

[DE] GEMA (Provisionally) Loses Legal Dispute with YouTube

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In a decision of 27 August 2010 (case no. 310 O 197/10), the Landgericht Hamburg (Hamburg District Court - LG) rejected an application by the Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (society for musical performing and mechanical reproduction rights - GEMA) and other collecting societies for a temporary injunction against YouTube.

The legal dispute concerned videos uploaded by users onto the YouTube portal, containing pieces of music to which the applicants held the rights but for the use of which YouTube paid no compensation. A licensing agreement between the GEMA and YouTube had expired on 31 March 2009 and had not been renewed due to a failure to agree on compensation obligations and methods. As a result, the GEMA, together with other European collecting societies, ended up taking legal action. The applicants requested an injunction preventing YouTube from making the disputed titles available to the public.

The LG Hamburg disputed the urgency of the application and therefore rejected it, suggesting that the applicants open principal proceedings if necessary or reach an out of court agreement. It ruled that the applicants had known for a long time "that music compositions were used on the YouTube service". This fact, together with the long period of time they had spent preparing the injunction application itself, contradicted the notion that the applicants had only become aware a few weeks earlier that their rights were being infringed. The argument regarding the necessary urgency was not therefore sufficiently plausible.

The LG Hamburg therefore did not consider the actual question of whether the applicants were entitled to an injunction against the video portal under copyright law. However, if principal proceedings were to be opened, there was good reason to believe that such a claim would be granted. In particular with regard to preventive measures that would stop further uploading of blocked content, it seemed "that the respondent had failed to fulfil reasonable examination duties or take measures to prevent further rights infringements".

Pressemitteilung des LG Hamburg vom 27. August 2010

<http://justiz.hamburg.de/2479208/pressemeldung-2010-08-27.html>

