

[DE] German court rules that YouTube's deletion of COVID-19 videos was unlawful

IRIS 2021-10:1/15

*Mirjam Kaiser
Institute of European Media Law*

In a press release of 12 October 2021, the *Landgericht Köln* (Cologne regional court – LG Köln) announced that it had decided in summary proceedings (case nos. 28 O 351/21 and 28 O 350/21) that YouTube had unfairly deleted two user-generated videos, featuring reports and interviews concerning COVID-19, on the basis of its general terms and conditions.

As part of the “#allesaufdentisch” campaign, which went viral at the end of September this year, various German artists uploaded onto the YouTube video-sharing platform video clips of interviews with comments by so-called scientists and experts concerning measures taken to combat COVID-19 and associated media coverage. The campaign was a continuation of the “#allesdichtmachen” campaign, in which a number of actors, authors and other German film and television personalities had, in late April, satirically discussed the COVID-19 measures taken in Germany. However, both campaigns, which met their initiators' objective to open up a public debate on how the COVID-19 crisis was being handled, were heavily and widely criticised, partly because they promoted conspiracy ideology.

The Cologne regional court's decision in the summary proceedings concerned two videos from the second campaign, which YouTube had deleted on the grounds that their content infringed its guidelines (in particular the guideline on medical misinformation on COVID-19). The YouTube channel operator had then applied to the LG Köln for a preliminary injunction against YouTube and demanded that the videos be reinstated.

The court upheld the applications and ruled that the deletion of the videos, with a penal notice attached, should be prohibited, at least pending a decision in the main proceedings. However, it also warned the applicant about the content of the uploaded videos. Explaining its decision, the court held that, since the applicant had a contractual entitlement to use the services provided by YouTube, they could assert those rights against YouTube. YouTube had deleted the videos unlawfully because it had failed to adequately explain which parts had allegedly infringed its guidelines. Long videos should not be deleted without providing a detailed list of the parts that supposedly contained medical misinformation. The situation for short clips was different, although this was not the case here, since the videos in question were 26 and 28 minutes long. YouTube should therefore

have informed the channel operator which parts had breached its guidelines. Deleting the videos without providing this information was unlawful because the videos had also contained permissible statements. YouTube can appeal against both decisions. The regional court will then need to consider whether to confirm or lift the preliminary injunction. If it confirms it, YouTube will be able to appeal to the *Oberlandesgericht Köln* (Cologne regional appeal court). A final decision, on the point of law itself, would only be taken in the main proceedings.

Pressemitteilung des LG Köln

https://www.lg-koeln.nrw.de/behoerde/040_presse/zt_presse/pressemitteilungen/PM2021-08-YouTube-Video.pdf

Cologne regional court press release

