

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

9 July 2020 (*)

(Reference for a preliminary ruling — Copyright and related rights — Internet video platform — Uploading of a film without the consent of the rightholder — Proceedings concerning an infringement of an intellectual property right — Directive 2004/48/EC — Article 8 — Applicant's right of information — Article 8(2)(a) — Definition of 'addresses' — Email address, IP address and telephone number — Not included)

In Case C-264/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 21 February 2019, received at the Court on 29 March 2019, in the proceedings

Constantin Film Verleih GmbH

v

YouTube LLC,

Google Inc.,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, E. Juhász, M. Ilešič (Rapporteur) and C. Lycourgos, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 12 February 2020,

after considering the observations submitted on behalf of:

- Constantin Film Verleih GmbH, by B. Frommer, R. Bisle and M. Hügel, Rechtsanwälte,
- YouTube LLC and Google Inc., by J. Wimmers and M. Barudi, Rechtsanwälte,
- the European Commission, by G. Braun, T. Scharf, S.L. Kalėda and H. Kranenborg, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 April 2020,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 8(2)(a) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, and corrigendum OJ 2004 L 195, p. 16).
- 2 The request has been made in proceedings between Constantin Film Verleih GmbH, a film distributor established in Germany, and YouTube LLC and Google Inc., established in the United States, concerning information required by Constantin Film Verleih from those two companies concerning email addresses, IP addresses and mobile telephone numbers of users who infringed its intellectual property rights.

Legal context

EU law

Directive 2004/48

- 3 Recitals 2, 10, 15 and 32 of Directive 2004/48 are worded as follows:

- ‘(2) ... [the protection of intellectual property] should not hamper freedom of expression, the free movement of information, or the protection of personal data, including on the Internet.
- ...
- (10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.
- ...
- (15) This Directive should not affect ... Directive 95/46/EC of 24 October 1995 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data [(OJ 1995 L 281, p. 31)] ...
- ...
- (32) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of that Charter.’

- 4 Under Article 1, entitled ‘Subject matter’, that directive ‘concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights’.

- 5 Article 2 of that directive, entitled ‘Scope’, provides, in paragraphs 1 and 3(a):

‘1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.

...

3. This Directive shall not affect:

- (a) the Community provisions governing the substantive law on intellectual property [and] Directive 95/46 ...’

6 Article 8 of that directive, entitled ‘Right of information’, provides:

‘1. Member States shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;
- (c) was found to be providing on a commercial scale services used in infringing activities;

or

(d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:

- (a) grant the rightholder rights to receive fuller information;
- (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- (c) govern responsibility for misuse of the right of information; or
- (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right;

or

(e) govern the protection of confidentiality of information sources or the processing of personal data.’

German law

7 Under the first sentence of Paragraph 101(1) of the Gesetz über Urheberrecht und verwandte Schutzrechte — Urheberrechtsgesetz (Law on copyright and related rights) of 9 September 1965 (BGBl. 1965 I, p. 1273), in the version applicable to the dispute in the main proceedings (‘the UrhG’), any person who, on a commercial scale, infringes copyright or any other right protected by that law may be required by the injured party to provide immediately information as to the origin and distribution channel of infringing copies or other products.

8 In the event of manifest infringement, without prejudice to Paragraph 101(1) of the UrhG, that right to information may also be exercised, under point 3 of the first sentence of Paragraph 101(2) of the UrhG, against a person who, on a commercial scale, has provided services used to engage in infringing activities.

- 9 The person who is required to provide the information must, under Paragraph 101(3)(1) of the UrhG, state the names and addresses of the producers, suppliers and other previous holders of copies or other products, the users of the services and the intended wholesalers and retailers.
- 10 In accordance with points 2 and 3 of the first sentence of Paragraph 111(1) of the Telekommunikationsgesetz (Law on Telecommunications) of 22 June 2004 (BGBl. 2004 I, p. 1190), in the version applicable to the dispute in the main proceedings ('the TKG'), when phone numbers are assigned, the name and address of the subscriber of the connection, and, in the case of a natural person, his or her date of birth, are collected and retained.
- 11 Pursuant to the third sentence of Paragraph 111(1) of the TKG, as regards prepaid services, that information must also be verified.
- 12 Under Paragraph 111(2) of the TKG, when an email address is assigned, such verification and retention are not mandatory.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 13 In Germany, Constantin Film Verleih has exclusive exploitation rights, inter alia, in respect of the cinematographic works '*Parker*' and '*Scary Movie 5*'.
- 14 In 2013 and 2014, those works were uploaded onto the website www.youtube.com, a platform operated by YouTube, which enables users to publish, watch and share videos ('the YouTube platform'). Those works have therefore been viewed several tens of thousands of times.
- 15 Constantin Film Verleih demands that YouTube and Google, the latter being the parent company of the former, provide it with a set of information relating to each of the users who have uploaded those works ('the users in question').
- 16 The referring court notes, in that regard, that, in order to upload videos onto the YouTube platform, users must first of all register with Google by means of a user account, the opening of that account requiring only that those users provide a name, email address and date of birth. Those data are not usually verified and the user's postal address is not requested. However, in order to be able to post onto the YouTube platform videos lasting more than 15 minutes, the user must provide a mobile telephone number to enable him or her to receive an activation code, which is necessary in order to post. Furthermore, according to YouTube and Google's joint terms of service and privacy policies, users of the YouTube platform consent to server logs, including the IP address, date and time of use as well as individual requests, being stored and to those data being used by participating undertakings.
- 17 After the parties to the dispute in main proceedings unanimously stated that the dispute at first instance concerning the names and postal addresses of the users in question had been formally settled, Constantin Film Verleih, which obtained only fictitious user names, requested that YouTube and Google be ordered to provide it with additional information.
- 18 That additional information concerns, first, the email addresses and mobile telephone numbers as well as the IP addresses used by the users in question to upload the files, together with the precise point in time at which such uploading took place, indicating the date and time, including minutes, seconds and time zones, that is to say, the time at which the file in question was uploaded, and, second, the IP address last used by those users to access their Google account in order to access the YouTube platform, together with the precise point in time at which access was obtained, indicating the date and time, including minutes, seconds and time zones, that is to say, the time at which the file was accessed.
- 19 By its judgment of 3 May 2016, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany) dismissed Constantin Film Verleih's request. However, on appeal by the latter, by judgment of

22 August 2018, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany) partially granted Constantin Film Verleih's request and ordered YouTube and Google to provide it with the email addresses of the users in question, but dismissed the appeal as to the remainder.

20 By its appeal on a point of law, brought before the referring court, the Bundesgerichtshof (Federal Court of Justice, Germany), Constantin Film Verleih maintains its claims seeking an order requiring YouTube and Google to provide it with the mobile telephone numbers and IP addresses of the users in question. Furthermore, by their own appeal on a point of law, YouTube and Google claim that Constantin Film Verleih's request should be dismissed in its entirety, including in relation to disclosure of the email addresses of the users in question.

21 The referring court considers that the outcome of those two appeals on a point of law depends on the interpretation of Article 8(2)(a) of Directive 2004/48 and, in particular, on the answer to the question whether the additional information requested by Constantin Film Verleih is covered by the term 'addresses' within the meaning of that provision.

22 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do the addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers, mentioned in Article 8(2) (a) of Directive [2004/48] and covered, as appropriate, by the information referred to in Article 8(1) of Directive [2004/48], also include

(a) the email addresses of service users and/or

(b) the telephone numbers of service users and/or

(c) the IP addresses used by service users to upload infringing files, together with the precise point in time at which such uploading took place?

(2) If the answer to Question 1(c) is in the affirmative:

Does the information to be provided under Article 8(2)(a) of Directive [2004/48] also cover the IP address that a user who has previously uploaded infringing files last used to access his or her Google/YouTube user account, together with the precise point in time at which access took place, irrespective of whether any infringement [of intellectual property rights] was committed when that account was last accessed?'

Consideration of the questions referred

23 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the term 'addresses' covers, in respect of a user who has uploaded files which infringe an intellectual property right, his or her email address, telephone number and IP address used to upload those files or the IP address used when the user's account was last accessed.

24 In the present case, it is common ground that YouTube and Google provide, on a commercial scale, services which were used by the users in question for the purposes of infringing activities, which consist in having uploaded files containing protected works onto the YouTube platform, to the detriment of Constantin Film Verleih. The dispute in the main proceedings concerns the refusal by those companies to provide certain information required by Constantin Film Verleih concerning those users, in particular their email addresses and telephone numbers, as well as the IP addresses used by them, both at the time when the files concerned were uploaded and when they last accessed their Google/YouTube account. It is

apparent from the order for reference and it is, moreover, not disputed in the present case that the outcome of the dispute in the main proceedings depends on whether such information is covered by the term ‘addresses’ within the meaning of Article 8(2)(a) of Directive 2004/48.

25 In that regard, it should be recalled, as a preliminary point, that under Article 8(1)(c) of Directive 2004/48, Member States are to ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who was found to be providing on a commercial scale services used in the infringing activities.

26 Article 8(2)(a) of Directive 2004/48 states that the information referred to in paragraph 1 of that article comprises, as appropriate, the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers.

27 It follows that, pursuant to Article 8 of Directive 2004/48, the Member States must ensure that the competent courts may, in a situation such as that at issue in the main proceedings, order the operator of an online platform to provide the names and addresses of any person referred to in paragraph 2(a) of that article who has uploaded a film onto that platform without the copyright holder’s consent.

28 As to whether the term ‘addresses’ within the meaning of Article 8(2)(a) of Directive 2004/48 also includes the email addresses, telephone numbers and IP addresses of those persons, it should be noted that, as that provision makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, the term ‘addresses’ constitutes a concept of EU law, which must normally be given an independent and uniform interpretation throughout the European Union (see, by analogy, judgment of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 62 and the case-law cited).

29 Moreover, since Directive 2004/48 does not define that term, the meaning and scope of that term must be determined in accordance with its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part and, where appropriate, its origins (see, to that effect, judgments of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 65, and of 19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111, paragraph 38 and the case-law cited).

30 As regards, in the first place, the usual meaning of the term ‘address’, it should be noted, as the Advocate General observed in points 30 and 33 of his Opinion, that, in everyday language, it covers only the postal address, that is to say, the place of a given person’s permanent address or habitual residence. It follows that that term, when it is used without any further clarification, as in Article 8(2)(a) of Directive 2004/48, does not refer to the email address, telephone number or IP address.

31 In the second place, the *travaux préparatoires* that led to the adoption of Directive 2004/48 and, in particular, the Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights of 30 January 2003 (COM(2003) 46 final), the Opinion of the European Economic and Social Committee of 29 October 2003 (OJ 2004 C 32, p. 15) and the Report of 5 December 2003 by the European Parliament (A5-0468/2003) on that proposal are in line with that finding. As the Advocate General observed in point 37 of his Opinion, and as the European Commission maintained before the Court, they contain nothing to suggest that the term ‘address’ used in Article 8(2)(a) of that directive should be understood as referring not only to the postal address but also to the email address, telephone number or IP address of the persons concerned.

32 In the third place, the context in which the concept in question is used supports such an interpretation.

- 33 As the Advocate General noted in point 35 of his Opinion, an examination of other EU legal acts referring to email addresses or IP addresses reveals that none of them uses the term ‘address’, without further details, to designate the telephone number, IP address or email address.
- 34 In the fourth place, the interpretation set out in paragraphs 31 to 33 above is also consistent with the purpose of Article 8 of Directive 2004/48, taking into account the general objective of that directive.
- 35 In that regard, it is true that the right to information, provided for in Article 8, seeks to apply and implement the fundamental right to an effective remedy guaranteed in Article 47 of the Charter of Fundamental Rights, and thereby to ensure the effective exercise of the fundamental right to property, which includes the intellectual property right protected in Article 17(2) of the Charter (judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 29), by enabling the holder of an intellectual property right to identify the person who is infringing that right and take the necessary steps in order to protect it (see, to that effect, judgment of 18 January 2017, *NEW WAVE CZ*, C-427/15, EU:C:2017:18, paragraph 25).
- 36 However, when adopting Directive 2004/48, the EU legislature chose to provide for minimum harmonisation concerning the enforcement of intellectual property rights in general (see, to that effect, judgment of 9 June 2016, *Hansson*, C-481/14, EU:C:2016:419, paragraph 36). Thus, that harmonisation is limited, in Article 8(2) of that directive, to narrowly defined information.
- 37 Additionally, it should be noted that Directive 2004/48 is intended to establish a fair balance between, on the one hand, the interest of the holders of copyright in the protection of their intellectual property rights enshrined in Article 17(2) of the Charter of Fundamental Rights and, on the other hand, the protection of the interests and fundamental rights of users of protected subject matter, as well as of the public interest (see, by analogy, judgments of 29 July 2019, *Funke Medien NRW*, C-469/17, EU:C:2019:623, paragraph 57; of 29 July 2019, *Pelham and Others*, C-476/17, EU:C:2019:624, paragraph 32; and of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 42).
- 38 More specifically, as regards Article 8 of Directive 2004/48, the Court has previously had occasion to hold that the aim of that provision is to reconcile compliance with various rights, inter alia the right of holders to information and the right of users to protection of personal data (see, to that effect, judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 28).
- 39 Lastly, it should be noted that, although it follows from the foregoing considerations that the Member States are not obliged, under Article 8(2)(a) of Directive 2004/48, to provide for the possibility for the competent judicial authorities to order disclosure of the email address, telephone number or IP address of the persons referred to in that provision in proceedings concerning an infringement of an intellectual property right, the fact remains that the Member States have such an option. As is clear from the wording of Article 8(3)(a) of that directive, the EU legislature expressly provided for the possibility for the Member States to grant holders of intellectual property rights the right to receive fuller information, provided, however, that a fair balance is struck between the various fundamental rights involved and compliance with the other general principles of EU law, such as the principle of proportionality (see, to that effect, order of 19 February 2009, *LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten*, C-557/07, EU:C:2009:107, paragraph 29, and judgment of 19 April 2012, *Bonnier Audio and Others*, C-461/10, EU:C:2012:219, paragraph 55).
- 40 In the light of all the foregoing considerations, the answer to the questions referred is that Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the term ‘addresses’ contained in that provision does not cover, in respect of a user who has uploaded files which infringe an intellectual property right, his or her email address, telephone number and IP address used to upload those files or the IP address used when the user’s account was last accessed.

Costs

- 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 8(2)(a) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as meaning that the term ‘addresses’ contained in that provision does not cover, in respect of a user who has uploaded files which infringe an intellectual property right, his or her email address, telephone number and IP address used to upload those files or the IP address used when the user’s account was last accessed.

[Signatures]

* Language of the case: German.