

November 26, 2015

GEMA obtains legal clarity for authors

German Federal Court of Justice confirms: blocking of piracy websites is fundamentally allowed

Germany's Federal Court of Justice today confirmed in a landmark ruling that access providers such as Deutsche Telekom can be obliged to make accessing infringing websites more difficult for customers by blocking access if the website operators and hosts are unidentifiable.

On November 26, 2015, the German Federal Court of Justice in Karlsruhe confirmed in case I ZR 3/14 that access providers like Deutsche Telekom have a duty to cooperate. The Federal Court of Justice (BGH) clarified that access providers have a fundamental duty to cooperate in combating Internet piracy if infringement cannot be otherwise stopped. This is the case, for example, when piracy website operators and hosts cannot be identified.

“We applaud the Federal Court of Justice’s ruling. This landmark decision was long overdue, and points the way forward for protecting the rights of authors in the digital music market,” said GEMA CEO Dr. Harald Heker. “Finally we have legal clarity on the permissibility of blocking access to websites illegally offering copyrighted music works on a massive scale. This is a major step forward in the fight against Internet piracy.”

Federal Court of Justice confirms: Access providers must cooperate in combating Internet piracy

In the case under review, GEMA sued Deutsche Telekom for refusing to block the access to the website 3dl.am offering the illegal downloading of copyrighted music works on a massive scale. This website – now defunct – gave access to a collection of hyperlinks and URLs leading to copyrighted musical works. GEMA has demanded before three court instances that Deutsche Telekom act to take appropriate measures to restrict access to such copyright infringing websites.

The judges of the Federal Court of Justice rejected GEMA’s appeal in its case against Deutsche Telekom on blocking the Internet piracy site 3dl.am on the grounds that GEMA had not at the time of filing taken all available measures to identify the site operator. The 3dl.am case itself was not however the foreground issue in the decision, as the site has been defunct for several years. Of key importance was rather the Court’s decision that blocking access is fundamentally permissible as a last resort. GEMA is now awaiting the explanatory statement on the ruling to review exactly which measures are necessary. In addition to civil action already taken by GEMA against the anonymous operators, the Court also requires further pursuit of criminal charges or the hiring of a detective agency, according to its press release.

Illegal business models violating copyright on a massive scale

Websites such as 3dl.am are operated specifically to generate advertising revenue from the illegal provision of copyrighted music and movies. Copyright infringement on such a massive scale has yielded illegal advertising revenues for operators of these sites estimated in the six or seven digit figures – at the expense of music copyright holders. Because of the anonymity of the site operators, authors have few options for recourse against such business models to enforce their copyrights.

“We are talking about copyright violation on an enormous scale as a commercial operation. If the operators of these sites cannot be held legally responsible, access providers such as Deutsche Telekom will, as a last resort, have to cooperate in the fight against Internet piracy. The Federal Court of Justice has confirmed that this is the case in its ruling,” commented Dr. Harald Heker. “We are aware that blocking websites is a drastic measure. However, if we have no defense against operators of these infringing sites, we must at least make such illegal activity more difficult by blocking the sites in question.”

Website blocking is common practice internationally. Courts in the UK, Italy, Spain and Austria have, for example, upheld the admissibility of web blocking and even, in particularly serious cases, imposed blocking in cooperation with Internet providers. Back in 2014, the European Court of Justice already ruled that web blocking is fundamentally permissible, leaving it up to national courts to decide on the details.

GEMA represents in Germany the copyrights of more than 70,000 members (composers, text authors and music publishers), as well as over two million copyright holders from all over the world. It is one of the largest societies for authors of works of music in the world. www.gema.de

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