[NL] Stop Online Shaming judgment requiring platform to remove user-generated videos posted without consent

IRIS 2022-4:1/18

Michelle de Graef
Institute for Information Law (IViR), University of Amsterdam

On 16 February 2022, the *Rechtbank Amsterdam* (District Court of Amsterdam) delivered an important judgment regarding user-generated content posted without prior consent on video-platforms hosting adult content. The case was filed as a class action lawsuit instigated by *Stichting Stop Online Shaming* (Stop Online Shaming Foundation — SOS), representing the interests of victims of online privacy infringements, and *Stichting Expertisebureau Online Kindermisbruik* (Online Child Abuse Expertise Centre Foundation), concerned with preventing and countering (online) child abuse and the sexual exploitation of children. The Court ruled that it was unlawful to host adult user-generated content without prior consent from the individual(s) that appeared recognisable in the uploaded content. Crucially, the Court held that the platform operator could not rely on the exemption of liability under the e-Commerce Directive, finding that the operator had had knowledge of the content uploaded to its platform based on the upload-screening system in place.

The case concerned a website operator that hosted adult content on its video-platform, uploaded by its users. The Court was faced primarily with the question of whether the website provider could be held liable for the user-generated content in which individuals did not know, or did not seem to know, that they were being recorded, without first making sure that there was prior consent for the uploaded content. The website operator admitted to (preventive) screening of the uploaded user-generated content to screen for content containing children and/or bestiality. The screening process resulted in the admittance or rejection of the videos to the platform. The Court concluded that this process resulted in the provider having knowledge of the nature of the content uploaded by its users. Crucially, this meant that the provider could not rely on the exemption of liability as laid down in the Articles 12-14 of the e-Commerce Directive. Those provisions allow an internet intermediary to be exempted from liability if its hosts unlawful content if it can demonstrate that it has no prior knowledge of the nature of the uploaded content.

Regarding the unlawfulness of the uploaded content without prior consent, the Court had to balance conflicting rights. The defendant invoked his right to conduct a business as laid down in Article 16 of the EU Charter of Fundamental Rights, as

© European Audiovisual Observatory (Council of Europe) 2026

well as the right to freedom of expression as laid down in Article 10 of the European Convention on Human Rights (ECHR). The plaintiffs invoked the right to private and family life under Article 8 ECHR due to the intimate nature of the uploaded content.

This case mainly focused on the surreptitious recording of individuals in the private sphere where they believed themselves to be unobserved. The cases did not always involve mature content, but the individual (or individuals) were (partly) undressed. It concerned places in which individuals would not expect to be recorded, such as in dressing rooms. The Court reasoned that this attributed to the notion that the individuals were being filmed secretly, as did the “tags” that could be added to the videos such as “secretly”, “covert”, “spying”, etc. Lastly, the quality of the videos was another reason for the Court to hold that the individuals did not know they were being recorded. The Court reasoned that these situations, due to their nature, specifically fell within the sphere of private life under Article 8 ECHR. This resulted in the privacy of the subject carrying more weight than the interest of the provider. By making the user-generated content available on the platform without prior consent, the provider had acted unlawfully. Furthermore, the Court added that the more clearly a person was in the frame, the more heavily their privacy interests weighed.

The operator in this case was found to have acted unlawfully and was required to pay damages to its victims. The operator was ordered to delete the uploaded user-generated content (and ensure it remained deleted) from its platform. This case demonstrates that, unless it is clear that it is a professional production, an operator is liable for user-generated content in which consent has not been given. An operator has to make sure that indiviudals on film have given prior consent for the content.

Rb. Amsterdam, 16 februari 2022, ECLI:NL:RBAMS:2022:557

https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2022:557

District Court Amsterdam, 16 February 2022, ECLI:NL:RBAMS:2022:557

RTL Nieuws, 16 februari 2022

https://www.rtlnieuws.nl/tech/artikel/5288767/verbod-naaktbeelden-porno-site-zonder-toestemming

RTL News, 16 February 2022

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026