[DE] Liability of Website Operator for Users' Infringements

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In a ruling on 12 November 2009, the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) decided that the operator of an Internet site is liable for the illegal uploading of photographs by users of the site.

The plaintiff operates an Internet site from which recipes, some including photographs, can be downloaded free of charge. Private users uploaded several of these photos together with recipes onto the website of the defendant, who also operates a free recipe collection on the Internet. The plaintiff did not give consent for the photos to be used in this way.

The *BGH* ruled that the defendant had adopted the photos uploaded by users as its own and was therefore liable for them as if they were its own content. It did not matter that the photos had previously been generally available on the plaintiff's website. The defendant had clearly accepted responsibility for the recipes and illustrations published on its website, particularly by marking the recipes with its logo. In the absence of adequate verification of the rights to the images, the stipulation in the defendant's general terms of business that uploading copyrighted content onto its platform was prohibited, was not sufficient.

Therefore, by making the photos available for download from its Internet site, the defendant had infringed the plaintiff's exclusive right to make content available under Art. 15 para. 2 no. 2 and Art. 19a of the *Urheberrechtsgesetz* (Copyright Act - *UrhG*).

Urteil des BGH vom 12. November 2009 (Az. I ZR 166/07)

http://www.bundesgerichtshof.de/

Ruling of the Federal Supreme Court, 12 November 2009 (case no. I ZR 166/07)

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