[DE] Hamburg District Court increases link liability after CJEU Playboy ruling

IRIS 2017-2:1/9

Tobias Raab
Stopp Pick & Kallenborn, Saarbrücken

In a decision of 18 November 2016, the Landgericht Hamburg (Hamburg District Court - LG) ruled that posting a link to an image illegally made accessible by a third party could constitute a breach of copyright (case no. 310 0 402/16).

In the case at hand, the defendant, who sold self-published learning materials through his website, had posted a link to a photo. The image concerned had been edited in breach of the terms of its Creative Commons licence, since various UFOs had been added without any indication that the image had been edited. Although photos can, in principle, be edited in accordance with the Creative Commons licence concerned, it must be made obvious that they have been edited. According to the LG Hamburg, this also applies if the viewer assumes that the image does not show actual UFOs, but a photomontage, since the viewer cannot tell from this circumstance alone whether the montage was created by the original rights holder or added later. The court found that this condition had not been met and that the requirement laid down in paragraphs 4.c) i. and iv. of the licence, i.e. that reference be made to the author and to the fact that the image had been edited, had also been breached. This infringement led to the licence being withdrawn under paragraph 7.a).

The LG Hamburg classified the defendant's website as commercial because he used it to sell self-published learning materials. Commercial use was not dependent on the link being provided in pursuit of financial gain. Rather, the crucial factor was whether the website itself was commercial in nature.

In September 2016, the Court of Justice of the European Union (CJEU) restricted the freedom to post links and decided that operators of commercial websites could infringe copyright simply by posting links to illegally uploaded content (see IRIS 2016-9/3). In its decision - the first by a German court to refer to the CJEU's ruling - the LG Hamburg ruled that the defendant should have known that the linked content had been uploaded illegally. Although this was a strict standard of fault, the defendant, who was acting in pursuit of financial gain, could be expected to take steps to ensure that the content had been legally published.

Entscheidung des LG Hamburg vom 18. November 2016 (Az. 310 0 402/16)

© European Audiovisual Observatory (Council of Europe) 2026

https://cdn.netzpolitik.org/wp-upload/2016/12/LG-Hamburg_Beschluss161118.pdf

Decision of the Hamburg District Court of 18 November 2016 (case no. 310 0 402/16)

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026