[DE] Court Clears Rapidshare of Copyright Infringements

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On 27 April 2010, the Oberlandesgericht Düsseldorf (Düsseldorf Regional Appeal Court - OLG) ruled that file-hosting site "Rapidshare" was not liable for copyright infringements committed by third parties using its service.

In the OLG's view, Rapidshare was not responsible, either as perpetrator or participant, for copyright infringements committed by users. Rapidshare made storage space available for the uploading of files and offered access to stored data by providing a download link. The site operator itself did not publish any content, so it could not be guilty of infringing copyright. As long as Rapidshare did not make uploaded files accessible to the public or enable others to do so, it could not be held liable as a wilful participant in the infringement. Insofar as the files could be used legally by users, it was not sufficient to argue that the service provider had accepted that its service might be used to infringe copyright.

The OLG ruled that, in such a case, Rapidshare was also not liable for its users' copyright infringements under contributory negligence rules. Contributory negligence was the failure to fulfil a duty of due diligence, the scope of which depended on what was generally considered "reasonable". A higher degree of diligence was particularly required if the wrongdoer had been informed by the rightsholder of a clear infringement. In that case, it would not only have to block access to the actual file immediately, but also take reasonable precautions to prevent similar infringements occurring in the future.

Rapidshare could not be reasonably expected to manually check uploaded files, and automatic file verification was largely unsuitable for technical reasons. In particular, checking file names was impractical, since these could be chosen freely, and this could instead lead to legitimate files being wrongly identified. Blocking all file names containing certain words was also out of the question because this would not provide any compelling indication that the file content was illegal. Finally, the verification and blocking of IP addresses was unsuitable since many IP addresses were used by so many different people that the likelihood of establishing further infringements was disproportionately small.

On 30 September 2009, the Oberlandesgericht Hamburg (Hamburg Regional Appeal Court) adopted a different legal opinion and found Rapidshare liable for copyright infringements under the principle of contributory negligence (case no. 5

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U 111/08).

Urteil vom 27. April 2010 (Az: Az. I-20 U 166/09)

http://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2010/I_20_U_166_09urteil20100427.html

Ruling of 27 April 2010 (case no. I-20 U 166/09)

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