[DE] Right to Information from an Internet Provider

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Hamburg Landgericht (Regional Court) has ruled that an author who believed his copyright had been infringed has a right to information from an Internet provider under Art. 101a of the Copyright Act.

The applicant, a firm operating in the sound recording industry, claimed that sound recordings were unlawfully available for downloading from the server of the respondent, an Internet provider. The applicant requested information about the particulars of one of the respondent's customers who manages this FTP server and supplies the storage and computer capacity needed for the content. The FTP server is connected to the Internet via access made available by the respondent but is managed exclusively by the respondent's customer, not the respondent himself. The respondent has no administrative access to the disputed content. Uploading is done without any involvement on his part. He is, however, able to identify the customer by means of his user identification.

The Court ruled that the unambiguous wording of Art. 101a of the Copyright Act establishes no right to disclosure of the information. The supply of music ready for downloading via the Internet means making the music accessible to the public within the meaning of Art. 19a of the Copyright Act, not multiplication or dissemination within the meaning of Arts. 16, 17 of the said Act.

The applicant does have a right to information, however, as a result of an unforeseen legal loophole which can only be overcome by applying Art. 101a of the Copyright Act by analogy. It was not the deliberate intention of the legislator to deprive third parties of the right to information. Furthermore, the purpose of Art. 101a of the Copyright Act argues in favour of its application by analogy, since this should enable the injured party, in this case the applicant, to investigate past violations and prevent any further violations in the future.

In arranging technical Internet access for the infringing party, the respondent knowlingly opened up the possibility of copyright infringement. Other interests, such as data protection obligations, could be adequately covered in the context of the proportionality test under Art. 101a of the Copyright Act. The request for information concerned personal data within the meaning of the Federal Data Protection Act, but did not affect the secrecy of telecommunications within the meaning of Art. 88 para.2 of the Telecommunications Act (TKG), insofar as the protection afforded applies only to "connection data" in a communications

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process, whereas the information requested by the applicant concerned the name and address of the server operator, in other words the "inventory data" within the meaning of Art. 95 of the Telecommunications Act, which are not protected by the right to telecommunications secrecy.

Urteil des LG Hamburg vom 7.September 2004, Az. 308 O 264/04

Decision of the Hamburg Regional Court of 7 September 2004, Az. 308 O 264/04 Achter Rund

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