

# Games Law Briefing

October 2022



Dear Reader,

Games are arguably the most dynamic media of our time. The legal framework for digital businesses is equally dynamic.

"**Games Law Briefing**" is our new newsletter format which is aimed to help you navigate through the jungle of new regulations and case law - we have selected what we found to be of particular interest for our industry, with a focus on intellectual property, consumer law, and youth protection.

We hope you find it useful - please let us know your thoughts.

## Your Contacts:

**Dr Andreas Lober**

E-Mail



**Daniel Trunk**

E-Mail



**Susanne Klein, LL.M.**

E-Mail



**Wojtek Ropel**

E-Mail



**Lennart Kriebel**

E-Mail



**Fabian Eckstein, LL.M.**

E-Mail



# Games Law Briefing:

---

## I. CASE LAW

**+++ Federal Court of Justice: Platforms such as YouTube and Uploaded can be held liable for copyright infringements by their users +++**

The German Federal Court of Justice (BGH) has followed judgments of the European Court of Justice (ECJ), according to which an operator of a video-sharing platform who knows or should know that users generally make protected content available to the public in an unlawful manner via its platform and does not take the appropriate technical measures that can be expected of an economic operator observing due care in its situation to fight copyright infringements on this platform – such operator is also responsible for the public reproduction of the infringing content uploaded by users.

The Federal Court of Justice made similar decisions on the same day regarding the uploading platform Uploaded and referred the legal disputes back to the appellate court. A decision in the specific case would require a more detailed discussion of the circumstances.

[To the press release of the Federal Court of Justice with the attached judgments \(dated 6 June 2022, in German\)](#)

**+++ Berlin Regional Court: Price adjustment clause illegal +++**

The subject of the legal dispute was a price adjustment clause in the subscription terms of the Swedish-based music streaming service "Spotify". In this clause the company had reserved the right to increase subscription fees and other prices to compensate for "increased costs". The German Federation of Consumer Associations and Consumer Organizations (vzbv) considered this an inappropriate discrimination of consumers and filed a lawsuit. The Regional Court agreed with the vzbv's view, as cost reductions must be reflected in price changes just like cost increases. These are to be passed on to customers under the same standards. Yet here the opportunities and risks were unequally distributed between the company and its customers.

The appeal is pending before the Court of Appeal in Berlin. According to *vzbv*, the price adjustment clause of the sports streaming service DAZN, which was included in the terms of use in February 2022, is now also being reviewed by Munich I Regional Court.

Publishers with subscription models should therefore critically examine their terms and conditions.

[To the press release on the ruling \(dated 9 September 2022, LG Berlin 52 / O 296/21, in German\)](#)

**+++ Cologne Regional Court: Third parties distributing **bot software** liable for software copyright infringements as joint offenders +++**

According to the Cologne Regional Court, a third party not directly involved in a copyright infringement but performing similar qualified acts, is liable as an accomplice for the infringement pursuant to Section 25 (2) sentence 2 of the German Criminal Code (StGB). The case concerned the distributor of a bot software used, among other things, to automate operations that had to be performed in an augmented reality game in the real world. The Regional Court states that financing and provision of an infrastructure as well as the psychological effect can result in a copyright infringement.

[To the judgment of the Cologne Regional Court \(dated 6 January 2022, 14 O 38/19, in German\)](#)

---

## II. PREVIEW

**+++ Federal Court of Justice to hear case on 27 October on the admissibility of **cheat software** under copyright law +++**

The Federal Court of Justice has to decide on claims for injunctive relief, information, and damages due to the distribution of software that enables users to manipulate the program running on a game console. The legal dispute keeping the courts engaged since 2012 deals with the question of whether a software infringement requires an infringement of the computer program itself or whether a change in the program flow on the device's main memory already suffices.

[To the appointment notice of the Federal Court of Justice \(in German\)](#)

---

# III. LEGISLATIVE PROJECTS AND NEWS

## +++ Initiative on virtual worlds like the **metaverse** planned +++

In her letter of intent to the state of the Union, President of the European Commission, Ursula von der Leyen, outlined the flagship initiatives of the Commission in 2023. On the topic digitalization, the list included an initiative on virtual worlds specifically mentioning metaverse as an example.

[To the press release of the European Commission and the letter of intent \(dated 14 September 2022\)](#)

## +++ Federal Ministry of Economics plans to tighten **antitrust law** +++

The Federal Ministry of Economics intends to amend the Act on Restraints of Competition. The draft bill is designed to reinforce competition in the interest of consumers. Intervention instruments are to be strengthened specifically where few suppliers are in competition with each other, and parallel price developments can be observed regularly. The scope could also include game platform operators.

[To the press release of the Federal Ministry of Economics \(dated 20 September 2022, in German\)](#)

## +++ Proposal of the Federal Ministry of Justice on the implementation of **class actions** +++

The German Federal Ministry of Justice has presented a draft bill on the implementation of Directive 2020/1828/EU which includes the proposal for a representative action to enable consumers to seek redress and claim damages. Such class action goes well beyond the current model declaratory action, leaving companies at risk of being sued collectively by several consumers in the event of a breach of duty.

[To the Handelsblatt article \(dated 24 September 2022, in German\)](#)

## +++ Enforcement of the Fair Consumer Contracts Act: **Cancellation button** +++

Under the Fair Consumer Contracts Act, in force in Germany since 1 July 2022, consumer protection organisations are now checking which

companies comply with the new requirements and warn against violations. They have even set up a website where consumers can report such violations.

As a reminder, the Fair Consumer Contracts Act obliges companies, among other things, to introduce a termination procedure for subscriptions on their websites to enable consumers to terminate paid subscriptions online with just a few clicks.

[To the notice of the consumer protection organisation \(in German\)](#)

### **+++ Culture and Education committee of the European Parliament asks for **recognition and support of video games and esports** in the EU +++**

The CULT Committee of the European Parliament has adopted a parliamentary report on esports and video games on 3 October 2022.

With its unanimously adopted resolution, the Committee calls for the development of an EU video game strategy which includes, among other things, video games and esports in schools as a means of developing digital competence, soft skills and creative thinking, the establishment of a European Observatory on Video Games, and the establishment of an EU archive to preserve EU's culturally most relevant video games.

In November 2022, the European Parliament will vote on the resolution.

[To the press release of the European Parliament \(dated 3 October 2022\)](#)

### **+++ Digital Services Act to update the EU's legal framework for illegal content on intermediaries +++**

The Digital Services Act (DSA) was adopted on 4 October 2022, following the European Council's final approval.

The DSA sets clear responsibilities and obligations for providers of intermediary services. Its range of obligations depend on the type of the provided service. We have discussed the new rules in our blog.

[To our latest publication \(dated 4 October 2022, in German\)](#)

[To our Tech Law Briefing \(dated 8 July 2022\)](#)

### **+++ Federal Review Board for Media Harmful to Young Persons (BzKJ) examines lootboxes +++**

According to a press release, the BzKJ has initiated the dialogue with relevant game providers. These were asked to explain how they intend to protect children and young people from loss of financial control and gambling addiction in their respective games. The issue had already gained media attention due to a television report a few weeks earlier.

[To the press release of the BzKJ \(dated 11 October 2022, in German\)](#)

### **+++ Digital Markets Act published in the EU Official Journal +++**

Regulation 2022/1925/EU, better known as Digital Markets Act (DMA) was published in the EU Official Journal on 12 October 2022 and will apply as of May 2023. The DMA establishes obligations for large online platforms with an overwhelming market power that are considered gatekeepers. Non-compliance with the defined obligations can result in fines of up to 10% of the respective company's total worldwide annual turnover.

[To the Official Journal of the European Union \(dated 12 October 2022\)](#)

**EDITOR IN CHARGE:**

Dr Andreas Lober | Rechtsanwalt

©Beiten Burkhardt

Rechtsanwaltsgesellschaft mbH



[Update Preferences](#) | [Forward](#)

**Please note**

This publication cannot replace consultation with a trained legal professional. If you no longer wish to receive information, you can [unsubscribe](#) at any time.

© Beiten Burkhardt

Rechtsanwaltsgesellschaft mbH

All rights reserved 2022

**Imprint**

This publication is issued by Beiten Burkhardt Rechtsanwaltsgesellschaft mbH

Ganghoferstrasse 33, 80339 Munich, Germany

Registered under HR B 155350 at the Regional Court Munich / VAT Reg. No.: DE811218811

For more information see:

[www.advant-beiten.com/en/imprint](http://www.advant-beiten.com/en/imprint)

Beiten Burkhardt Rechtsanwaltsgesellschaft mbH is a member of ADVANT, an association of independent law firms. Each Member Firm is a separate and legally distinct entity, and is liable only for its own acts or omissions.