

Legal Regulation & Education: Doing the Right Thing?

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Streaming of Porn Movies, The RedTube.com – Case: Shame on Whom?

Recently, thousands of German internet users have been accused of copyright infringements for allegedly watching porn clips on the streaming platform RedTube.com and were asked by the alleged rights-holders to pay € 250 in compensation (comprising of lawyers' fees, postage fees, damages and expenses for investigating the alleged infringement). Obviously, the rights-holders relied on the recipients being ashamed and paying the requested amount without hesitation. From a legal point of view, as intellectual property rights are private rights, rights-holders are entitled to take civil action where an infringement has occurred and are advised to do so. However, this case has raised major attention with even the Ministry of Justice issuing a statement and foreign newspapers reporting. This paper will discuss the reasons for this attention focussing on the legal implications.

When most people think of copyright enforcement through private litigation, what comes to their mind is the massive amount of lawsuits that have been launched against individual file-sharers in the US. While RIAA's mass John Doe lawsuits and volume pre-litigation letters gained worldwide attention, it is often ignored that in Germany, peer-to-peer file-sharing is almost exclusively dealt with in private litigation. Usually, a rights-holder will send a letter before claim (so called "Abmahnung") to an Internet subscriber stating that the connection of the recipient was used in an infringement of copyright. In the letter the rights-holder will not only ask the recipient to sign an undertaking that he will abstain from infringing copyright in the future, but also claim compensation for the costs occurred in pursuing the claim and damages for the infringement. This pre-litigation warning letter model has even proved profitable in some areas and specialised enforcement companies support rights-holders in enforcing their rights. It has become a widely employed tool targeting primarily peer-to-peer file-sharers. A while ago, this practice was imported to the UK by Davenport Lyons and ACS:Law and became known as "speculative invoicing". While UK courts will have to take into consideration the draft letter before claim and examine the claim as such before granting disclosure orders against access providers to allow the identification of the subscribers behind identified IP addresses, German courts do not seem to sufficiently scrutinise disclosure applications.

This paper will examine the latest developments in Germany, where 20.000 to 30.000 users received "Abmahnungen" for watching clips on RedTube.com.

While "Abmahnungen" are well known in relation to peer-to-peer file-sharing, this has been the first time ever that "Abmahnungen" have been sent alleging copyright infringements through streaming. It seems that with the switch of many users from normal peer-to-peer networks to encrypted or anonymous networks, one-click hosts and streaming websites, the "turn piracy into profit" industry is looking for new playgrounds. The author argues that with their latest coup, they might have gone too far.

This paper takes a critical approach and analyses the deficits of the system in general but also discusses whether the consumption of copyright-infringing streams is illegal under German copyright law. In this regard, while there are currently no legal cases or leading judgements on this matter, the author argues that at least in the RedTube case, users have not committed copyright infringements as the source has not been disseminated in a clearly illegal manner.

In addition to the legal analysis, the author will also discuss the question of how the rights-holders might have succeeded in obtaining the IP addresses of the users in question. Usually, only platform operators have access to the IP addresses and so far, the operator of RedTube has denied any involvement.