[DE] Internet Transmission of Sexual Acts via Webcam Constitutes Abuse

IRIS 2009-7:1/11

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The Bundesgerichtshof (Federal Supreme Court - BGH) has dismissed as unfounded the defendant's appeal against the ruling of the Landgericht München I (Munich District Court I - LG) of 15 December 2008 (case no. 12 Kls 468 Js 310758/07) concerning five concurrent cases of sexual abuse of children and the distribution of pornographic material via teleservices.

The defendant, who had several previous convictions for sexual offences, had made contact with five children from Belgium via the Internet. During their conversations, live images of the defendant and the children had been transmitted using a webcam. When the defendant told the children that he wanted to "fuck" them, one of the girls turned the webcam away and told him that she was only 12 years old. The defendant then wrote back: "It doesn't matter how old you are, do you want to take your clothes off?" At that point, the defendant turned his webcam towards his exposed penis and started masturbating in order to arouse himself sexually, in the knowledge that the children would be able to see what he was doing on the screen.

According to the BGH's decision, its re-examination of the original ruling did not show that any legal error had been made to the defendant's disadvantage. Even though the defendant and the five children had not been physically next to each other, the victims, who were interacting with the defendant, could directly see his exposed penis and masturbation because of the simultaneous transmission of images to their computer screen using the webcam and the Internet. It did not matter whether the offender and victim were physically next to each other. The offence described in Art. 176(4)(1) of the Strafgesetzbuch (Criminal Code - StGB) could also be committed if the physical distance between the perpetrator and his actual victim was overcome by the transmission of live images, which enabled the victim to watch the perpetrator's sexual acts in real time on the screen. The criminal court had therefore been right to find the defendant guilty, since there was no doubt that the law was designed to give children complete protection from such images in order to prevent harm to their overall development.

Under Art. 176(4)(1) StGB, children under 14 should be protected from harm to their overall development caused by exposure to exhibitionist acts performed in front of them.

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Beschluss des BGH vom 21. April 2009 (1 StR 105/09)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2009&Sort=3&nr=47989&linked=bes&Blank=1&file=dokument.pdf

Decision of the BGH of 21 April 2009 (1 StR 105/09)

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