

[CZ] Application of the GS Media ruling

IRIS 2017-4:1/7

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In a ruling of 16 January 2017, the Prague Regional Court found that the operator of a website was not liable for embedded hyperlinks if it did not operate the site commercially (case no. 33 T 54/201).

The case at hand concerned a website created by the Czech Pirate Party in protest against previous court decisions concerning website operators' liability for embedded hyperlinks. Visitors to the website, sledujserialy.cz, could post their own links to episodes of various TV programmes. At the request of the rightsholders concerned, the Prague Regional Court examined whether the website was lawful.

As part of the Prague Court's analysis of the case law of the Court of Justice of the European Union (CJEU) relating to liability for hyperlinks, it examined the CJEU's decision in the GS Media case (IRIS 2016-9/3). The Prague Court ruled that, for this decision to be applicable, the main criterion was whether the website on which links to third-party sites that infringed copyright had been posted without the rightsholders' consent was being operated commercially. The Prague Court held that the operator of a website that was not being operated for profit should be presumed not to know or to be expected to know that the linked websites were illegal. On the other hand, it should be presumed that operators of commercial websites did, in principle, know that the third-party websites were illegal. Since, in the case at hand, the disputed website did not contain any advertising and the website operator, the Czech Pirate Party, did not intend to make any profit from the site in any other way, including through the sale of merchandise, the Prague Court classified the website as non-commercial. Although the Czech Anti-Piracy Union (CAPU) had informed the Pirate Party that the hyperlinks on its website led to sites that infringed copyright, it had failed, despite repeated requests, to show that it was acting on the rightsholders' behalf. In the Prague Court's view, the Pirate Party could therefore not be presumed to know that the hyperlinks were illegal.

In summary, the Prague Regional Court interpreted the criterion of commerciality in line with a current business model. In the Court's opinion, a website is operated commercially if it contains advertising in order to generate profit. Meanwhile, the Court also applied very strict standards when determining whether website operators could be presumed to know that content was illegal. It concluded that the Pirate Party, which operated the website as a form of protest, could not be

accused of being certain that the links were unlawful.

USNESENÍ Spisová značka: 33 T 54/2016

https://www.pirati.cz/media/tiskove-zpravy/pirati_436871814_0_usnesenizastaveni.pdf

Ruling of the Prague Regional Court of 16 January 2017 (case no. 33 T 54/2016)

