

Illegal downloads – acts of terrorism?

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THERE may be no direct link between illegally downloading Madonna's new album and planting a bomb on a commuter train but the two offences have become conflated in a debate taking place in the European Parliament.

Since the 7 July atrocities in London, Britain's EU presidency has made a priority of pushing through a proposal on retaining telecommunications data. When Tony Blair's government originally joined forces with Sweden, France and Ireland to suggest mandatory data retention last year, it made clear that this would be a tool to fight terrorism and serious crime.

In the past few weeks, however, the entertainment industry has been urging MEPs to widen the dossier's scope in a vote scheduled for 13 December. Companies such as EMI, Walt Disney, Sony and Time-Warner have said that data stored must be used to help track those who infringe copyright laws online.

Francine Cunningham, a spokeswoman for the International Federation of the Phonographic Industry (IFPI), says that it is "inflammatory" to suggest that record labels are "hijacking" an anti-terror law.

According to the IFPI, a 2004 EU law on intellectual property, known as the enforcement directive, already recognises the need to use data held by internet service providers for fighting music piracy.

There are other moves afoot that might make the rules against copyright infringement more stringent.

In July, the European Commission put forward suggestions for a non-binding decision on strengthening the "criminal law framework to combat intellectual property offences". It advocated that the EU member states should ensure that such offences were punishable by up to four years in prison "when committed under the aegis of a criminal organisation".

But that approach is being revised in the light of a European Court of Justice ruling in September, which opened up the possibility of the Commission adding criminal sanctions in support of EU law.

The ruling was about a dispute between the Council of Ministers and the Commission over sanctions for breaches of environmental law. The Commission presented a paper last week (23 November) arguing that the judgement

could be applied to all of the EU's laws "with which criminal penalties should be associated in order to ensure their effectiveness".

This week, a representative of the Commission told MEPs that it was withdrawing its July proposal and instead would present in January a proposal for a binding law. (The consent of the Council and the Parliament would still be needed.)

Charlotte Cederschiöld, a Swedish conservative

deputy, describes the four-year prison sentence idea as "excessive".

She believes that it is dangerous that the music downloading issue has been drawn into the data retention data. In an opinion she drafted for the assembly's internal market and consumer protection committee, she called for an independent assessment of the consequences of data retention to be conducted before proceeding further. "Nobody

is really explaining why downloaders are terrorists," she says.

The Commission's July proposal said that "intellectual property offences have become a very worrying phenomenon, linked in some cases to organised crime".

UK Liberal Democrat MEP Bill Newton Dunn is leading efforts within the assembly to have data retention used against music piracy. The rationale, he has said, is that it is only proper to

fight crime in general with whatever resources are at the EU's disposal, rather than limiting the measure to extremist violence.

Civil libertarians are perturbed, though, that the Commission's proposal describes a "criminal organisation" as "a structured organisation of more than two persons".

It is conceivable, some claim, that a small group of teenage rock or hip-hop fans could be penalised for

sharing unauthorised files.

"Downloading is a modern form of listening to the radio," says Ante Wessels from the Foundation for Free Information Infrastructure. "It is just like everybody trying to slip into a movie theatre or a circus for free when they were young; these are really small things. Starting to fight adolescents with means meant for fighting organised crime is not a good idea."



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