[DE] Online Copyright Clearance System is launched and arranges block of streaming site

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A new *Clearingstelle Urheberrecht im Internet* (Online Copyright Clearance System – CUII) has been created to promote joint solutions for dealing with websites that systematically infringe copyright and ancillary intellectual property rights in Germany. The CUII was launched as an independent body at the start of the year on the basis of a code of conduct adopted on 18 January 2021. The code was signed by companies regularly affected by infringements of copyright and intellectual property rights on the Internet, i.e. Internet access providers on the one hand and holders of such rights or their associations from the music, film, gaming and scientific publications sectors on the other.

The CUII is intended to combat systematic infringements of copyright and ancillary intellectual property rights. It does so by blocking access to websites after they have been examined using objective criteria that access providers voluntarily agree to apply. It uses so-called Domain Name System (DNS) blocking, which blocks access to websites that commit systematic, i.e. large-scale copyright infringements.

Blocking requests submitted to the CUII, by an Internet access provider or rightsholder, require a unanimous decision by a three-person examination committee set up by the CUII. The committee is chaired by retired Federal Supreme Court judges familiar with this area of the law. Its recommendation is forwarded to the *Bundesnetzagentur* (Federal Networks Agency – BNetzA), which only authorises a DNS block if the provisions of the Net Neutrality Regulation (Regulation (EU) 2015/2120) are met. Provided the BNetzA concludes that the equal treatment of Internet content has been respected and the general ban on content-blocking has not been infringed, the website may be blocked. The blocks themselves are implemented by the Internet access providers that have signed the code of conduct, which include Germany's largest providers (Telekom Deutschland, Vodafone, 1&1, Telefónica and Mobilcom-Debitel). A block prevents a website from being assigned an IP address and therefore stops the site being accessed. This process has previously been recognised in case law (see CJEU ruling of 27 March 2014, case no. C-314/12), which enables the CUII to implement DNS blocks more effectively and more quickly, thus avoiding long, expensive legal proceedings. However, critics fear that blocking procedures that are not based on a court decision or judicial procedure could result in Internet censorship or restrict

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freedom of expression and information.

In a press release published on 11 March 2021, the *Bundeskartellamt* (Federal Cartels Office – BKartA) announced that the CUII did not infringe cartel law provisions. Having analysed the new system, it had no objections to its launch and proposed remit. It referred to the security mechanisms put in place, such as the need for a unanimous decision and consultation with the BNetzA. The efficiency of the project, which may have positive effects on Internet rights management, was also taken into account.

Also on 11 March, the BNetzA reported that it had blocked a streaming website on the CUII's recommendation for the first time. It had blocked several domains of the provider Serien.sx (including s.to, serienstream.sx and serienstream.to), whose websites offered free streams of television series, after the CUII had found that its content clearly infringed copyright. According to the BNetzA, the DNS block in this case was compatible with net neutrality requirements because it was necessary to enforce national legislation. If the circumstances changed, the DNS block could be re-examined.

Webseite der CUII

https://cuii.info/ueber-uns/

CUII website

Pressemitteilung des BKartA, 11 März 2021

https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2021/11_03_2021_DNS%20Clearingstelle.html;jsessionid=DBB2A9E72D0E99590FE975C3AB6A9FED.2_cid381?nn=3591286

Federal Cartels Office press release, 11 March 2021

Pressemitteilung der BNetzA, 11. März 2021

https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/DE/2021/20210311_Clearingstelle.html?nn=265778

Federal Networks Agency press release, 11 March 2021

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