

Private Peers – What Role Should Privacy Law Play in Learning the Identities of P2P Users? The European Case

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From IP Address to IP Enforcement

- Three preconditions for learning a user's identity from his dynamic IP address:
 - Dynamic IP address must have been stored by provider.
 - Until recently: Permanent storage **prohibited** by privacy law (Art. 6 (2) of European Directive 2002/58, "Privacy and Electronic Communications Directive").
 - Since September 15, 2007: **Obligation** to store IP addresses (Art. 5 of European Directive 2006/24, "Data Retention Directive").
 - Provider must be obliged to give data to right holder.
 - Disclosure of identity may be ordered (Art. 8 (1) of Directive 2004/48, "IP Enforcement Directive").
 - Privacy law must allow provider to use data for disclosure.

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From IP Address to IP Enforcement

- Can privacy law prevail over IP enforcement?
 - ECJ: Yes, it can.
 - Within discretion of Member States to strike balance between IP protection and privacy.

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The “No, No, Never” Approach – a Right Balance?

- Some Member States generally prohibit the use of IP addresses for private law enforcement.

- Good for privacy, but bad for
 - IP enforcement:
Enforcement Directive ineffective in Internet cases.
 - Legal awareness of Internet users:
No individual litigation, no sense for right and wrong.



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The “Provider Does It All” Approach – a Right Balance?

- Current debate about filtering and blocking obligations for access providers.

- Seems inadequate because
 - more conflicts between more parties
 - new privacy issues with regard to monitoring traffic
 - undue burden on access providers



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Proposal for a Two-Tiered System

- First stage (first-time infringers):
Provider does not disclose user's identity yet, but must send warning notice to user.
 - High level of privacy maintained at first.
 - Helps raise legal awareness of user.
 - Helps right holder, as most infringers stop if once caught.

- Second stage (repeated infringements):
Provider must disclose user identity to right holder.
Conflict must now be settled between the parties involved.

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Thank You for Your Attention

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