[GB] High Court Orders Internet Service Provider to Hand Over Personal Details of Customers to Pornographic Film Producers Alleging Breach of Copyright

IRIS 2012-6:1/21

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The English High Court has ordered the Internet Service Provider O2 to hand over the personal details of over 9,000 customers to a company acting on behalf of copyright owners and to a pornographic film production company, whilst rejecting similar claims by 12 other copyright owners.

Golden Eye International Limited, an organisation acting on behalf of copyright owners, and 13 pornographic film producers sought a 'Norwich Pharmacal Order' to compel O2 to give them the personal details of 9,124 O2 customers in order to demand GBP 700 each in damages for alleged copyright infringement, and to threaten to take court action and/or have the customers' internet service slowed down or cut off if they did not pay. The proposed letters also wrongly asserted that bill payers are liable for any copyright infringement that may have occurred on their internet connection, whether or not they committed the infringement. This tactic is known as 'speculative invoicing' and aims to intimidate consumers into paying without the need to go to court. The application was referred to the High Court, which was concerned that those consumers whose details would be released would not be able to challenge the application. It asked the consumer organisation Consumer Focus to represent their interests in court.

The High Court balanced the competing interests of copyright owners and the customer's right to privacy and protection of his or her personal data. In relation to Golden Eye and 12 of the copyright owners it concluded that the order should not be granted as this "would be tantamount to the court sanctioning the sale of the Intended Defendants' privacy and data protection rights to the highest bidder". This was because the owners had surrendered total control of the litigation to Golden Eye, which would receive around 75% of the proceeds. In relation to Golden Eye and one producer, Ben Dover Productions, which were bringing the litigation jointly, the Court held that it would be proportionate to order disclosure of the personal details of bill payers, as there was a good arguable case that many of the intended defendants had infringed copyright. However, the order and the proposed letter to the customers must be framed so as to safeguard properly the legitimate interests of consumers, particularly those who had not in fact committed the alleged copyright infringements. The proposed letters were objectionable in a number of respects, and should instead request

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customers who admitted copyright infringement for details of their P2P filesharing and then individually negotiate an appropriate settlement. The Court will hold a second hearing to impose conditions on the wording of the letters and order.

High Court (Chancery Division), Golden Eye (International) and another v. Telefonica UK Ltd [2012] EWHC 723 (Ch), 26 March 2012

http://www.bailii.org/ew/cases/EWHC/Ch/2012/723.html

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