

BVMI on the verdict on the liability of a domain registrar

“Important clarification in favor of the creatives and their partners”

Berlin, 19 December 2018 – The Bundesverband Musikindustrie (BVMI) welcomes the judgment of the Oberlandesgericht (OLG) Saarbrücken (Higher Regional Court of Saarbrücken), in which the court has clarified that the registrar of a domain does have a responsibility as “Störer” (secondary liability) to cease and desist if it does not block an obvious rights infringement after being specifically notified thereof. According to the judgment, a registrar cannot refer to a privilege under the Telemediengesetz (German Telemedia Act) nor subsidiary responsibility. If the domain owner does not react to the registrar’s request to remove certain content, it is reasonable to force the registrar to disconnect the entire domain, even if only isolated content was objected to. The court thus confirmed the judgment at first instance of the Landgericht (LG) Saarbrücken (Regional Court of Saarbrücken) (Judgment of 30 August 2017, case no. 7 O 17/15). The legal dispute was preceded by an injunction proceeding in which the Senate, by way of judgment of 22 October 2014 (case no. 1 U 25/14), became the first higher court in the world to issue a ruling finding that a registrar had a responsibility in respect of copyright infringements. Most recently, the OLG Köln (Higher Regional Court of Cologne), confirmed this finding (Judgment of 31 August 2018 - 6 U 4/18).

One of the largest BitTorrent search engines in the world was operated at the URL h33t.com. Alongside a huge volume of other protected content such as feature films, series and software, a current music album, in which the music company which brought the action held the exclusive phonogram producer exploitation rights, was being offered for free download via that site in August 2013. A limited company with registered offices in non-European countries was listed as the owner of the domain h33t.com. The website content was stored with a hosting provider in the Netherlands.

René Houareau, Managing Director Legal & Political Affairs at BVMI: “This is a further important clarification in the legal space of the internet, helping it to become clearer and fairer for creatives and their partners. The OLG affirms, with clearly outlined criteria, the responsibility of so-called registrars and thus gives affected rightholders an important legal tool to defend themselves against the unlawful use of their content on the internet. As registrars, unlike access providers, have a contractual relationship with the party actually responsible for making the copyright infringing content available, the Court correctly rejected a merely subsidiary responsibility, in particular under the consideration of an effective enforcement of rights for rightholders.”

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