



Internet providers can be required to block websites that infringe copyright - Copyright Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: In this case, the applicant demanded that a major Austrian Internet provider should block a website that infringes copyright. The Internet provider refused. The applicant requested a temporary injunction and asked for the provider to be prohibited from granting its customers access to the website in question. In this case, there was no legal relationship between the provider and the operators of the website, but it could be assumed that individual customers availed themselves of the website which was infringing copyright.

The petition was successful in the courts of first and second instance. The Austrian Supreme Court asked the CJEU for a preliminary ruling whether the Internet provider is an intermediary for those using an illegal website if the provider's services are used by a third party thus infringing copyright. In that case, a judicial order could be obtained against the provider. In addition, the CJEU was asked to clarify EU rules on the content and procedure for the issuing of such an injunction.

The Advocate General took the view that Internet providers are intermediaries in that sense and that an injunction can therefore be granted against them. That is said to be apparent from the wording of the guideline and the context, spirit and purpose of the EU provision.

However, the Advocate General also takes the view that it is incompatible with the fundamental rights of the EU to allow such a prohibition generally and without ordering specific measures. That also applies where the provider can avoid incurring a penalty for breach of that prohibition by showing that it has taken all reasonable steps to comply with the prohibition. The Advocate General underlined in that connection that the provider has no legal connection with the website that infringes copyright.

In his view, it is for the national courts to weigh the fundamental rights of the parties against each other and to strike a fair balance between them. A blocking measure is not necessarily disproportionate because it entails considerable costs. Yet, the owner of the copyright would first have to direct the claim directly against the operator of the website.

EU law also plays an important role in the application of national regulations. In some cases it is not easy to establish the appropriate relationships with national law. A competent and experienced lawyer can help to enforce claims with international connotations.

<http://www.grprainer.com/en/Copyright-Law.html>

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Anlage: Bild

