[DE] Vodafone must block kinox.to

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In its ruling of 1 February 2018 (Case no. 7 O 17752/17), the Landgericht München (Munich Regional Court - LG München) decided that Vodafone Kabel Deutschland must block its customers from accessing the streaming portal kinox.to. In injunction proceedings, film producer Constantin Film had requested that the streaming portal be blocked for Vodafone customers because films including 'Fack Ju Göhte 3', for which Constantin Film holds the exploitation rights, could be viewed via the portal without the rightsholders' permission. In March 2014, the Court of Justice of the European Union had ruled that Internet providers could be required to block illegal websites such as streaming portals that distributed copyright-protected content.

The defendant in the case, Vodafone Kabel Deutschland, appealed against the complaint on the grounds that the decision issued by the Bundesgerichtshof (Federal Supreme Court - BGH) on 26 November 2015 (Case no. I ZR 174/14) on access providers' indirect liability (available at http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=73491&pos=0&anz=1) was no longer applicable because the law had been amended under the Dritte Gesetz zur Änderung des Telemediengesetzes (Third Act Amending the Telemedia Act - TMGÄndG). It claimed that access providers no longer held such liability and that their obligation to block Internet services was regulated under Article 7(4) of the Telemediengesetz (Telemedia Act - TMG). Through the addition of Article 8(1)(2) TMG, the legislator had extended the privileges of service providers within the meaning of Article 8 TMG. This rule applied to all service providers that transmitted information via a communications network or provided access to such information for others to use. Furthermore, IP blocking created the risk of 'overblocking', that is to say, the blocking of unrelated websites, since a huge number of websites could be accessed via a single IP address.

The LG München disagreed. It examined in detail whether the new version of the TMG exempted access providers from indirect liability. In the Munich court's view, the current wording of Article 8(1)(2) TMG did not contradict the application of the indirect liability principle. The wording of this provision should be interpreted narrowly to the extent that Article 8(1)(2) TMG only applied to the privileged users mentioned in Article 7(4) TMG. Otherwise, there would be a clear contradiction with the explanatory memorandum. In the Third Act Amending the Telemedia Act,

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the legislator had only sought to regulate the liability of WLAN network providers. The indirect liability principle therefore still applied to access providers. In the court's opinion, this restrictive interpretation was also supported by European law provisions.

Since a previous claim by kinox.to had been rejected and the provider had no obvious right to protection, the defendant was prohibited from distributing the film 'Fack Ju Göhte 3' to its customers via the Internet, in so far as the film could be viewed via the Internet service currently known as 'kinox.to'.

Urteil des LG München vom 01. Februar 2018 (Az. 7 O 17752/17)

http://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2018-N-002857?hl=true

Ruling of the Munich Regional Court of 1 February 2018 (Case no. 7 O 17752/17)

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