

Illegal streaming: internet access providers not liable for third-party platforms

08 March 2019 | Contributed by [Walder Wyss](#)

Facts Decision

On 2 February 2019 the Federal Supreme Court ruled that internet access providers are not liable for third-party websites and portals that make movies available for illegal downloading or streaming. **(1)** Further, internet access providers are not obliged to monitor or block access to such websites and portals.

Facts

The case involved internet access provider Swisscom and a movie producer and distributor. Finding that various movies for which it held an exclusive copyright licence for Switzerland had been made available for illegal download and streaming via third-party portals, the movie producer and distributor requested Swisscom to block access to these sites, but the internet access provider refused. A press release by the Federal Supreme Court is available in [French](#) and [German](#).

Decision

The Federal Supreme Court asserted that claims for damages and injunctive relief against a participant in a copyright infringement were conditioned on the existence of a copyright infringement committed by a third party (ie, either by the user who illegally downloaded the movie from the portal or the person or company which illegally made the movie available via the portal). In addition, such claims require that the infringement be an adequate causal consequence of the participant's contribution to such infringement.

The Federal Supreme Court held that, under Article 19(1) of the Copyright Act and irrespective of whether the source had been made available legally or illegally, users who download, stream and watch movies for their own private use through internet access provided by an internet access provider were not infringing Swiss copyright law. On the other hand, portal operators and hosting providers – even those located outside Switzerland – that provide access to such movies via the Internet in Switzerland are considered to be infringing Swiss copyright law.

However, the court also held that the copyright infringement committed by portal operators and hosting providers did not impose a liability on internet access providers given the lack of an adequate causal link between the internet access provider's contribution and the copyright infringement committed by the portal operators and hosting providers.

Internet access providers merely allow their customers to use their infrastructures to access the Internet. Such access does not require a manual intervention by an internet access provider, but is an automatic data exchange between the portal operator and the end user. Further, neither the portal operators or the hosting providers nor the persons who have uploaded the movies to the portals are customers of or otherwise linked to the internet access provider. Therefore, the court found no adequate causal link between the internet access provider's activity and the portal operators and hosting providers infringing Swiss copyright law. Moreover, creating a liability for internet access providers in such cases could result in corresponding monitoring and abstention obligations, which would be considered excessive.

Finally, the Federal Supreme Court asserted that judges were not responsible for integrating internet access providers into the fight against copyright infringements. This is the legislator's responsibility, which has so far refrained from introducing such regulatory requirements regarding internet access providers into the Copyright Act.

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Endnotes

(1) [Decision 4A_433/2018](#), rendered on 2 February 2019 and published on the Federal Supreme Court website on 27 February 2019; offered to official publication in the official collection of the Federal Supreme Court (publication date and official publication reference not yet confirmed).

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