[DE] Court Considers Unauthorised Use of Open WLAN as Criminal Offence

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According to media reports, the *Amtsgericht Zeven* (Zeven district court - AG) has issued a penalty order against the user of another person's unencrypted WLAN. In the court's view, the unauthorised use of the WLAN constitutes the offence of unauthorised tapping under Art. 148 in connection with Art. 89 of the *Telekommunikationsgesetz* (Telecommunications Act - TKG). Furthermore, the woman, by making contact with her former partner and his new girlfriend via the social network "StudiVZ", was found guilty of stalking under Art. 238 of the *Strafgesetzbuch* (Criminal Code - StGB) and of false accusation under Art. 164 StGB.

After her relationship had ended, the defendant had managed to obtain the confidence of her former partner's new girlfriend by using a female false identity. Using another, male, false identity, she used the information she had thus obtained in order to make compromising remarks to her former partner about his new girlfriend. The defendant accused her, for example, of damaging her former partner's vehicle. In the end, the former partner broke off his new relationship. In order to remain anonymous, the defendant had used the unsecured WLAN network of a neighbour, who had known nothing about it.

The court treated this as a punishable case of unauthorised tapping, as the *AG Wuppertal* (Wuppertal district court) had done in a similar case in 2007. The latter court had considered it an offence under Articles 148 and 89 TKG on the grounds that the allocation of an IP address to a computer represented a "message" in the sense of these provisions. Since it was not the WLAN router, but its owner who decided who could use the IP address, the message had not been intended for the accused, who was therefore guilty of unauthorised tapping.

In such cases, the dominant opinion in case law and literature until now has been that such offences are not punishable under criminal law, but merely lead to the granting of civil law actions such as claims for damages.

Pressemitteilung der den Strafbefehl beantragenden Staatsanwaltschaft Stade vom 16. Dezember 2009

http://www.staatsanwaltschaften.niedersachsen.de/master/C60521196_N37287720_L20_D0_I3749624

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Press release of the State public prosecutor's office, which applied for a penalty order, 16 December 2009

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