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## CJEU, C-264/19 (Constantin Film Verleih): The Court on the scope of the copyright holder's right of information under the Enforcement Directive

On July 9, the Court of Justice has issued a preliminary ruling concerning the interpretation of Article 8(2)(a) of Directive 2004/48/EC on the enforcement of intellectual property rights ("the Enforcement Directive")

The case, referred by the Bundesgerichtshof, Germany's highest Court, concerns the interpretation of the Enforcement Directive in so far as the **personal data that can be requested by the right holder** in case of infringement are concerned.

The parties to the main proceedings are Constantin Film Verleih GmbH, a film distributor established in Germany, and YouTube LLC and Google Inc., established in the United States. The dispute between the parties concerns the refusal by YouTube and Google to provide part of the information required by Constantin Film concerning the users who had illegally uploaded cinematographic works over which the latter holds the exclusive exploitation right, in particular the user's email addresses and telephone numbers and 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.

In a nutshell, the referring court asked 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.

Art. 8 of the Enforcement Directive concerns the "*Right of Information*". It provides that "*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."*

The German applicable law, implementing the Enforcement Directive, is coherent with these rules.

The Eu Court of Justice ruled that Art. 8(2)(a) of the Directive "*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.***"

Indeed, that provision – in the context of the minimum harmonization provided for through the Directive - makes no reference to the Member States' legislation for the purpose of determining its meaning and scope. Thus, the Court stated that the term “**addresses**” constitutes **a concept of EU law**, which must be given an independent and uniform interpretation throughout the EU. The term is not defined in Directive 2004/48, therefore, it must be understood according to its usual meaning in everyday language, i.e. the postal address.

The CJEU reminds that the Enforcement Directive aims to strike a fair balance between the interest of the holders of copyright (and the protection of their IP rights enshrined in Article 17(2) of the Charter) and, on the other hand, the protection of the interests and fundamental rights of users, as well as of the public interest, as the Court's case law on the provision at hand shows (*e.g.* C-580/13, *Coty Germany*).

Lastly, it is worthwhile noting that Member States have no obligations, under Article 8(2)(a) of the Directive, to provide for the possibility for the judicial authorities to order disclosure of the email address, telephone number or IP address of the persons involved in the infringement of IP rights, but they can do it – so that a national legislation may include those too. Still, in that case, a fair balance of the rights involved must be struck, taking into account the fundamental rights involved and compliance with other EU law general principles.