[DE] Hamburg District Court Rules in Dispute between GEMA and YouTube

IRIS 2012-6:1/15

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On 20 April 2012, the *Landgericht Hamburg* (Hamburg District Court - LG) ruled, in the dispute between the *Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte* (society for musical performing and mechanical reproduction rights - GEMA) and the video portal operator YouTube, that YouTube was liable, although only in cases in which it "knowingly breached certain rules of conduct and control obligations". YouTube was under no general obligation to check all content uploaded onto its portal for copyright infringements, to block such content or to take measures to prevent repeat infringements. Rather, the operator was only obliged to act after being notified of a copyright infringement (see IRIS 2010-9/19).

In its complaint, the collecting society had sought an injunction against YouTube preventing it from continuing to provide online access to 12 musical works for which the GEMA held the copyright. However, its request was only partially granted. The court granted an injunction against YouTube with regard to seven of the 12 works. However, since the defendant had not uploaded the aforementioned videos itself and had not given the impression that they were its own content, the court did not agree with the GEMA's interpretation that YouTube was liable as the primary offender. Rather, it merely found YouTube liable under the principle of secondary liability. By providing and operating the online portal, YouTube contributed to copyright infringements, as a result of which it had certain obligations. YouTube had breached these obligations with regard to the seven works because it had taken one-and-a-half months to block them. The court considered that no further uploads of the other five videos were apparent. Since the defendant's breach of its obligations with regard to these works had not therefore caused any further copyright infringements, the complaint concerning them should be rejected.

In addition, the court ruled that YouTube had further examination and control obligations, such as to use so-called Content ID software, which can prevent the upload of content identical to previously reported recordings. YouTube should use this software itself, rather than expect copyright holders to do so, as was its current practice. Since this software could only block absolutely identical audio recordings and therefore did not recognise live performances rather than studio recordings, the defendant should also, in future, install a word filter. This should

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filter out new clips whose names contained both the title and the name of the artist of a previously reported work.

However, the court added that proportionality should always be respected in relation to the obligations imposed on the defendant. These should not excessively impede its activities, which were, in principle, admissible. YouTube should therefore not be required to search its entire database for copyright infringements. The defendant was not liable under the principle of secondary liability until it was notified of an actual copyright infringement. The obligation to take precautions against further infringements only applied to future copyright breaches.

The ruling is not yet final. After it was published, both parties signalled a willingness to negotiate a new contractual agreement.

Urteil des LG Hamburg vom 20. April 2012 (Az. 310 O 461/10)

http://openjur.de/u/311130.html

Decision of the LG Hamburg (Hamburg District Court) of 20 April 2012 (case no. 310 O 461/10)

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