Bundeskartellamt / Protection of competition

Bundeskartellamt has no objections to launch of
Online Copyright Clearance System

Bonn, 11 March 2021: The Bundeskartellamt has no objections to the launch of the “Online Copyright Clearance System”. The clearance system is an initiative of the sector to act against systematic infringements of copyrights and ancillary intellectual property rights. The aim is to use so-called DNS blocks to make access to websites more difficult which by their nature infringe copyrights.

Andreas Mundt, President of the Bundeskartellamt: “Illegal offers such as websites which infringe copyrights are generally not protected under competition law. Nonetheless initiatives placing the enforcement of statutory rules in private hands can be problematic. There is always the risk that this could also affect the legitimate offers of competitors. However, the proposed clearance system has provided for a whole range of security mechanisms to prevent any excessive restrictions and these measures have been further reinforced at the Bundeskartellamt’s suggestion. It is also intended to engage the Bundesnetzagentur before blocking recommendations are implemented. This will create a framework which, with a view to more efficiently protecting intellectual property rights, seems justifiable under competition law.”
Participants in the initiative are on the one hand holders of copyrights and ancillary intellectual property rights or their associations from the music, film, gaming and scientific publications sectors and on the other all the large internet access providers in Germany.

DNS blocks, the key element of the project, will be triggered when websites are accessed. In order to access a website, users normally only enter the name of a website. However, it is necessary that the website's name is converted into an IP address. This function is performed in the background by the so-called DNS server. A DNS block prevents a website name from being assigned an IP address and hence prevents direct access to a website. The reason for the use of DNS blocks is recent case law according to which holders of rights can, under certain circumstances, request internet access providers to prevent access to websites which illegally make copyrighted works publicly accessible. This claim is conditional on the holders of the rights having no other possibility to remedy the infringement of their rights.

The clearance system is intended to implement DNS blocks more effectively and quickly in future based on the criteria of the relevant case law. In the clearance system blocking requests are to be examined firstly by a three-person examination body on the basis of the criteria mentioned. The recommendation of the examination body is then to be forwarded to the Bundesnetzagentur for its opinion on whether the recommendation can be implemented in compliance with the aspect of net neutrality pursuant to Regulation (EU) 2015/2120 (TSM Regulation) (see Bundesnetzagentur press release). If, in an informal statement, the Bundesnetzagentur does not express any concerns, the access providers will block the respective website addresses (domains).

With regard to similar initiatives in the past the Bundeskartellamt had already made it clear that when designing such a system it has to be ensured that the initiative does not result in a boycott in violation of competition law (see Bundeskartellamt 2015/2016 Activity Report, German Bundestag printed paper 18/12760, p. 97). In view of the envisaged security mechanisms and possible efficiencies of the project, the authority has decided within the scope of its discretion not to raise any antitrust objections at the current stage. However, it will observe how the practice unfolds.