[DE] Google Obliged to Delete “Autocomplete” Entries

IRIS 2014-6:1/11

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In a decision of 8 April 2014, the *Oberlandesgericht Köln* (Cologne Appeal Court - OLG) ruled that Google can be obliged to delete content in the form of “autocomplete” suggestions that breach personality rights (case no. 15 U 199/11). In the proceedings, a public limited company and its chairman had lodged a claim against the search engine operator after Google had suggested the terms “*Scientology*” and “*Betrug*” (the German word for “fraud”) when the chairman’s name was entered. The chairman claimed that this infringed his personality rights, while his company believed that it damaged its commercial reputation. Both sought the removal of the “autocomplete” suggestions and reimbursement of their legal costs, while the chairman also sought financial compensation from Google.

The OLG upheld the claim in so far as it ordered Google to refrain from committing the infringements upon which it had not already acted. For example, in an email on 4 May 2010, the company chairman had asked the search engine operator to delete the “autocomplete” suggestion “*Scientology*”. On 13 May 2010, Google had replied that “the search requests concerned were automatically created […]” and “individual requests to remove or change the links currently displayed” could not be met. In the judges’ opinion, an injunction was therefore justified because a breach of the duty to monitor content had been committed and there was therefore a risk of repeat infringements. However, the judges did not award financial compensation to the plaintiff because they did not consider that the defendants were seriously at fault. On the other hand, Google had reacted quickly by removing the “autocomplete” suggestion “*Betrug*”, thereby fulfilling its monitoring obligation and negating additional claims by the company and its chairman.

The case had previously been heard by the *Landgericht Köln* (Cologne District Court - LG) and the OLG, both of which had concluded that no personality rights breaches could have been committed, since Google’s “autocomplete” software merely analysed users’ behaviour - as users were fully aware - and could therefore not be considered to convey a comprehensible message. In the subsequent appeal procedure, the *Bundesgerichtshof* (Federal Supreme Court - BGH) quashed the OLG’s initial decision and referred the case back to it in a ruling of 14 May 2013 (case no. VI ZR 269/12). It thought that “autocomplete” suggestions conveyed a comprehensible message if Google was aware that the

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party concerned had requested an injunction (see also IRIS 2013-6/12).

In its latest decision of 8 April 2014, the OLG did not grant leave to appeal. The plaintiffs have one month in which to appeal against the denial of leave to appeal, before the decision takes effect.

Urteil des Oberlandesgericht Köln, 15 U 199/11

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2014/15_U_199_11_Urteil_20140408.html

Decision of the Cologne Appeal Court, 15 U 199/11

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