[DE] Federal Supreme Court Rules on Google “Autocomplete” Suggestions

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In an as yet unpublished decision of 14 May 2013, the Bundesgerichtshof (Federal Supreme Court - BGH) ruled on the admissibility of Google “autocomplete” suggestions that breach personality rights.

Google uses a so-called “autocomplete” function, which automatically shows users various suggested search terms in the form of word combinations as they enter search items in its search engine.

In the case at hand, a businessman applied for an injunction to stop Google showing his full name as part of the “autocomplete” function with the words “Scientology” and “Betrug” (the German word for “fraud”) which, he claimed, infringed his personality rights and damaged the reputation of his business. He had no connection with Scientology and had not been accused of or investigated for fraud. Not a single search result seemed to contain any link between him and Scientology or fraud.

In the BGH’s opinion, the “autocomplete” suggestions “Scientology” and “Betrug” that appeared when the businessman’s first name and surname were entered constituted an infringement of his personality rights, since they conveyed a comprehensible message. They created a link between the businessman and the terms “Scientology” and/or “Betrug”, which had negative connotations.

This infringement was directly attributable to the search engine. It had evaluated user behaviour using computer software that it had created and made the relevant suggestions to its users.

However, according to the BGH, this did not mean the search engine was liable for every personality right infringement resulting from “autocomplete” suggestions. It should not be condemned for developing and using “autocomplete” software, but merely for failing to take adequate precautions to prevent “autocomplete” suggestions generated by the software infringing third-party rights.

Search engine operators were only liable if they failed to carry out due diligence. They were not generally obliged to check software-generated “autocomplete” suggestions for possible rights infringements in advance. In principle, they were

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only liable if they were aware of the unlawful breach of personality rights.

However, the BGH concluded that if someone informed the operator of an illegal breach of their personality rights, the operator concerned was obliged to prevent further such infringements (see IRIS 2012-8/23).

Urteil des BGH vom 14. Mai 2013 (Az. VI ZR 269/12)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=d29182962895b4748425c7a5ae3050e2&nr=64163&pos=1&anz=7

BGH decision of 14 May 2013 (case no VI ZR 269/12)

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