[DE] Hamburg District Court Finds Blogger Liable for Embedded YouTube Video

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On 22 May 2012, the Landgericht Hamburg (Hamburg District Court - LG) ruled that a blogger was liable for a YouTube video that he had embedded on his website. The video showed a television report about the plaintiff, a doctor, broadcast on the ZDF magazine programme “WISO”. In the report, the doctor was accused of using dubious methods to treat cancer patients. However, the report also included false allegations, for example, it claimed that there was no expert evidence verifying the effectiveness of the plaintiff’s methods, which proved to be untrue. The doctor’s complaint at the time was therefore upheld and ZDF was forbidden by a court from distributing the film.

The blogger accused in the present case had reported on his website about the legal dispute between the plaintiff and ZDF and, despite the court injunction imposed on ZDF, had embedded the TV report in his blog as a YouTube video. The doctor also lodged a complaint about this.

The court concluded that the blogger had failed to meet his duty to check the report’s accuracy. For example, he had been aware of the legal dispute in which the doctor had sought an injunction preventing ZDF from distributing the television report. He had therefore known that the video’s accuracy could not be trusted, especially as he had been aware that the plaintiff had already taken court action repeatedly against reports that he thought had infringed his general personality rights. The defendant should therefore have checked the accuracy of the television report before embedding the YouTube video in his blog.

According to the LG Hamburg, the principles of the 2003 Paperboy ruling, in which the Bundesgerichtshof (Federal Supreme Court - BGH) had expressly authorised so-called “deep links”, i.e., links leading directly to a particular web page rather than to a website’s home page (see IRIS 2003-8/32), were not relevant in the current case. The reason for this lay in the purpose of the respective complaints: whereas the Paperboy ruling dealt with copyright infringements, the current case concerned “the dissemination of expressions of opinion”. It was also detrimental to the blogger’s case that he had regarded the link as a reference to additional information and referred to the video in his article.

The ruling, which to a large extent runs counter to previous “opinion-friendly” case law of the BGH and the Bundesverfassungsgericht (Federal Constitutional

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Court - BVerfG), has attracted a considerable amount of criticism. The defendant has already declared his intention to appeal.

Urteil des Landgerichts Hamburg, Az.: 324 O 596/11

http://www.afs-rechtsanwaelte.de/urteile/kompa_lg_hh.pdf

Ruling of the Hamburg District Court, case no. 324 O 596/11

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