# [DE] YouTube is not a music service subject to licensing

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The Oberlandesgericht München (Munich Regional Court) held, in a judgment of 28 January 2016 (Case 29 U 2798/15), that the online video portal YouTube cannot be held liable for breaches of copyright committed via the platform.

The case comprised an action for damages brought against YouTube by the music performing rights society GEMA. For many years, GEMA has been demanding licence fees from YouTube for the use of music in the videos on its platform. YouTube refuses to pay, which GEMA considers unreasonable, especially in view of the advertising revenues generated by YouTube. It claims that YouTube is exploiting the music works that can be retrieved from its platform, and considers that the fact that YouTube keeps works available on its platform is relevant because it makes YouTube itself a perpetrator of copyright violations. The platform is, GEMA asserts, therefore a music service and is accordingly obliged to pay fees. YouTube, on the other hand, mainly considers itself a technical service provider with no control over the publication of individual videos. Rather, it claims, it only provides the platform via which users disseminate content, and the relevant act as far as copyright is concerned is the actual uploading of videos by its users.

The Munich Regional Court ruled in the defendant's favour and dismissed GEMA's action, stating that YouTube was not a music service subject to licensing. In the Court's view responsibility for the content of the videos uploaded to the online video platform lies not with YouTube itself but with those who upload content. As such the Court considers that GEMA must seek payment from the platform's users and not YouTube itself.

The judgment is not yet final, as leave has been given to lodge an appeal on points of law (Revision) to the Bundesgerichtshof (Federal Court of Justice - BGH). GEMA has announced its intention to do so.

***Urteil des Oberlandesgericht München vom 28.01.2016 (Az.: 29 U 2798/15)***

http://www.online-und-recht.de/urteile/YouTube-haftet-nicht-als-Taeter-fuer-fremde-Urheberrechtsverletzungen-Oberlandesgericht-M%C3%BCnchen-20160128/

*Judgment of the Munich Regional Court of 28 January 2016 (Case 29 U 2798/15)*

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