[NL] Court rules YouTube not required to reinstate video containing alleged COVID-19 disinformation

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On 9 September 2020, the Rechtbank Amsterdam (District Court of Amsterdam) delivered an important judgment involving YouTube videos that were said to contain COVID-19 disinformation. The judgment concerned two videos removed from YouTube in which a doctor was interviewed regarding the controversial, and in the Netherlands unrecognised, drug against COVID-19, hydroxychloroquine (HCQ).

In this case, Cafe Weltschmerz - a Dutch citizen journalism platform with a channel on YouTube - initiated legal proceedings against Google Ireland, the company offering YouTube in Europe. A doctor who was interviewed in the videos claimed to have successfully treated 10 of his patients with the help of the drug HCQ. This drug is being tested in several countries as a drug against COVID-19, and even the Netherlands tested it on patients in March and April 2020. However, due to the many side effects, the health care system in the Netherlands has banned the prescription of this drug for cases of COVID-19.

Both the doctor and Café Weltschmerz sued Google following the removal of the videos from YouTube. Cafe Weltschmerz demanded, among other things, that the videos be reinstated on YouTube and that YouTube discontinue its policy regarding COVID-19. They argued that YouTube had committed malpractice by removing the videos and that the breach was unlawful. In addition, they stated that YouTube's policy was contrary to the views of the World Health Organisation (WHO) and local health organisations, and that the removal of the videos constituted a restriction on their right to freedom of expression. YouTube, on the other hand, argued that Cafe Weltschmerz’s videos contained disinformation. The debate about HCQ is allowed, but it considered that the videos crossed the line. For example, they tell spectators how to obtain the substance outside the regular channels, and the 1.5 metre measure was not being respected.

YouTube stated that by having an account on YouTube, Café Weltschmerz had agreed to YouTube's terms of service, which also meant that YouTube could remove videos if they caused damage to YouTube, their users or third parties. On 20 May 2020, YouTube supplemented its guidelines with a policy against misleading information about COVID-19. As a result, YouTube does not allow content that disseminates misleading medical information in violation of advice

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from the World Health Organization (WHO) or local health authorities. YouTube also stated that no videos may be posted stating, for example, that people were not dying of coronavirus, that a vaccine had been discovered, or that encouraged viewers to use medical devices. Since both of Cafe Weltschmerz's videos violated YouTube's policy, they had been removed.

The Court first stated that since YouTube is one of the largest platforms on the Internet, it has a great responsibility regarding the public debate. In this case, YouTube only allowed content in line with the Dutch National Institute for Public Health and the Environment (RIVM). According to the Court, this policy is too limited and is therefore not in line with the principle of freedom of expression. With regard to COVID-19, a user may expect a large amount of content. However, the Court stated that in the case of these two videos, the doctor should have formulated his statements with more nuance. Since this did not happen, the interviews are not part of the public debate. Furthermore, the statements of incorrect information contained potentially harmful and dangerous information.

In light of the foregoing, the Court concluded that there had been no violation of the right to freedom of expression and that YouTube’s decision to remove the videos was not unlawful.

Rechtbank Amsterdam, 9 september 2020, ECLI:NL:RBAMS:2020:4435

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2020:4435

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