[DE] Court Orders YouTube to Block Individual Music Videos

IRIS 2010-10:1/22

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On 3 September 2010, the Landgericht Hamburg (Hamburg district court - LG) ordered the YouTube video portal to block access to three disputed music videos and, since they had already been published, to provide information about the extent to which they had been used and pay a corresponding amount of compensation.

The producer of the pieces of music had complained that his copyright and related rights, protected by the Urheberrechtsgesetz (Copyright Act - UrhG), had been infringed by the unauthorised use of the music in numerous videos available on YouTube.

The LG Hamburg only took a decision on three of the videos that were complained about, since it found the complaint largely inadmissible, partly because the object of the complaint was not sufficiently well defined. The court upheld the claims regarding a breach of the right to make works available to the public, enshrined in Article 97(1) in connection with Articles 15, 19a, 73 ff. and 85 UrhG. The works had illegally been made publicly accessible by users of the platform. However, YouTube should be held accountable for these actions. YouTube had “made the third-party content its own” and “as an exception, service providers [can be] considered liable if, in the opinion of the third party, the information appears as if it were owned by the operator”. This should be assessed by objectively examining the overall circumstances from the perspective of a sensible average user. As well as indicating the name of the user who uploads the content concerned, it must be made clear that the content provider does not wish to adopt it as its own. However, the inclusion of the uploaded videos on the platform, where the YouTube logo was clearly dominant in comparison to the name of the user concerned, gave the impression that YouTube had adopted the content as its own. This impression was strengthened even further by the inclusion of third-party content (advertising), which brought with it a greater obligation for the provider to verify the content. However, YouTube had no control mechanism in place through which, for example, it could prevent illegal content being uploaded. The requirement for users to complete a form declaring that they owned the rights to the uploaded works, without demanding that they provide concrete, comprehensible information on the origin of the works, was insufficient. Contrary to the defendant’s opinion, such an obligation for users would not fundamentally

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call the YouTube business model into question.

In a similar case at the end of August, the LG Hamburg had rejected an application by the GEMA for a temporary injunction against YouTube on the grounds that there was insufficient urgency, although it did suggest that such an injunction could, in principle, be granted (see IRIS 2010-9: 1/19).

Urteil des LG Hamburg vom 3. September 2010 (Az. 308 O 27/09)

http://rechtsprechung.hamburg.de/jportal/portal/page/bshaprod.psml;jsessionid=7DCFD3DC846F8F37C24759F2ACBA429A.jpc5?doc.id=JURE100070104&st=ent&showdoccase=1&paramfromHL=true#focuspoint

Ruling of the LG Hamburg, 3 September 2010 (case no. 308 O 27/09)

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