[FI] Open WiFis and Criminal Liability

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The Ministry of Justice is assessing the possibility of decriminalizing the use of open WiFi networks. According to a draft memorandum published last year, using a wireless internet connection without its owner's permission would be allowed in such cases where the access point is not protected by password or the like. In particular, the memorandum assesses whether it is appropriate to deem unauthorised use a criminal offence.

In compliance with Chapter 28, section 7 of the Penal Code of Finland, "[a] person who without authorisation uses the movable property or the non-movable machine or equipment of another shall be sentenced for unauthorised use to a fine or to imprisonment for at most one year." The provision can be interpreted as covering the unauthorised use of an open WiFi.

The memorandum includes three options to amend the current legislation. In accordance with the first option, it would be punishable to use the wireless connection unless the user has a good reason to assume that the network is intended for public use and no specific permission is required. According to the second option, it would not be punishable to use the connection unless the act is likely to cause significant harm to the owner. Finally, complete decriminalisation was considered as a third option.

The Ministry of Justice requested opinions from 23 different authorities, organisations, and individuals. In total, 15 issued statements. On 11 June 2010 all opinions delivered were published as a summary. From among the respondents, the Ministry of Transport and Communications pointed out that it would be impossible to implement the second option. In general, many of the respondents called the first and the second option into question. Professor Kimmo Nuotio noted that a specific provision on decriminalisation is not necessary, as the same conclusion can be achieved by interpreting the law in an appropriate and reasonable manner. Consequently, Chapter 28, sections 7-9 of the Penal Code would not cover the unauthorised use of open WiFis. In his opinion the legal jurisprudence should specifically address the fact and clarify the situation.

It was argued in the memorandum that it is relatively easy to protect a WiFi connection by password. Some of the respondents disagreed with this statement. The Ministry of Transport and Communication stated that it should be clarified

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what measures are needed so that an ordinary person would be able to protect his or her WiFi. The Central Bureau of Investigation paid attention to situations where sexually offensive material is spread by using another person's base station, for example. In such cases the owner of the network would have an interest in seeking sanctions.

Nevertheless, most of the respondents were in favour of abolishing criminal liability. Civil liability should prevail when significant harm is caused. Only two respondents were against the amendments suggested in the memorandum. The memorandum is a preliminary assessment of the situation. It remains to be seen whether any legislative measures will be taken.

Suojaamattoman langattoman Internet-lähiverkon (WLAN) käytön rikosoikeudellisia kysymyksiä. Oikeusministeriö. Muistio 14.10.2009

http://www.om.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIapptype=BlobServer&SSURIcontainer=Default&SSURIsession=false&blobkey=id&blobheadervalue1=inline;

Criminal Law Questions Related to the Use of Unprotected WiFis, The Ministry of Justice, Memorandum 14 October 2009

WLAN:in käytön rangaistavuus - Lausuntotiivistelmä 11.6.2010

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The Use of WiFis and Criminal Liability - Summary of responses, 11 June 2010

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