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Judgment of the Court of Justice in Case C-275/06

Productores de Música de España (Promusicae) v Telefónica de España SAU

THE COURT RULES ON THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN THE INFORMATION SOCIETY

Community law does not require the Member States, in order to ensure the effective protection of copyright, to lay down an obligation to disclose personal data in the context of civil proceedings

There are several Community directives ¹ whose purpose is that the Member States should ensure, especially in the information society, effective protection of industrial property, in particular copyright. Such protection cannot, however, affect the requirements of the protection of personal data. The directives on the protection of personal data ² also allow the Member States to provide for exceptions to the obligation to guarantee the confidentiality of traffic data.

Promusicae is a Spanish non-profit-making organisation of producers and publishers of musical and audiovisual recordings. It applied to the Spanish courts for an order that Telefónica should disclose the identities and physical addresses of certain persons whom it provided with internet access services, whose IP address and date and time of connection were known. According to Promusicae, those persons were using the KaZaA file exchange program (peer-to-peer or P2P) and providing access in shared files of personal computers to phonograms in which members of Promusicae held the exploitation rights. It therefore sought disclosure of the above information in order to be able to bring civil proceedings against the persons concerned.

¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1), Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10), and Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, and corrigendum, OJ 2004 L 195, p. 16),

² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

Telefónica argued that, under Spanish law,³ the communication of the data sought by Promusicae was authorised only in a criminal investigation or for the purpose of safeguarding public security and national defence.

The Spanish court asks the Court of Justice of the European Communities whether Community law requires the Member States to lay down, in order to ensure effective protection of copyright, an obligation to communicate personal data in the context of civil proceedings.

The Court of Justice notes that the exceptions permitted by the directives on the protection of personal data include the measures necessary for the protection of the rights and freedoms of others. As the directive on privacy and electronic communications does not specify the rights and freedoms concerned by that exception, it must be interpreted as expressing the Community legislature's intention not to exclude from its scope the protection of the right to property or situations in which authors seek to obtain that protection in civil proceedings. It does not therefore preclude the possibility for the Member States of laying down an obligation to disclose personal data in the context of civil proceedings. However, it does not compel the Member States to lay down such an obligation.

As to the directives on intellectual property, the Court of Justice finds that they too do not require the Member States to lay down, in order to ensure effective protection of copyright, an obligation to communicate personal data in the context of civil proceedings.

That being so, the Court points out that the present reference for a preliminary ruling raises the question of the need to **reconcile** the requirements of the protection of different fundamental rights, namely the **right to respect for private life** on the one hand and the **rights to protection of property and to an effective remedy** on the other.

The Court concludes that the **Member States must, when transposing the directives on intellectual property and the protection of personal data, rely on an interpretation of those directives which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order. Further, when implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with the directives but also make sure that they do not rely on an interpretation of them which would be in conflict with those fundamental rights or with the other general principles of Community law, such as the principle of proportionality.**

³ Law 34/2002 on information society services and electronic commerce of 11 July 2002 (BOE No 166 of 12 July 2002, p. 25388).

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Languages available: BG CS DA DE EL EN ES FI FR HU IT NL PL PT RO SK SL SV

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-275/06>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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