[NL] Hosting provider ordered to block access to lawful website and to provide contact details of website owner

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On 10 January 2018, Overijssel District Court ruled that Your Hosting, a Dutch internet service provider hosting the website www.gabme.org, was obliged to block access to the website and to provide the contact details of the website owner.

The claimant initiated the case over a report circulating on the internet accusing him of fraud and money laundering. Consequently, the claimant had suffered damage as a result of a decrease in his business's revenues. The report referred to the website www.gabme.org. GABME is a non-existant organisation for which no contact details were provided on the website. The claimant was therefore unable to get into contact with the domain-name holder, which is why he turned to the hosting provider. At the District Court, the claimant first of all demanded an order blocking access to the website. Secondly, he sought provision of the website owner's contact details, such as payment details and the IP addresses used for the creation of the website, in order to be able to start a separate procedure to hold the website owner liable for the severe, unfounded accusations on his or her website.

In its decision, the District Court refers to Article 6:196c paragraph 4 of the Dutch Civil Code, a provision based on Article 14 of the E-Commerce Directive (2000/31/EC). According to this provision, a hosting provider such as Your Hosting cannot be held liable for the information that it stores on its internet service if it does not have actual knowledge of the unlawful activities or information and is not aware of facts or circumstances which render the unlawful character apparent. When it obtains such knowledge or awareness, it is obliged to immediately remove the information or disable access to the website.

Your Hosting states that the information on the website is not unlawful in itself. According to the District Court, this argument is insufficient to avoid liability. Even though the website does not provide unlawful information about the claimant, the website is part of a "construction with an unlawful character" ("constructie met een onrechtmatig karakter"). All the information on the website is published for the purpose of making the accusations against the claimant, with the result that the website falls under the scope of Article 6:196c paragraph 4 of the Dutch Civil Code. Since Your Hosting did not remove the information or disable access to it on

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the claimant's first notice, it can be held liable.

Regarding the second claim, the District Court weighed the interests of both the claimant and the defendant. It based its reasoning on a decision by the Dutch Supreme Court of 25 November 2005 (Lycos/Pessers), in which the Supreme Court stated that the interest of the claimant in the provision of identifying data prevails over the interest of the hosting provider in not infringing its client's privacy (see IRIS 2006-2/101). Therefore, Your Hosting is obliged to provide the contact details of the website owner of www.gabme.org since there are no other means of identifying the infringer.

Vzr. Rechtbank Overijssel 10 januari 2018, ECLI:NL:RBOVE:2018:202, 22/01/2018

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBOVE:2018:202

District Court of Overijssel, 10 January 2018, ECLI:NL:RBOVE:2018:202, published 22 January 2018

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