[DE] Google liable if aware of breaches of the law

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The operator of the search engine Google can be held liable for breaches of the law on third-party websites displayed in search results. The precondition for this is that Google has been informed about the breach and has nevertheless not taken any suitable measures to block the content accessed via the search engine. This was the ruling of the Landgericht Köln (Cologne Regional Court) in a judgment of 16 September 2015 (Case 28 O 14/14).

In the case at issue, a married couple were confronted with insults in an Internet forum. Among other things, it was claimed that they operated websites with morally reprehensible content. After the facts had been clarified, the allegations could still be found by searching for the relevant terms in Google. The couple were afraid of suffering professional and private disadvantage as a result of damage to their reputation and filed a cease-and-desist action. In the plaintiffs' view, in order to meet its obligation to check search results, Google should have installed a search filter to prevent the websites concerned from being displayed when the relevant search terms were entered.

The Regional Court judges affirmed that the operator of the search engine was liable. They considered that Google's contribution to the breach of the law lay in the fact that it had taken no steps to remedy the situation after having been previously made aware by the plaintiffs of the unlawful content. In the Court's opinion, automatically linking the specific search terms to the display of links to certain third-party websites with unlawful content means that Google is responsible as a co-liable party (Störerhaftung) if it has been informed about the unlawful content and takes no steps to put an end to the breach of the law. The Court noted that the search engine operator's contribution, for which no legal fault was found, lay in enabling users of the search engine to encounter the relevant statements. The company should therefore have taken action against the breaches of personality rights complained of instead of permitting them on its own platform.

However, the Court did not endorse the plaintiff's view that Google should have installed a search filter in order to meet its obligations, because the development of a search filter involved the investment of excessive time and effort for the company and accordingly was not proportional. Moreover, in view of the steadily growing capacity/size/scope of the Internet, Google was unable to run a

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continuous check of unlawful content on links found by the search engine.

Overall, the Cologne judges affirmed that the company was obliged to remove the link but denied that a search index was necessary. They also dismissed the claim against Google for pecuniary damages.

Urteil des Landgericht Köln vom 16. September 2015 (Az.: 28 O 14/14)

https://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2015/28_O_14_14_Urteil_20150916.html

Cologne Regional Court of 16 September 2015 (Case 28 O 14/14)

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