on the new right to copyright information enshrined in section 101(9) of the *Urheberrechtsgesetz* (Copyright Act, – UrhG). This right has existed since 1 September 2008 and implements Directive 2004/48/EC on the enforcement of intellectual property rights.

The applicant for an injunction in both cases was a company that possesses rights in sound recordings. Some of these recordings were illegally distributed over the internet and the applicant had identified the IP addresses of those involved. This company requested the courts to order the access provider to let it have information on the identifiers and traffic data of the clients behind the IP addresses. The applications were granted.

The Cologne Regional Court considered that the preconditions set out in section 101(9) of the Copyright Act were met and ruled that the illegal distribution of the sound recordings constituted a breach of the applicant's rights within the meaning of section 19a of the Copyright Act. This breach had also been committed on a commercial scale, as could be seen from the seriousness of the legal infringement since a large file was made publicly accessible after the publication of the sound carrier in Germany. The court denied that the provision of information would be disproportionate within the meaning of section 101(4). It fixed the value of the subject-matter at issue at EUR 200 per IP address. The Düsseldorf Regional Court's reasons for its own decision to grant the application for an injunction have not yet been published.

While the applicant welcomed the decisions, other lawyers criticised the courts' assumption regarding the commercial extent, stating that the threshold had been set too low and a flood of applications for information was consequently to be feared in the future.

Beschluss des LG Köln vom 2. September 2008 (Az: 28 AR 4/08)

http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2008/28_AR_4_08beschluss20080902.html

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Decision of the Cologne Regional Court of 2 September 2008 (Case 28 AR 4/08)

Beschluss des LG Düsseldorf vom 12. September 2008 (Az: 12 O 425/08), abrufbar unter:

http://www.justiz.nrw.de/nrwe/lgs/duesseldorf/lg_duesseldorf/j2008/12_O_425_08beschluss20080912.html

Decision of the Düsseldorf Regional Court of 12 September 2008 (Case 12 O 425/08)

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