[DE] Cologne District Court Denies Liability of ISP

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In a ruling of 31 August 2011, the Landgericht Köln (Cologne District Court - LG) rejected an action brought by several manufacturers of audio storage media against an Internet Service Provider (ISP). The plaintiffs wanted to force the ISP to block its customers' access to a well-known file-sharing platform.

In the plaintiffs' opinion, the ISP was liable under Article 97(1) of the Urheberrechtsgesetz (Copyright Act) because it enabled its customers to infringe their rights. The ISP was both technically and legally able to prevent its customers accessing the file-sharing service concerned by blocking DNS and/or IP addresses.

The LG Köln decided that the ISP was neither liable nor obliged to take precautionary measures by blocking access. In order to take such measures, the ISP would need to control data communication among its customers, through which it would obtain information about the circumstances of the telecommunications, including their content. The creation of corresponding filters and blocking mechanisms without a legal basis was incompatible with the principle of telecommunications secrecy enshrined in Article 10(1) and (2) of the Grundgesetz (Basic Law).

In addition, the measures demanded by the plaintiffs were unreasonable because the ISP would have to take numerous technical precautions in the form of data filters, which would have to be constantly adapted to changing circumstances and new forms of infringement.

Finally, the requested blocks were not a suitable means of preventing further rights infringements. Only minimal amendments to a particular URL would be required to ensure the same illegal service remained available under the same domain, albeit with a different URL. This had been clearly demonstrated in the current proceedings by the fact that the plaintiffs had had to amend their action several times and add more and more new URLs in order to deal with the illegal content under the domain concerned.

Urteil des LG Köln vom 31. August 2011 (Az. 28 O 362/10)

http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2011/28_O_362_10_Urteil_20110831.html

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Ruling of the LG Köln (Cologne District Court) of 31 August 2011 (case no. 28 O 362/10)

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