[AT] Film Producers Granted Injunction Against Provider of Streaming Platform www.kino.to

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An Austrian and a German film producer have, with the support of the Verein für Antipiraterie (Anti-Piracy Association - VAP), been granted an injunction against one of the largest Austrian Internet access providers by the Handelsgericht Wien (Vienna Commercial Court).

The operators of the Internet platform kino.to, which was the subject of the dispute and provides links to streams of copyrighted films, are thought to be based in Russia and were therefore beyond the plaintiffs' reach.

The Internet access provider, which provides access to the portal kino.to (as do virtually all other providers in Europe), had previously been cautioned and informed that films such as the award-winning Austrian title "The White Ribbon" were illegally available on the site. It had ignored a request to block customer access to this site. The two producers therefore took legal action to prevent it from allowing its customers to access kino.to if films that they had produced were being made available to the provider's customers on the website. This was to be achieved by blocking the relevant domain and IP addresses. At the same time, the plaintiffs filed for a temporary injunction until the matter could be resolved in ordinary civil proceedings.

The Vienna Commercial Court has now taken the first step by granting the temporary injunction. It ruled that the portal kino.to was being used to infringe the film producers' right to make their films available, enshrined in Article 18a of the Urheberrechtsgesetz (Copyright Act - UrhG), even though the portal did not produce pirate copies itself but used copies illegally made available by third parties. Kino.to had to take responsibility for these copies. According to Article 81(1a) UrhG, it is possible to apply for an injunction against intermediaries whose services are used by a third party to commit an infringement, in application of Article 8(3) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. If the intermediary is a provider in the sense of the eCommerce-Gesetz (E-Commerce Act), it must be warned in advance, as was the case here.

The defendant particularly disputed the claim that, as a mere access provider, it was an intermediary in this sense. However, this was rejected by the first instance

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court. It was true that access providers were not under a general obligation to monitor all content. However, this did not mean that copyright infringements on the Internet should never lead to the access provider being issued with an injunction or special monitoring obligation. The plaintiffs had correctly pointed out that end users had no legitimate right to use the illegally provided content and that providers were not entitled to distribute it.

However, there seems to be a problem with this decision, since it is not only access to illegal content that will be blocked, but also access to legally available content. The access provider will therefore be obliged to check which content may be distributed to its customers. An appeal has been lodged against the decision; meanwhile, access to the platform is blocked.

Pressemitteilung der VAP vom 17. Mai 2011

http://www.vap.cc/

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