[DE] BGH rules that framing of lawfully uploaded content does not infringe copyright

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In a ruling of 9 July 2015, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that, in principle, copyright is not infringed by a website operator who uses ‘framing’ to embed, in its own website, copyright-protected content that has been made accessible to the public on a third-party website with the copyright-holder’s consent (case no. I ZR 46/12 - Die Realität II).

The plaintiff had commissioned a video entitled ‘Die Realität’, in which it advertised its products and for which it held the exclusive usage rights. According to the plaintiff, the video had been uploaded to the ‘YouTube’ video portal without its consent. The defendants, who were self-employed sales representatives of one of the plaintiff’s competitors, had used the ‘framing’ technique to embed the video on their respective websites so users could watch it, hosted on the ‘YouTube’ server, in a window displayed on their websites. The plaintiff had accused them of unlawfully making the video available to the public. Its claim for damages, upheld in the first instance, had been rejected on appeal.

The BGH ruled that ‘framing’ itself did not constitute communication to the public within the meaning of Article 19a of the Copyright Act (UrhG). Whether the video remained accessible to the public was purely a matter for ‘YouTube’ in this case. Neither had an unnamed public communication right been breached if Article 15(2) UrhG was interpreted in conformity with EU directives. Before reaching its decision, the BGH had asked the Court of Justice of the European Union (CJEU) for a preliminary ruling, in which the latter had found that the ‘framing’ of content did not constitute communication to the public if the content had been made available on the original website with the copyright-holder’s consent (CJEU, decision of 21 October 2014 - ECLI:EU:2014:2315 - see IRIS 2015-1/3). In the BGH’s opinion, the CJEU’s findings suggested that, conversely, ‘framing’ would constitute communication to the public if the copyright-holder did not give its consent. The defendants in the case at hand had therefore infringed the film’s copyright if it had been uploaded to ‘YouTube’ without the plaintiff’s permission. Since the appeal court had not ruled on this point, the BGH quashed its decision and referred the case back to it for a new ruling. The appeal court must now establish whether the uploading of the video to ‘YouTube’ was unlawful before it can issue a new decision.

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Urteil vom 9. Juli 2015 - I ZR 46/12 - Die Realität II

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2015&Sort=3&nr=71618&pos=0&anz=115

Judgment of the Federal Supreme Court of 9 July 2015 - I ZR 46/12 - Die Realität II

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