Court of Justice of the European Communities: Promusicae v. Telefónica

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On 29 January 2008, the Grand Chamber of the Court of Justice issued its judgment in case C-275/06, Productores de Música de España (Promusicae) v. Telefónica de España SAU (Telefónica). Promusicae is a non-profit-making organisation of producers and publishers of musical and audiovisual recordings. It asked the Spanish *Juzgado de lo Mercantil No. 5 de Madrid* (Commercial Court No 5, Madrid) for Telefónica to be ordered to disclose the identities and physical addresses of certain persons whom it provided with Internet access services. According to Promusicae, those persons used the peer-to-peer file sharing application KaZaA and provided access via shared files of personal computers to phonograms in which the members of Promusicae held the exploitation rights.

The national court decided to stay the proceedings and referred a question to the Court of Justice for a preliminary ruling. The reference for a preliminary ruling concerned the interpretation of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Electronic commerce Directive), Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Copyright Directive), Directive 2004/48/EC on the enforcement of intellectual property rights, and Articles 17(2) and 47 of the Charter of Fundamental Rights of the European Union. The national court essentially asked whether Community law, in particular these Directives, must be interpreted as requiring Member States to lay down an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings.

Aside from the directives mentioned above, the Court of Justice considers Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), of use for deciding the case. The Court of Justice finds that this Directive does not preclude the possibility for the Member States to lay down an obligation to disclose personal data in the context of civil proceedings. As to the directives mentioned by the national court, the Court of Justice notes that the purpose of these directives is that the Member States should ensure, especially in the information society, effective protection of intellectual property, in particular copyright. However, it follows from Article

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1(5)(b) of Directive 2000/31/EC, Article 9 of Directive 2001/29/EC and Article 8(3)(e) of Directive 2004/48/EC that such protection cannot affect the requirements of the protection of personal data.

The national court also referred to the right to property, which includes intellectual property rights such as copyright, and the right to an effective remedy as laid down in Articles 17 and 47 of the Charter of Fundamental Rights of the European Union. The Court of Justice adds another fundamental right, namely the right that guarantees protection of personal data and hence of private life as laid down in Article 7 of the Charter and Article 8 of the European Convention on Human Rights. According to recital 2 in the preamble to the Directive on privacy and electronic communications, the directive seeks to respect, *inter alia* , this fundamental right.

The Court of Justice concludes that all mentioned directives do not require the Member States to lay down, in a situation such as that in this case, an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. However, Community law requires that, when transposing those directives, the Member States take care to rely on an interpretation of these which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order. Further, when implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation, which would be in conflict with those fundamental rights or with the other general principles of Community law, such as the principle of proportionality.

Judgment of the Court (Grand Chamber) of 29 January 2008, Case C-275/06, Productores de Música de España (Promusicae) v. Telefónica de España SAU (Telefónica)

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