



LG Leipzig (Reasons for decision I. Instance)	Higher Regional Court Dresden (Reasons for decision II. Instance)
<p>I. Definiteness of the application The Regional Court ruled that the addition in the operative part "and/or the other domain(s)" complies with the requirement of certainty.</p>	<p>I. Partial indefiniteness of the application The Higher Regional Court is of the opinion that the addition "and/or any other domain(s)" does not meet the requirement of certainty because, as a result, the enforcement court would have to decide whether or not the requirements for blocking the domain not yet named are met. Therefore, the domain to be blocked must be specifically named.</p>
<p>II. Perpetrator liability due to a communication to the public because of the "central role" of the DNS resolver in the publication of the copyrighted material The Regional Court ruled that the "central role" of the DNS resolver is sufficient as an adequate causal contribution, as internet users are provided with the DNS resolver and are referred to the pages of a service with infringing download offers. This would not be possible without the DNS resolver. The intentional nature of the act is present because the defendant did not comply with its legal obligation to immediately take the necessary measures to prevent access to this content by informing the plaintiff of the infringement.</p>	<p>II. No perpetrator liability for lack of communication to the public due to lack of "central role" of the DNS resolver in the publication of the copyrighted material The Higher Regional Court rejects the "central role" for only one adequately causal contribution because this is insufficient. Recital 27 of the Copyright Directive states that: "The mere making available of the facilities which enable or bring about a communication does not itself constitute a communication within the meaning of this Directive." If the mere fact that the use of a platform is necessary for the public to actually be able to retrieve the work, or even the fact that the platform merely facilitates retrieval, would automatically lead to the platform operator's action being classified as an "act of communication", any "making available of the facilities which enable or facilitate communication" would constitute such an act, which the 27th recital of the Copyright Directive explicitly excludes. Therefore, both the significance of the role played by the platform operator's action in the reproduction by the user and the intentionality of that action must be assessed in order to determine whether the action in question should be classified as</p>



	<p>an act of reproduction, taking into account the specific context. The use of the defendant's DNS resolver was neither necessary to find the IP address via the domain name, nor did it facilitate access. The question of intentional action, because the defendant has violated certain (traffic) obligations in connection with the DNS resolver and can be accused of intent in this respect, does not arise. However, it would also have to be denied. The obligations for the DNS resolver cannot be based on those of the host provider. It must be taken into account that with the DNS resolver, the defendant provides a tool that is accessible to everyone free of charge, is in the public interest and is approved, and which plays a purely passive, automatic and neutral role in the connection of Internet domains. DNS resolvers are even further removed from infringements than access providers.</p>
<p>III. Liability for interference "Stoererhaftung"? In the opinion of the Regional Court, the extent to which the requirements for "Stoererhaftung" are met can be left open, as the requirements for "Stoererhaftung" already justify perpetrator liability, as the same legal protection objective is pursued in the case of identical facts the same legal protection objective is being pursued.</p>	<p>III. No liability for interference "Stoererhaftung" While an adequately causal contribution to the infringement of the protected right was sufficient for fault-based liability, this is no longer sufficient when assessing the "central role" criterion now established by the ECJ. By emphasizing that the assessment of the role (also) depends on the respective context, the ECJ makes it clear that not every adequately causal contribution to individual acts of infringement by the access provider is already considered to be given if the use of copyright-infringing offers via the connection provided is not beyond all probability of fulfilling the criterion of the "central" role.</p>
<p>IV. No liability privilege according to Section 8 TMG The Regional Court ruled that the DNS resolver is not a service provider pursuant to Section 2 No. 1 TMG because it does not provide its own or third-party telemedia for use or arrange access for use.</p>	<p>IV. Liability privilege pursuant to Section 8 TMG, Recitals 28 and 29 DSA With regard to the DNS resolver, which serves as an interface between users and name servers for pure access mediation and in this respect only forwards information, the defendant can</p>



RICKERT.LAW

	<p>invoke the liability privilege of Section 8 (1) TMG. According to this, service providers are not responsible for third-party information that they transmit in a communication network or to which they provide access for use, provided that - as here - they have not initiated the transmission, have not selected the addressee of the transmitted information and have not selected or changed the transmitted information and have not cooperated with the user of their service to commit illegal acts. Any other view would be contrary to good faith because the DSA has already entered into force and recitals 28 and 29 make it clear that this service is privileged in terms of liability.</p>
<p>V. Subsidiarity of the claim against the host provider fulfilled The Regional Court is of the opinion that the plaintiff has demonstrated the unsuccessfulness of the claim against the host provider, as it cannot be proven that the address of the host provider in Vilnius/Lithuania (EU) exists on the basis of the courier service's notification of an unsuccessful delivery attempt.</p>	<p>V. Subsidiarity of the claim against the host provider not fulfilled The plaintiff has not demonstrated the unsuccessfulness of the claim against the host provider, the high hurdles of the BGH case law (DNS block) are not met; the issuance of an interim injunction together with public service within the EU can be demanded as a minimum requirement.</p>
<p>VI. Blocking claim pursuant to Section 7 (4) TMG The Regional Court did not rule on the alternative claim, as the main claim was granted.</p>	<p>VI. No blocking claim pursuant to Section 7 (4) TMG However, even if a decision is made on the blocking claim, it does not exist because the subsidiarity of the claim (see V.) is not fulfilled.</p>

Conclusion: With the pronouncement of the judgment and the application for annulment, Quad9 is not obliged to block domains in the Federal Republic of Germany. In future applications to block a domain, the rights holder must prove that a claim against the website operator and/or the host provider is not possible. If they are based within the EU, at least a preliminary injunction must have been applied for and an attempt at service must have been made. If they are based outside the EU, it is necessary to check whether there are comparable legal regulations that allow enforcement (formal service) of an injunction in a similar way to within the EU.