

## [DE] Düsseldorf District Court Rejects Claim Based on Fraudulent-Filesharing Caution

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In a decision of 8 October 2013, the Amtsgericht Düsseldorf (Düsseldorf District Court - AG) ruled that a claim based on an out-of-court settlement was unenforceable because it had been preceded by a fraudulent-filesharing caution and its enforcement was incompatible with the defence of bad faith.

At the rightsholders' request, a law firm specialising in copyright had informed the defendant that her Internet connection had been used to make 537 copyright-protected music files available for download. As the connection owner, she was obliged to reimburse the legal prosecution costs even if she had not committed the copyright infringements herself. With the amount in dispute normally valued at EUR 10,000 per file, a substantial sum was due, since legal costs of EUR 2,998.80 were applicable for only ten music files.

The law firm asked the defendant to provide evidence to show who had committed the copyright infringements using her connection. It then offered to accept an out-of-court settlement of EUR 4,000 and explained that, if the offer was accepted, the rightsholders would waive any further claims and withdraw their request for the name and address of the person directly responsible. The defendant subsequently signed the settlement agreement, which had been formulated in advance by the law firm. Since the defendant later refused to pay the sum of EUR 4,000 stipulated in the settlement agreement, the law firm instigated court proceedings against her.

The AG Düsseldorf dismissed the action on the grounds that it was incompatible with the defence of bad faith enshrined in Articles 853 and 823(2) of the Bürgerliches Gesetzbuch (Civil Code - BGB) and Article 263 of the Strafgesetzbuch (Criminal Code - StGB), which should officially be taken into account as a particular form of an abuse of rights. It was legally incorrect, for example, to claim that the connection owner was liable regardless of guilt, since disturbance liability was always based on a failure to exercise due diligence. Moreover, the amount in dispute alleged in the letter was inconsistent with higher-court case law, according to which, where only disturbance liability was concerned, the value of a claim was lower than if the defendant had committed the crime himself. Furthermore, the amount in dispute did not increase in a linear fashion, as the plaintiff had claimed in the caution. Interpretations of the law constituted "facts"

in the sense of Article 263 StGB if the impression was deliberately given that they represented a widely accepted legal opinion, especially as people who were not legal experts tended to have a high level of trust in lawyers' statements. The false claim that the defendant's legal position was hopeless represented a form of deception that had misled the defendant about her legal situation, causing her to sign the settlement agreement, under which she would have suffered a financial loss.

Since the law firm's deception had also caused intentional damage contrary to public policy, the defendant was entitled, under Article 826 BGB, to demand that the plaintiff release her from her obligations under the settlement, which in turn meant that the claim could not be enforced under Article 242 BGB.

***Urteil des Amtsgerichts Düsseldorf, Az. 57 C 6993/13, 08. Oktober 2013***

[http://www.justiz.nrw.de/nrwe/lgs/duesseldorf/ag\\_duesseldorf/j2013/57\\_C\\_6993\\_13\\_Urteil\\_20131008.html](http://www.justiz.nrw.de/nrwe/lgs/duesseldorf/ag_duesseldorf/j2013/57_C_6993_13_Urteil_20131008.html)

