[DE] OLG Köln says Unitymedia can use router for WLAN hotspots

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In a ruling of 2 February 2018 (case no. 6 U 85/17), the Oberlandesgericht Köln (Cologne Appeal Court - OLG Köln) decided that the telecommunications provider Unitymedia could use its customers' routers to create a nationwide WLAN network without obtaining the express consent of the customers concerned.

Before the case began, the cable network operator Unitymedia had already started using its customers' routers to build a WLAN network, which it hoped would be Germany's largest. Customers in the Bundesländer of North Rhine-Westphalia, Hessen and Baden-Württemberg would have been able to access 1.5 million WiFi hotspots by the end of 2016. From a technical point of view, customers' routers would emit two signals: one for private use and the other for the public WLAN network. The public network would be accessible to the provider's other customers. The plaintiff in the proceedings was a consumer association, which argued that customers' routers should only be used with their express consent. The first-instance ruling of the Landgericht Köln (Cologne Regional Court - LG Köln) of 9 May 2017 (case no. 31 O 227/16) agreed and upheld the consumer association's complaint.

The OLG Köln, however, overturned this decision. It held that it was questionable whether an unacceptable nuisance had been caused to customers under the terms of Article 7 of the Gesetz gegen den unlauteren Wettbewerb (Act against unfair competition - UWG). Although the router connection could be classified as a nuisance, it was not, after careful consideration, unacceptable. The company had a legitimate interest in extending its service by offering this additional benefit, while other customers also had an interest in being able to use WiFi hotspots away from their homes. Bearing this in mind, the nuisance caused to the customer by the newly connected signal was negligible. Moreover, customers could object to it at any time by opting out of the system operated by Unitymedia. This was a decisive factor as far as the OLG Köln was concerned; it thought the nuisance would have been unacceptable if this option had not been available.

The ruling is not yet legally binding, since the OLG Köln senate allowed an appeal to be lodged with the Bundesgerichtshof (Federal Supreme Court).

Pressemitteilung des OLG Köln vom 2. Februar 2018

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http://www.olg-koeln.nrw.de/behoerde/presse/004_zt_letzte-pm_archiv_zwangs/002_archiv/001_zt_archiv_2018/004_PM_-02-02-2018---Routernutzung-durch-Unitymedia.pdf

Press release of the Cologne Appeal Court, 2 February 2018

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