[DE] International online platform liable for copyright infringement

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In a ruling of 30 April 2019 (Case no. 11 O 27/18), the Oberlandesgericht Frankfurt (Frankfurt Court of Appeal) decided that an internationally-oriented Internet platform on which literary works are published free of charge is liable for copyright infringements in Germany if it publishes German-language works that are not yet in the public domain under German copyright law and claims ownership of their content.

The defendant in this case was a US-based not-for-profit corporation that operates an internationally-oriented website, www.gutenberg.org, from which more than 50 000 books, including some in German, can be downloaded as e-books. The books are uploaded to the platform by members on a voluntary basis. Before they are published, copyright checks are carried out, although only in accordance with US law.

A German publishing house had complained about the distribution of several German-language works on the platform. The publisher, which holds exclusive, comprehensive and geographically unlimited rights to a total of 18 books that can be downloaded from the platform, had sought an injunction for copyright breaches. Its claim was granted in the first instance by the Landgericht Frankfurt (Frankfurt District Court) in February 2018. An appeal to the Oberlandesgericht Frankfurt has now been rejected. Under US copyright law, the disputed works have been in the public domain for several years, but they remain protected under German law.

In the judges' view, German courts have international jurisdiction and German law is applicable because the website's content can be downloaded in Germany. The claims for copyright infringement had been made under German law in accordance with the country of protection principle. The platform had also treated the content uploaded by its members as its own because the books had been listed, together with the platform's own licensing notice, under the heading "our books". The platform was therefore responsible for the copyright breaches. The fact that it did not seek to make a profit was irrelevant.

However, the court ruled that removing the disputed works from the defendant's platform in Germany would be sufficient. The platform was not obliged to remove them completely. Since February 2018, German IP addresses have been blocked

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by the platform, so only the home page can be viewed and content can no longer be downloaded.

Pressemitteilung des OLG Frankfurt am Main vom 30. April 2019 (Az. 11 O 27/18)

https://ordentliche-gerichtsbarkeit.hessen.de/pressemitteilungen/internationale-internet-plattform-f%C3%BCr-literarische-werke-haftet-f%C3%BCr

Press release of Frankfurt am Main Court of Appeal, 30 April 2019 (case no. 11 O 27/18)

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