[NL] Internet service provider does not have to hand over contact data of alleged infringers to a movie distributor

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In a judgment of 8 February 2019, the Midden-Nederland District Court dismissed an action brought by a Dutch movie distributor seeking to obtain Internet users' contact data held by a Dutch Internet service provider (ISP). The movie distributor requested data that would enable it to identify Internet users who illegally downloaded a certain movie.

Between 21 December 2017 and 2 Februar 2018, the movie distributor was permitted by the Dutch data protection authority (Autoriteit Persoonsgegevens) to collect the Internet Protocol (IP) addresses of Internet users who illegally downloaded the movie "The Hitman's Bodyguard". In order to act against the infringement of the intellectual property rights protecting the movie, the distributor requested from the ISP the contact data linked to the IP-addresses of 377 Internet users. The distributor announced that the contact data would be used to send the alleged infringers a settlement proposal of EUR 150.

In the proceedings leading to the judgment, the ISP refused to hand over the contact data of the IP address holders. The ISP contested the existence of a legal obligation to share personal data for the above-stated aim. Upholding earlier case-law, the Court dismissed this argument by stating that an unlawful act could provide legal grounds for requesting personal data. It held that in order to determine the circumstances under which this data actually had to be provided, the interests of the movie distributor had to be weighed against the interests of the ISP and its clients.

The Court firstly declared that illegally downloading the movie was to be considered an unlawful action undertaken against the movie distributor, as the holder of the relevant intellectual property rights. Since the distributor should be able to invoke its rights against the infringers, the Court stated that the distributor had a legitimate interest in obtaining the personal data from the ISP. Moreover, the Court acknowledged that there was no less drastic way for the distributor to retrieve the contact data of the infringers.

However, although it acknowledged the interests of the movie distributor, the Court nevertheless held that the balance of interests had to tilt in favor of the ISP,

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for several reasons. Firstly, the Court stated that it was not clear how the amount that the distributor wished to receive as a settlement had been substantiated. Secondly, the distributor had insufficiently clarified the uncertainty regarding the content of the letter in which the settlement proposal would be sent to the IP address holders. Since it was not certain that the holder of each IP address was the actual respective infringer of the intellectual property rights, the distributor should have provided more information about how the distributor intended to approach the IP address holder.

Accordingly, the Court ruled that the interests of the ISP in not handing over the contact data of its clients outweighed the interests of the movie distributor and dismissed the request.

Rechtbank Midden-Nederland, 8 February 2019, ECLI:NL:RBMNE:2019:423

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2019:423

District Court of Midden-Nederland, 8 February 2019, ECLI:NL:RBMNE:2019:423

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