[DE] Federal Supreme Court Submits Questions on Embedding of Online Videos to CJEU

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In an as yet unpublished decision of 16 May 2013, the Bundesgerichtshof (Federal Supreme Court - BGH) submitted to the Court of Justice of the European Union (CJEU) a request for a preliminary ruling concerning the admissibility, under copyright law, of embedding online videos.

The case concerned a company's advertising video lasting approximately two minutes, which could be watched without the company's permission via the online video platform YouTube. Two independent sales representatives of a competitor had embedded the video on their websites so it could be downloaded from the video platform's server and played in a window that opened on their websites. The company that owned the rights complained that the competitor's sales representatives had unlawfully made the video available to the public in the sense of Article 19a of the Urheberrechtsgesetz (Copyright Act - UrhG).

According to the BGH, the appeal court had correctly ruled that simply linking a work stored on a third-party website to one's own website by means of "framing" (i.e. embedding) does not, in principle, constitute making the work available to the public within the meaning of Article 19a UrhG. Only the owner of the third-party website could determine whether the work stored on its website should remain available to the public.

However, under an interpretation of Article 15(2) UrhG, with reference to Article 3(1) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, such a link could infringe an unnamed right to public communication. The BGH therefore had to decide whether, in this case, the embedding of a third-party work made available to the public via a third-party website into one's own website constituted communication to the public in the sense of Article 3(1) of Directive 2001/29/EC. In the BGH's view, there was no clear answer to this question, even taking into account CJEU case law, so it could be referred to the CJEU for a decision (for a similar case in the USA, see IRIS 2012-8/39).

Pressemitteilung des BGH vom 16. Mai 2013 (zu Az. I ZR 46/12)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2013&a

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BGH press release of 16 May 2013 (case no. I ZR 46/12)

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