

BVMI welcomes the decision of the OLG Cologne
Anonymisation service Cloudflare obliged to block infringing content

Berlin, 15 October 2020 - In a highly regarded decision last Friday, 9 October 2020, the Higher Regional Court of Cologne ordered the anonymisation service of the company Cloudflare Inc. to block access to content that was offered on the website of one of its customers; now the reasons for the decision are available. The proceedings had been initiated by a member company of the Bundesverband Musikindustrie (BVMI), the German Federal Music Industry Association, because access to the structurally infringing website ddl-music.to had not been blocked despite indications of legal infringements. Cloudflare offers a so-called CDN (Content Delivery Network), which is misused by structurally copyright infringing websites to evade prosecution by making them anonymous. The Higher Regional Court of Cologne has now put a stop to this: It has obliged Cloudflare to block content which has been reported to it by rights holders or otherwise to block the customer's entire website. The Higher Regional Court has thus confirmed the ruling of the Cologne Regional Court of 30 January 2020 (14 O 171/19).

The decision is particularly noteworthy against the background of the fact that, for the first time, a German Higher Regional Court has confirmed a preliminary injunction against an anonymisation service and thus prohibiting third parties from disseminating illegal offers while concealing the identity of the servers of structurally infringing websites. The fact that the operators of such sites evade prosecution by means of anonymisation and escape from the access of the rights holders is in line with experience and is supported by the observation that the tendency to relocate structurally infringing offers to "offshore areas" outside the EU seems to continue. The decision will make such evasion measures more difficult in the future, which means more legal certainty in the digital space for the benefit of rightholders.

Dr. **Florian Drücke**, Chairman of BVMI: "The decision of the Cologne Higher Regional Court strengthens the position of right holders in an important field and is a clear signal: a service which helps others to evade prosecution by making them anonymous is illegal as well. The decision is a further success for our industry in the face of offers on the net which cause considerable damage to creatives and their partners and whose business model is based on generating sometimes substantial revenues with third-party content without acquiring licenses for the use. The licensing business as the lifeline of the music industry is shifting more and more to the net, as is the use of music. In mid-2020, three-quarters of the industry's turnover was generated online, and the trend is rising. So if the legal dos and don'ts in the digital licensing business are not clearly defined, the future of the industry is at stake. Therefore, the correct implementation of the Copyright Directive is absolutely necessary. Here, we depend on political support in the interest of the market participants, because German solo efforts, as currently planned by the German Ministry of Justice, would damage the digital licensing business, counteract the

European compromise and thus ultimately fragment the digital internal market instead of harmonising it.”

René Houareau, Managing Director, Legal & Political Affairs at BVMI: "A decision whose importance should not be underestimated! Step by step we are getting closer to the modern understanding of the responsibility of all players on the Internet - especially through ambitious court decisions like the one at hand. An anonymisation service must not allow third parties to disseminate illegal offers while concealing the identity of the servers of structurally infringing websites. In other words: excuses no longer apply in such cases either. The services must increasingly recognise that some smoke candles no longer work. The liability privilege on the basis of § 8 TMG could not be effective here, if only because there was a contractual relationship between the service and the content provider and the latter had intervened in many ways in the data transfer between users and website operators".

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About the Bundesverband Musikindustrie e. V. (German Music Industry Association):

The Bundesverband Musikindustrie (German Music Industry Association, BVMI) represents the interests of roughly 250 music industry labels and companies who themselves comprise more than 80 percent of the German music market. As the music industry's advocacy group, the BVMI works to promote and uphold the concerns of the music industry among German and European policymaking bodies. It also serves the public as the central contact partner for all issues relating to the music industry. In addition to the compilation and publication of market statistics, the BVMI portfolio also includes many other industry related services. Since 1975, the BVMI has handed out its GOLD and PLATIN awards to the most successful artists in Germany. It launched its DIAMOND Awards in 2014 and has also commissioned the compilation of the Official German Charts since 1977. In 2013, the BVMI started its PLAYFAIR initiative, which provides consumers with guidance with regard to online music consumption.

For more information, please visit: www.musikindustrie.de, www.playfair.org