

Data Privacy: Personal Right or Infringement Facilitator?

Data Protection Issues in Enforcing Intellectual Property Rights Against Internet Wrongs

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Issues to Be Covered

1. The technical evidence needed to investigate and prosecute civil or criminal infringements that take place on the internet.
2. The relevant EU data protection rules that apply to such evidence collection and use.
3. The various ways that these data protection rules have been applied in national legislation and court cases to permit such evidence collection – or not.
4. An examination of whether the current state of affairs is workable or whether more specific legislation or other guidance is needed.

Background

Victims of many kinds of civil or criminal wrongs routinely need to gather and analyse evidence to enforce their rights effectively through criminal complaints or civil litigation. This is certainly true in the intellectual property area. Rights owners are required to collect, analyse and present evidence of what infringement has taken place, who has done it, and where and to what extent it has happened, in order to get police or prosecutors to take action or to get a court to consider civil claims against a wrongdoer. This was always the case with respect to infringements involving hard goods. It remains true where civil or criminal infringement has been committed on the internet.

The internet involves some new types of computer-based technical evidence – internet protocol (IP) addresses, packet data, internet service provider logs and the like – that are indispensable for proving civil or criminal wrongs. These particular types of computer-based data are often covered by privacy rules like the EU data protection directives. These rules have been drawn up to protect individuals against unwarranted collection and use of their personal data, but obviously not to give individuals immunity from detection or prosecution for torts and crimes either in the ‘real world’ or the internet.

Data protection legislation often does not deal specifically with the particular challenges of third-party enforcement of rights against internet wrongdoing, however. As a result, national data protection legislation and court decisions wrestling with these issues differ considerably as to how evidence on such internet-related torts and crimes may be collected and used consistent with data protection protections. This session will examine EU data protection rules and how they have been applied to enforcement of intellectual-property rights, and will explore whether more consistency and certainty are needed in this area.