[DE] Cologne Appeal Court Grants Right to Information in File-Sharing Case

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According to media reports, in a decision taken in a file-sharing case on 7 October 2013, the Oberlandesgericht Köln (Cologne Appeal Court - OLG) granted a rightsholder's right to information held by an Internet access provider (case no. 6 W 84/13). In the case concerned, the rightsholder had asserted a claim to information under the terms of Article 101(9) of the Urheberrechtsgesetz (Copyright Act - UrhG) in order to issue a warning to a file-sharer whose IP address it had previously tried to trace.

According to the court, a right to information arose if there was a sufficient degree of certainty to exclude reasonable doubt. Absolute certainty in the scientific sense was unnecessary. In this case, the court did not think there was "reasonable doubt", since it had been verified firstly that the investigation software had functioned perfectly and secondly that the investigator appointed by the rightsholder had given a sworn declaration that it had traced the IP address concerned. In the court's opinion, it could also be sufficiently verified, with the aid of the hash value used to identify the file, that the rightsholder's works had been shared.

In its decision of 20 January 2012 (case no. 6 W 82/11), for example, the OLG Köln had considered the undoubted reliability of investigation software to be a condition of the right to information under Article 101(9) UrhG. This could not be established through the plaintiff's sweeping statements, but only if the software had been checked by independent experts.

Beschluss des Oberlandesgericht Köln vom 7. Oktober 2013 (Az. 6 W 84/13)

http://openjur.de/u/655432.html

Decision of the Cologne Appeal Court of 7 October 2013 (case no. 6 W 84/13)

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