[DE] Saarbrücken Regional Court Lays Down Examination and Blocking Obligation for Domain Name Registrars in Relation to Copyright Infringements

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In a ruling of 15 January 2014 (case no. 7 O 82/13), the Landgericht Saarbrücken (Saarbrücken Regional Court) ruled that a domain name registrar is obliged, if it has received a clear report of a copyright infringement, to examine and, if necessary, block the website concerned.

A German storage media manufacturer had filed an action against an internationally active domain name registrar. In return for payment, the registrar registers and manages top-level domains, including ".com", both directly and via resellers from all over the world.

In August 2013, the plaintiff claimed that a music album to which it owned the rights had been illegally made available for download on one of these domains. It asked the registrar to put a stop to the copyright infringement.

When the registrar refused to provide a cease and desist declaration, the regional court issued a corresponding temporary injunction in August 2013. Under the injunction, the storage media manufacturer is entitled to injunctive relief: the plaintiff can prohibit the registrar from enabling third parties to copy and/or make available a copyright-protected music album using special music software or a file-sharing program (BitTorrent search engine or tracker) via the URLs concerned. By registering the relevant domain, the registrar bore secondary liability because it had played a sufficient part in enabling the domain's owner and users, as well users of the so-called tracker, to commit copyright infringements using this domain.

The registrar lodged a protest and argued that access to the copyright-protected content was not dependent on the registration of a particular domain name. Rather, users could view the website and its content by entering the IP address directly. The registrar could not influence the content of or the services offered via the website. Furthermore, an obligation to examine the website was unreasonable. Finally, its registration activities were in the public interest.

However, the court confirmed the temporary injunction. If the storage media manufacturer could prove to the registrar, setting a deadline, that it held the exclusive copyright under Articles 85, 16, 17 and 19a of the Urheberrechtsgesetz

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(Copyright Act) for the territory of the Federal Republic of Germany, and that a clear infringement had been committed, the registrar would be obliged to examine the website and take appropriate action by that deadline. In this case, the registrar would, as far as was technically and economically reasonable, be obliged to stop the work being made available illegally on the domain responsible for the infringement and on other domains registered with it.

Urteil des LG Saarbrücken vom 15.1.2014 (Az. 7 O 82/13)

http://raschlegal.de/uploads/media/LG_Saarbruecken__Urt._v._15.01.2014__Az._7_O_82-13.pdf

Ruling of the Saarbrücken Regional Court of 15 January 2014 (case no. 7 O 82/13)

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