[DE] Court Rulings on Illegal Online Music File-Sharing Networks

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On 8 October 2010, the Landgericht Hamburg (Hamburg regional court - LG), in a legal dispute over the distribution of two music tracks via an Internet file-sharing network, ordered the defendant to pay two music publishers EUR 15 per track in compensation.

The court decided that the defendant had culpably and illegally infringed the music publishers' copyright (reproduction right and right to make available to the public) by copying the music tracks without permission and uploading them to a file-sharing network. The court's assessment of the level of compensation due is particularly significant. Whereas the plaintiffs had each asked for EUR 300 per track, the court decided that EUR 15 per track was adequate. It was important to consider what reasonable parties concluding a hypothetical licensing agreement would have agreed was an appropriate licence fee for the use of the music recordings. Since the tracks in question had been released many years previously, it could be assumed that demand for them was limited. It should also be borne in mind that the tracks were only available on the file-sharing network for a very short time, during which neither track could have been downloaded more than 100 times. The LG took into account the fees normally applied by the Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (music copyright collecting society - GEMA) for the private use of works obtained through music-on-demand services.

On 5 October, the Oberlandesgericht Köln (Cologne regional court of appeal - OLG), in a procedure relating to the use of an illegal file-sharing network, granted the owner of an Internet connection the right to appeal against a court order requiring the provider to pass his personal details on to a copyright holder.

According to the OLG, the copyright holder was entitled, under Article 101(9) of the Urheberrechtsgesetz (Copyright Act), to require the provider to disclose the information (user's name and address) if the act of making the work available to the public was a clear breach of the law committed on a commercial scale. The Landgericht Köln (Cologne regional court - LG) had previously granted copyright holders' requests for information in several cases. It considered that the legal requirements were met if a whole album was uploaded for sharing purposes.

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The OLG granted the user of the file-sharing network the right to appeal in the original procedure. Although the owner of the Internet connection had certain rights vis-à-vis the copyright holder, which did not include the right to appeal against the court order, his defence was "seriously impeded" if what he considered to be incorrect conclusions reached by the court could not be verified until a subsequent procedure. The appeal should only relate to the examination of whether the legal requirements were met for the copyright holder's request for information to be granted. In this case, the OLG found that the LG's decision to grant the information request infringed the user's rights because the "commercial scale" criterion had not been met. The album uploaded by the appellant had already been published and on sale for a year and a half. Only in particular circumstances could there be considered to be a "commercial scale" to the operation. It had a "commercial scale" if "a sufficiently large file was made available to the public during its relevant sale and exploitation phase".

The court stressed the need for the law to be developed further and for consistent case-law in this field, and granted leave to appeal.

Urteil des LG Hamburg vom 8. Oktober 2010 (Az. 308 O 710/09)

http://www.wbs-law.de/news/wp-content/uploads/2010/11/lg-hamburg-308-o-710_09.pdf;

Ruling of the Hamburg regional court, 8 October 2010 (case no. 308 O 710/09)

Beschluss des OLG Köln vom 5. Oktober 2010 (Az. 6 W 82/10)

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2010/6_W_82_10beschluss20101005.html

Ruling of the Cologne regional court of appeal, 5 October 2010 (case no. 6 W 82/10)

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