[DE] Act Against Dubious Business Practices in Force

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On 9 October 2013, the Gesetz gegen unseriöse Geschäftspraktiken (Act Against Dubious Business Practices), also known as the Anti-Abzock-Gesetz (Anti-Rip-Off Act), entered into force. It had been adopted by the Bundestag (lower house of parliament) on 27 June 2013 and the Bundesrat (upper house) on 20 September 2013 (doc. no. 638/13). The Act is designed to prevent the current practice of issuing mass cautions for copyright infringements, as well as dubious telephone transactions and debt collection methods. In future, paid subscriptions or competition entries concluded by telephone will only be legally binding if they are confirmed in writing, i.e. by e-mail, fax or letter. Fines for unauthorised telephone advertising were also increased from EUR 50,000 to EUR 300,000.

The Act also contains more consumer-friendly provisions concerning cautions issued regarding copyright infringements on the Internet. In future, for example, the party issuing a caution must explain in detail how it obtained the cautioned party's IP address. If a caution is issued without justification, the court costs and lawyer's fees must be reimbursed in full by the party that issued it. The amount in dispute is limited to a flat sum of EUR 1,000 under a revised version of Article 97a(3)(2) of the Urheberrechtsgesetz (Copyright Act - UrhG). The associated caution fees may not exceed approximately EUR 155. The use of a so-called "itinerant place of jurisdiction" is also largely banned under the revised Article 104a UrhG, according to which consumers can only be taken to court for copyright infringements in their place of residence. This should put an end to the practice used by numerous companies who were in practice free to issue cautions through whichever courts seemed most likely to give favourable decisions. Exceptions to the maximum amount in dispute and the place of residence principle may, in particular, be granted when infringements are committed on a commercial scale.

In this connection, reference should be made to court rulings issued in relevant file-sharing cases during summer 2013, which limited the amount in dispute on the basis of existing legal provisions before the entry into force of the Anti-Abzock-Gesetz. The view of the Amtsgericht Hamburg (Hamburg District Court) that an "ordinary" file-sharing case with no special circumstances could not involve a sum higher than EUR 1,000 was also adopted by other courts. The rightsholder's freedom to choose the place of jurisdiction was also considered inadmissible by various courts in cases where the only connection with the district

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of jurisdiction was the fact that a film or audio file could have been downloaded from the Internet in that district.

The courts had therefore already begun to take account of the legislator's intentions before these reforms had even entered into force.

Gesetz gegen unseriöse Geschäftspraktiken vom 1. Oktober 2013

http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl113s3714.pdf#__Bundesanzeiger_BGBl__%2F%2F*[%40attr_id%3D%27bgbl113s3714.pdf%27]__1381931232890

Act Against Dubious Business Practices of 1 October 2013

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