

[DE] File-Sharing Networks Between Telecommunications Law and Criminal Law

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On 14 April 2008, the *Landgericht Offenburg* (Offenburg District Court) decided that ISPs must disclose to the public prosecutor's office or the police the name and address of the owner of a dynamic IP address in order to establish the identity of a user of a file-sharing network, even without a judicial order. In the LG Offenburg's opinion, this information (name and postal address) is an example of the customer data referred to in Art. 3 no. 3 of the *Telekommunikationsgesetz* (Telecommunications Act - TKG), the disclosure of which does not require a judicial order. At the same time, it quashed the decision of the *Amtsgericht Offenburg* (Offenburg Local Court) of 20 July 2007, which considered the release of such data to be subject to a judicial order.

Currently, if the criminal prosecution authorities know the name and postal address of a file-sharing network user, it is necessary to consider whether such persons should be allowed to view this information as part of their right to inspect files. On 12 March 2008, the *Landgericht München I* (Munich District Court I) ruled that they did not have such a right, a view shared by the *Landgericht Saarbrücken* (Saarbrücken District Court) which, in a ruling of 28 January 2008, prohibited the public prosecutor's office from granting to the music industry the right to inspect its files in a file-sharing case. Explaining its decision, the LG München I held that the violation of personality rights weighed more heavily than "questionable rights under civil law". In their decisions, both the Munich and Saarbrücken courts referred to Art. 406e of the *Strafprozessordnung* (Code of Criminal Procedure - StPO), under which the right to inspect files should be refused if it results in the violation of the legitimate interests of the accused. The case heard by the LG München I concerned pornographic content, which is why the court ruled that the disclosure of the name and address of the user constituted an invasion of the privacy of the computer owner. Both courts agree that the interests of the accused take precedence if the investigations fail to produce sufficient evidence of an infringement of the rights of the party that instituted legal proceedings. Since the allocation of an IP address to a telephone extension cannot be considered to constitute sufficient evidence, the right to inspect the files was refused in both cases.

