[AT] OGH Rejects Collecting Society's Claim Against Internet Provider for Customer Data

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Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a ruling issued on 14 July 2009 (case no. 4Ob41/09x), the *Oberste Gerichtshof* (Supreme Court - OGH) explained that an Internet access provider cannot be forced to disclose the personal data of customers who download protected works using file-sharing systems.

In the case concerned, the collecting society LSG GmbH had demanded that access provider Tele2 should disclose the personal data linked to IP addresses of customers who had downloaded files illegally. Tele2 had refused to comply. LSG had based its claim on Art. 87b (3) of the Copyright Act, which obliges providers, as intermediaries, to disclose this information in accordance with Art. 81 (1a) of the Act.

The OGH ruled in Tele2's favour and quashed the decisions of the courts of lower instance. During the proceedings, the OGH had submitted to the European Court of Justice (ECJ) questions on the interpretation of Information Directive 2001/29/EC (C-557/07), including its definition of the term "intermediary". The OGH explained its decision with reference to the *Telekommunikationsgesetz* (Telecommunications Act - TKG). LSG had requested information about master data in the sense of Art. 92 (3) (3) of the 2003 TKG. However, this information could only be provided if Tele2 processed the relevant traffic data (internally). This was nevertheless contradicted by Art. 99 (1) of the 2003 TKG, under which "traffic data relating to participants and users [...must be] erased or made anonymous as soon as they are no longer required for the transmission of information". This rule was intended to prevent unlawful use of such data. Traffic data that was lawfully stored for a legitimate purpose could only be used for that specific purpose.

However, since Tele2 could not be forced to act illegally, the complaint had to be dismissed. Only the legislature could establish an obligation to disclose information.

Entscheidung des OGH (Gz: 4Ob41/09x) vom 14. Juli 2009

http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20090714_OGH0002_0040OB00041_09X0000_000&ResultFunctionToken=a5947270-50df-4bfc-8f51-

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Ruling of the OGH (case no. 4Ob41/09x) of 14 July 2009

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