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To reveal or not to reveal: that is the Odex question

Judge Ernest Lau has thrown out a request by [Odex Pte Ltd](#), a local *anime* distributor, to order internet service provider (ISP) [Pacific Internet](#) to identify some allegedly infringing subscribers. The ruling comes as a surprise as Odex has already succeeded in obtaining court orders to have two other ISPs – [SingNet](#) and [Starhub](#) – disclose the identities of more than 1,000 subscribers who allegedly downloaded illegal content.

Odex filed separate suits against the three local ISPs, requiring them to reveal information on the identities of customers alleged to have illegally downloaded popular Japanese *anime* titles that Odex imported into Singapore. Odex alleged that a substantial number of illegal downloads had been made in Singapore over the past 10 months, causing its sales to plunge dramatically over the past two years. *Anime* are very popular cartoons with youngsters and it was reported that the youngest perpetrator was only nine years old.

From a reading of the judgment it appears that there were several reasons for the decision. First, different judges had ruled in all three cases; although the arguments of the other two cases were not disclosed to the public, Judge Lau revealed that in the case of SingNet, the company has consented to the request. Interestingly, and in the face of public queries, this consent has now been denied by SingNet. In the case of Starhub, the judge noted that the issues now raised by Pacific Internet were never fully argued by it.

In his judgment, Judge Lau found that Odex had no clear legal standing to act against the alleged illegal downloaders because it was only a sub-licensee and not the copyright owner or exclusive licensee for most of the *anime* titles it distributed in Singapore. Under the Singapore Copyright Act, only the copyright owners or an “exclusive licensee” can take legal action. Odex was found to be the exclusive licensee of only one *anime* video titled *Mobile Suit Gundam Seed*. Even in this case the judge found that Odex still failed to satisfy the legal requirement of showing an “extremely strong case”. Interestingly, the judge compared the request for an ISP’s subscriber information to an Anton Piller order. This is a court order that provides for the right to search premises, halt all activities and seize all incriminating evidence found. The judge stated in his decision that because of their draconian nature, such orders are granted only when the plaintiff can prove it had an “extremely strong *prima facie* case of a civil cause of action”. The judge therefore required a similar threshold in this case to protect the public interest.

Further, the judge noted that Odex’s explanation of how it identified the downloaders fell short of what was required. Odex’s claims of engaging a US company called [BayTSP](#) to obtain information on the illegal downloads were found to be not fully substantiated. Odex had provided no proof that it had engaged the services of BayTSP, and neither did BayTSP give evidence in favour of Odex.

However, the judge did go on to say that the protection of IP rights is of paramount importance to Singapore and that if a clear case of infringement is proven, copyright owners and their exclusive licensees can certainly expect pre-action assistance from the courts.

The question that potential rights owners now have to ask themselves before commencing similar actions is the extent to which they have to prove their case and the adequacy of the evidence, which they must first bring to the court before launching such an action. Odex has stated that it will appeal the decision. It has also been reported that Odex plans to get the appropriate rights owners involved and have BayTSP give evidence on its behalf in Singapore, if needed.

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