[NO] ISP Ordered to Reveal Identity of Copyright Infringer

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Ingvil Conradi Andersen
Norwegian Media Authority

The Supreme Court has decided that an Internet Service Provider (ISP) may be obliged to reveal the identity (name and home address) of an Internet subscriber engaging in illegal file-sharing to the rightsholder intending to pursue relief. In a landmark ruling delivered on 18 June 2010, the Supreme Court found that a statutory duty of confidentiality may be repealed when there is a copyright infringement of a certain gravity.

A customer of the Internet Service Provider Altibox had engaged in illegal file-sharing by uploading different Norwegian blockbusters, such as Max Manus and Kautokeino-opprøret, on a peer-to-peer file-sharing system called Lysehubben. The exclusive rightsholders Sandrew Metronome AS (theatrical distributor) and Filmkameratene AS (production company) identified the IP address from which the movies were uploaded and demanded that Altibox reveal the customer's name and home address. The Norwegian Post and Telecommunications Authority decided to exempt Altibox from its statutory duty of confidentiality under the Electronic Communications Act section 2-9, but Altibox refused to identify its customer. The rightsholders therefore filed a petition to court for the securing of evidence outside a lawsuit. Both the District Court and the Court of Appeals found that Altibox had to reveal its customer's identity and the Supreme Court has now confirmed this interpretation.

Section 22-3 of the Dispute Act prohibits the presentation of evidence that is under a statutory duty of confidentiality. The Court may, however, consent to such presentation after giving due consideration to the duty of confidentiality on the one hand and to the need for clarification of the case on the other. In a unanimous decision the Supreme Court first concluded that the rules were applicable also in procedural cases dealing only with the securing of evidence outside a lawsuit. The Court also rejected a claim from the defendant that the rules on the securing of evidence outside a lawsuit had to be interpreted narrowly when applied to private individuals who intend to pursue their rights and make civil claims as a result of copyright infringement. Secondly, the Court confirmed the balancing of interests that the Court of Appeals had undertaken and found that there were grounds for accepting such presentation of evidence in the case. The Court emphasised that the case involved actions which were both illegal and entitled the rightsholders to compensation, that the police did not give priority to

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such cases and that the copyright infringer could not legitimately expect protection for his illegal actions. The Court also concluded that securing access to evidence in this case would not be in violation of Article 8 of the European Convention on Human Rights on the right to privacy. Given that several films had been uploaded, the copyright infringement had to be considered to be of a certain gravity and the Court also emphasised that the information sought was of a less sensitive character.

The decision has been characterised as a major victory for the industry in the battle against piracy on the Internet and a disappointment to all those claiming that piracy must be fought only through police investigations. The Ministry of Cultural Affairs is currently in the process of revising the Copyright Act. Advocates for the industry have argued that the Supreme Court decision has highlighted the need for statutory provisions securing efficient procedural handling of rightsholders' claims of access to identity information.

Høyesteretts kjennelse, 18.06.2010, HR-2010-01060-A

http://www.domstol.no/upload/HRET/saknr2010-226.pdf

Supreme Court decision of 18 June 2010, No. HR-2010-01060-A

Unofficial English translation of The Dispute Act

http://www.ub.uio.no/ujur/ulovdata/lov-20050617-090-eng.pdf

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