[DE] Munich District Court refuses exemption for online video recorder

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In a ruling of 28 September 2016, the Landgericht München I (Munich District Court - LG) decided that the provider of an online video recorder cannot benefit from the private copy exemption provided in Article 53(1)(1) of the Urhebergesetz (Copyright Act - UrhG) (case no. 37 O 1930/16).

The online video recorder “YouTV” enables its users to record all programmes on all TV channels with a single click and to watch them within 24 hours. Users cannot record individual programmes or channels. The service is free to use, although a fee is charged to extend it to a 7-day catch-up service. In order to provide the service, the “YouTV” operator receives the broadcast signals and transmits them to a server, where they are permanently stored and made available for users to download. Rather than obtain licences from the broadcasters, the operator relied on the private copy exemption enshrined in Article 53(1)(1) UrhG, which was disputed by a TV broadcaster.

The LG München I held that the transmission and storage of signals for download by users constitutes a form of reproduction that infringes the copyright of the TV broadcasters concerned. The provider of “YouTV”, rather than its users, should be considered the “producer” of these reproductions. A private copy within the meaning of Article 53(1)(1) UrhG would only exist if users themselves could individually choose which programmes to record. However, this was not the case here, and users were also unable to delete individual recordings.

Another reason why the private copy exemption did not apply was the fact that users only had limited access to the stored programmes. In particular, it was not possible to watch recorded programmes free of charge more than 24 hours after they had been broadcast.

The defendant must now disclose how much it receives in user fees, as well as its other gross income. Since YouTV.de did not acquire any rights from licensors, reasonable compensation will also have to be paid to the applicant broadcaster.

Urteil des LG München I vom 28. September 2016 (Az. 37 O 1930/16)

http://openjur.de/u/898186.html

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Decision of the Landgericht München I (Munich District Court - LG) of 28 September 2016 (case no. 37 O 1930/16)

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