

Court of Justice EU, 9 July 2020, Constantin Film v Youtube

Constantin Film

PRIVATE INTERNATIONAL LAW

Article 8(2)(a) of Directive 2004/48 on the enforcement of intellectual property rights must be interpreted as meaning that the term ‘addresses’ contained in that provision does not oblige platforms such as Youtube, in respect of a user who has uploaded files which infringe an intellectual property right, to provide the user’s 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:

- [the term ‘addresses’ in article 8\(2\)\(a\) solely refers to a postal address](#)

8 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.

- [Member States do have the option to order disclosure of more complete information](#)

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](#)).

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Court of Justice EU, 31 March 2010

(E. Regan, I. Jarukaitis, E. Juhász, M. Ilešič (Rapporteur) and C. Lycourgos)

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. Kalēda 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.

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE

delivered on 2 April 2020 (1)

Case C-264/19

Constantin Film Verleih GmbH

v

YouTube LLC,

Google Inc.

(Request for a preliminary ruling

from the Bundesgerichtshof (Federal Court of Justice, Germany))

(Reference for a preliminary ruling — Copyright and related rights — Internet-based video-sharing platform — YouTube — 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 — Rightholder's right to information — Article 8(2)(a) — Concept of 'names and addresses' — Scope — Email address, IP address and telephone number — Not included)

I. Introduction

1. This request for a preliminary ruling has arisen in the context of a dispute between Constantin Film Verleih GmbH, a film distributor established in Germany, and YouTube LLC and its parent company Google Inc., both of which are established in the United States.

2. The dispute concerns the refusal by YouTube and Google to provide certain information required by Constantin Film Verleih with regard to users who have placed several films online in breach of Constantin Film Verleih's exclusive exploitation rights. More specifically, Constantin Film Verleih is asking YouTube and Google to provide it with the email addresses, telephone numbers and IP addresses used by those users.

3. The Bundesgerichtshof (Federal Court of Justice, Germany) asks, in essence, whether such information is covered by Article 8(2)(a) of Directive 2004/48/EC, (2) in accordance with which the competent judicial authorities may order the disclosure of the 'names and addresses' of certain categories of persons who have a connection with the goods or services which infringe an intellectual property right.

4. For the reasons which I shall set out in this Opinion, I am convinced that the concept of 'names and addresses', set out in Article 8(2)(a) of Directive 2004/48, does not include any of the information set out above.

II. Legal framework

A. EU Law

5. Recitals 2, 10 and 32 of Directive 2004/48 are worded as follows:

'(2) The protection of intellectual property should allow the inventor or creator to derive a legitimate profit from his/her invention or creation. It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it 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.

...

(32) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(3) In particular, this Directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of th[e] Charter.'

6. 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 [EU] 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 [EU] law and/or by the national law of the Member State concerned.

...

3. *This Directive shall not affect:*

(a) the [EU] provisions governing the substantive law on intellectual property, Directive 95/46/EC ...'

7. Article 8 of Directive 2004/48, 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;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his/her own participation or that of his/her 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.'

B. German law

8. Under the first sentence of Paragraph 101(1) of the Urheberrechtsgesetz (Law on Copyright, 'the UrhG'), anyone who, on a commercial scale, infringes copyright or another 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.

9. 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 that law, against a person who, on a commercial scale, has provided services used to engage in infringing activities.

10. 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.

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

11. Constantin Film Verleih is a film distributor established in Germany.

12. YouTube, which is owned by Google and established in the United States, operates the internet platform with the same name.

13. In Germany, Constantin Film Verleih has exclusive exploitation rights in respect of the cinematographic works Parker and Scary Movie 5.

14. Between the months of June 2013 and September 2014, those two works were posted online on the 'YouTube' platform without Constantin Film Verleih's consent. On 29 June 2013, the cinematographic work Parker was uploaded in its full-length version and in German under the username 'N1'. It was viewed more than 45 000 times before it was blocked on 14 August 2013. During the month of September 2013, the cinematographic work Scary Movie 5 was uploaded in its full-length version under the username 'N2'. It was viewed more than 6 000 times before it was blocked on

29 October 2013. On 10 September 2014, another copy of the second work was uploaded under the username 'N3'. It was viewed more than 4 700 times before it was blocked on 21 September 2014.

15. Constantin Film Verleih demanded that YouTube and Google provide it with a set of information for each of the users who had uploaded those works.

16. The referring court found that the conditions for the right to information were satisfied. Consequently, the scope of the dispute in the main proceedings is limited to the content of the information that YouTube and/or Google must provide to Constantin Film Verleih. More specifically, the dispute concerns the following information:

– the user's email address,

– the user's telephone number,

– the IP address used by the user to upload the files at issue, together with the precise point in time at which such uploading took place, and

– the IP address last used by the user to access his or her Google/YouTube account, together with the precise point in time at which that access took place.

17. Ruling at first instance, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany) rejected Constantin Film Verleih's request that such information be provided.

18. On appeal, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany) ordered YouTube and Google to provide the email addresses of the users concerned, rejecting Constantin Film Verleih's request as to the remainder.

19. By its appeal on a point of law, brought before the Bundesgerichtshof (Federal Court of Justice), Constantin Film Verleih requested that YouTube and Google be ordered to provide it with all of the abovementioned information, including users' telephone numbers and IP addresses. By their own appeal on a point of law, YouTube and Google requested that Constantin Film Verleih's request be rejected in its entirety, including in so far as it concerns users' email addresses.

20. Taking the view that the outcome of the two appeals on a point of law depended on the interpretation of the concept of 'addresses' contained in Article 8(2)(a) of Directive 2004/48, 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 [that] directive, 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?'

21. The reference for a preliminary ruling was received at the Registry of the Court of Justice on 29 March 2019.

22. Constantin Film Verleih, YouTube, Google, and the European Commission submitted written observations.

23. Representatives of Constantin Film Verleih, YouTube, Google, and the Commission took part in the hearing held on 12 February 2020 and presented oral argument.

IV. Analysis

24. Under Article 8 of Directive 2004/48, Member States are obliged to provide, in their legal order, for the possibility, for the competent judicial authorities, to order that certain information be provided in the context of proceedings concerning an infringement of an intellectual property right.

25. Accordingly, by its two questions, which it is appropriate to examine together, the referring court asks whether Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the Member States are obliged to provide for the possibility, for the competent judicial authorities, to order, in respect of a user who has uploaded files which infringe an intellectual property right, that the email address, the telephone number, the IP address used to upload those files and the IP address used when the user's account was last accessed be provided.

26. YouTube and Google, as well as the Commission propose that those questions be answered in the negative, in contrast to Constantin Film Verleih.

27. In accordance with the position maintained by YouTube, Google, and the Commission, and for the reasons set out below, I take the view that that provision does not cover any of the information set out in the questions referred for a preliminary ruling.

28. As a preliminary point, I note that Article 8(2)(a) of Directive 2004/48 contains no reference to the law of the Member States. Consequently, and in accordance with settled case-law, the concept of '*names and addresses*' is a notion of EU law which must be given an autonomous and uniform interpretation. (4)

29. Moreover, the concept of '*names and addresses*' is not defined in Directive 2004/48. Again according to settled case-law, the meaning and scope of terms for which EU law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part. (5)

30. Therefore, the usual meaning in everyday language must be the starting point in the process of interpreting the concept of '*names and addresses*' used in Article 8(2)(a) of Directive 2004/48. There is little doubt that, in everyday language, the concept of a person's '*address*',

about which the referring court asks in particular, covers only the postal address, as YouTube and Google have rightly submitted. (6) That interpretation is confirmed by the definition of the French word '*adresse*' given in the Dictionnaire de l'Académie française, namely '*la désignation du lieu (7) où l'on peut joindre quelqu'un*' (the designation of the place where you can reach someone).

31. With regard to the telephone number, the second item of information referred to in the questions referred for a preliminary ruling, I do not consider it necessary to discuss at length the fact that it cannot be included in the concept of persons' '*names and addresses*', as envisaged in Article 8(2)(a) of Directive 2004/48, whether in everyday language or in any other context. (8)

32. The status of the other two items of information referred to in those questions, namely the email address and the IP address, warrants further consideration.

33. As I have just noted, in everyday language, the starting point in the interpreting process, the term '*address*' refers only to the postal address. Therefore, when it is used without any further clarification, that term does not cover the email address or the IP address.

34. This is especially the case in a context which I would describe as '*general*', that is to say going beyond the strict context of the internet, as is the case with Article 8(2)(a) of Directive 2004/48.

35. An examination of other EU legislation that refers to the email address or IP address supports that interpretation. Where the EU legislature has intended to refer to the email address (9) or the IP address, (10) it has done so expressly by supplementing the word '*address*', as noted by YouTube and Google. To my knowledge, there are no examples of EU legislation where the terms '*names and addresses*', used alone and in a general context, refer to the telephone number, IP address or email address.

36. Consequently, it follows from a literal interpretation of Article 8(2)(a) of Directive 2004/48 that the terms used by the EU legislature, namely the terms '*names and addresses*', do not include any of the information set out in the questions referred for a preliminary ruling, as YouTube, Google, and the Commission have submitted.

37. That interpretation is confirmed by the historical interpretation set out by the Commission. The travaux préparatoires which led to the adoption of Directive 2004/48 (11) contain nothing to suggest, even implicitly, 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 or the IP address of the persons concerned.

38. The Commission explained, in that regard, that, when Directive 2004/48 was adopted in 2004, the EU legislature had never intended to include more modern forms of an '*address*', such as the email address or the IP address.

39. Accordingly, it follows from a historical interpretation that Directive 2004/48 must be interpreted as referring to only the traditional meaning of that term, namely the postal address.

40. It follows from the foregoing that, according to a literal and a historical interpretation, Article 8(2)(a) of Directive 2004/48 does not include the email address, the telephone number and the IP addresses used by the persons covered by that provision.

41. Constantin Film Verleih contests that interpretation, focusing on the purpose of Article 8 of Directive 2004/48 and, more generally, the objectives of that directive.

42. According to Constantin Film Verleih, the purpose of Article 8 of Directive 2004/48 is to enable the holder of intellectual property rights to identify the persons mentioned in that provision. Accordingly, and irrespective of its wording, Constantin Film Verleih takes the view that paragraph 2 of that article should be interpreted as referring to *'any information that makes it possible to identify'* those persons and such information may include, depending on its availability, the telephone number, the email address, the IP address or even bank details.

43. In my view, to adopt that interpretation would be tantamount to the Court rewriting that provision. I understand of course that a rightholder such as Constantin Film Verleih would like Directive 2004/48 to be amended to enable it to identify possible infringers more easily in the specific context of the internet. However, rewriting that legislation falls not to the Court, but to the EU legislature.

44. It was open to the legislature, if that had been its intention, to include, in Article 8(2) of Directive 2004/48, *'any information that makes it possible to identify'* the persons concerned. At the hearing, the Commission emphasised that the EU legislature had expressly chosen to provide for minimum harmonisation limited to names and addresses, without including other items of information which enable a person to be identified, such as a telephone number or social security number.

45. I should point out that a *'dynamic'* or teleological interpretation of that provision, as Constantin Film Verleih has called for, must be ruled out in this context. The terms used in Article 8(2)(a) of Directive 2004/48 do not offer sufficient room for interpretation to enable a dynamic or teleological interpretation with a view to including the information set out in the questions referred for a preliminary ruling.

46. In that regard, I agree wholeheartedly with the reasoning developed by Advocate General Bobek in points 33 to 35, 38 and 39 of his Opinion in *Commission v Germany*. In accordance with the prohibition of *contra legem* interpretation and the principle of the separation of powers, a dynamic or teleological interpretation is only possible where *'the text of the provision itself [is] open to different interpretations, presenting some degree of textual ambiguity and vagueness'*. (12)

47. However, that is not the case in this instance. As I explained above, literal and historic interpretations preclude any ambiguity as to the scope of the terms *'names and addresses'* used in Article 8(2)(a) of Directive 2004/48.

48. Constantin Film Verleih also refers, more generally, to the objectives pursued by Directive 2004/48. In my view, that line of argument cannot call into question the interpretation of the abovementioned provision, given the lack of ambiguity in its wording. Nevertheless, for the sake of completeness, I will examine that argument below.

49. Admittedly, it cannot be disputed that Directive 2004/48 seeks to ensure a high level of protection of intellectual property in the internal market, as stated in recitals 10 and 32 thereof and in accordance with Article 17(2) of the Charter.

50. Nor can it be disputed that the interpretation proposed by Constantin Film Verleih would increase the level of protection of intellectual property in the internal market.

51. However, it must be borne in mind that Directive 2004/48, like all legislation on intellectual property, (13) strikes a balance between, on the one hand, the interest of holders in protecting their intellectual property right, enshrined in Article 17(2) of the Charter and, on the other, the protection of the interests and fundamental rights of users of protected subject matter, and the public interest.

52. As the Court has held on numerous occasions, there is nothing whatsoever in the wording of Article 17(2) of the Charter or in the Court's case-law to suggest that the right to intellectual property enshrined in that article is inviolable and must for that reason be absolutely protected. (14)

53. Therefore, Article 17(2) of the Charter does not require that all available technical means be used to assist the holder in identifying possible infringers, without account being taken of the wording of the provisions of Directive 2004/48.

54. With regard, in particular, to Article 8 of Directive 2004/48, the Court has already had occasion to specify, in the judgment in *Coty Germany*, 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. (15)

55. In the context of the case in the main proceedings, the data requested by Constantin Film Verleih are, by definition, personal data within the meaning of Article 2(a) of Directive 95/46/EC, (16) now Article 4(a) of Regulation (EU) 2016/679, (17) since they must enable Constantin Film Verleih to identify the persons concerned. (18)

56. Although it is clear from recital 32 of Directive 2004/48 that that directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of the Charter, at the same time it is clear from Article 2(3)(a) and recitals 2 and 15 of that directive that the protection of intellectual property is not to hamper, inter alia, the protection of personal data guaranteed in Article 8 of the Charter, so that that directive cannot, in particular, affect Directive 95/46. (19)

57. I note, in that regard, the importance of Article 8(3)(b) to (e) of Directive 2004/48, in accordance with which that article is to apply without prejudice to the provisions which set out, or even restrict, the holder's

right to information, and in particular the provisions which govern the processing of personal data.

58. In that context, I take the view that it is not for the Court to alter the scope of the terms used by the EU legislature in Article 8(2) of Directive 2004/48, which would have the effect of upsetting the balance that the legislature had intended to achieve when adopting that directive. The EU legislature alone has the competence to strike that balance. (20)

59. To supplement what I said in point 43 of this Opinion, to adopt the interpretation suggested by Constantin Film Verleih would be tantamount to the Court not only rewriting Article 8(2) of Directive 2004/48, but also upsetting the balance that was struck by the EU legislature in such a way as to favour the interests of holders of intellectual property rights.

60. I would add that the dynamic interpretation suggested by Constantin Film Verleih also runs counter to the general scheme of Directive 2004/48, which is based on the minimum harmonisation intended by the EU legislature, as the Commission has noted.

61. That institution rightly states that a dynamic interpretation of that kind is not appropriate in the present case since, under Article 8(3)(a) of Directive 2004/48, the EU legislature expressly provided for the possibility for the Member States to address that dynamic concern by granting rightholders '*rights to receive fuller information*'.

62. In other words, a dynamic interpretation of Directive 2004/48 by the EU Courts, in order to bring it into line with new behaviour on the internet, is not necessary since the Member States have the power to adopt additional measures targeting that behaviour.

63. For the sake of completeness, I would point out, lastly, that Article 47 of the TRIPS Agreement, (21) which establishes a mere ability to provide for a right to information, cannot be relied on in support of the interpretation proposed by Constantin Film Verleih. (22)

64. For all of those reasons, I consider that Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the concept of 'names and addresses' set out in that provision does not cover, in respect of a user who has uploaded files which infringe intellectual property rights, the email address, the telephone number, the IP address used to upload those files or the IP address used when the user's account was last accessed.

65. Accordingly, the Member States are not obliged, under that provision, to provide for the possibility, for the competent judicial authorities, to order that that information be provided in the context of proceedings concerning an infringement of an intellectual property right.

V. Conclusion

66. In the light of the foregoing, I propose that the Court should answer the questions referred for a preliminary ruling by the Bundesgerichtshof (Federal Court of Justice, Germany) as follows:

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 concept of 'names and

addresses' set out in that provision does not cover, in respect of a user who has uploaded files which infringe intellectual property rights, the email address, the telephone number, the IP address used to upload those files or the IP address used when the user's account was last accessed.

Accordingly, the Member States are not obliged, under that provision, to provide for the possibility, for the competent judicial authorities, to order that that information be provided in the context of proceedings concerning an infringement of an intellectual property right

1 Original language: French.

2 Directive 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).

3 'The Charter'.

4 See, in respect of the concept of 'appropriate compensation', used in Article 9(7) of Directive 2004/48, judgment of 12 September 2019, Bayer Pharma (C-688/17, EU:C:2019:722, paragraph 40). See also, again with regard to intellectual property, judgments of 22 June 2016, Nikolajeva (C-280/15, EU:C:2016:467, paragraph 45), and of 27 September 2017, Nintendo (C-24/16 and C-25/16, EU:C:2017:724, paragraphs 70 and 94).

5 See, inter alia, judgments of 31 January 2013, McDonagh (C-12/11, EU:C:2013:43, paragraph 28); of 6 September 2018, Kreyenhop & Kluge (C-471/17, EU:C:2018:681, paragraph 39); and of 12 September 2019, Bayer Pharma (C-688/17, EU:C:2019:722, paragraph 41).

6 I have not noticed any inconsistency in the different language versions of that provision, which all refer to the concept of an 'address': see, by way of illustration, 'direcciones' in the Spanish version, 'adresse' in the Danish version, 'Adressen' in the German version, 'addresses' in the English version, 'indirizzo' in the Italian version, 'adres' in the Dutch version, 'endereços' in the Portuguese version, 'adresele' in the Romanian version, and 'adress' in the Swedish version.

7 My italics.

8 The fact, on which Constantin Film Verleih relies, that the telephone number may have a 'routing address' function for the transmission of data, in particular in connection with telephone calls or applications that use a telephone number, such as WhatsApp, cannot change my view in that regard. The concept of persons' 'names and addresses', as envisaged in Article 8 of Directive 2004/48, clearly has no connection with the functional intended purpose of the data flow, notwithstanding the fact that the latter may have been described as a 'routing address'.

9 With regard to the email or 'electronic' address, see inter alia Article 88(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the

coordination of social security systems (OJ 2009 L 284, p. 1); Article 14(1) of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ 2013 L 165, p. 1); Article 54(2) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65), and Article 45(2)(a) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35).

10 With regard to the IP address, see inter alia Article 10(1)(e) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1); Article 5(1)(k) of Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ 2017 L 168, p. 1); Article 17(8), Article 34(4)(j) and Article 52(2)(g) of Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ 2018 L 236, p. 1).

11 See, in particular, 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) and 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. The proposal for a directive contains no explanation as to the meaning to be given to the terms 'names and addresses'. Moreover, the Parliament did not propose any amendment in respect of the wording of the future Article 8(2)(a) of Directive 2004/48.

12 C-220/15, EU:C:2016:534, point 34.

13 See, inter alia, judgments of 16 February 2012, SABAM (C-360/10, EU:C:2012:85, paragraphs 42 to 44); 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).

14 See, inter alia, judgments of 29 January 2008, Promusicae (C-275/06, EU:C:2008:54, paragraphs 62 to 70); of 16 February 2012, SABAM (C-360/10, EU:C:2012:85, paragraph 41); of 19 April 2012, Bonnier Audio and Others (C-461/10, EU:C:2012:219, paragraph 56); of 3 September 2014, Deckmyn and Vrijheidsfonds (C-201/13, EU:C:2014:2132, paragraph

26); and of 29 July 2019, Funke Medien NRW (C-469/17, EU:C:2019:623, paragraph 72).

15 Judgment of 16 July 2015 (C-580/13, EU:C:2015:485, paragraph 28).

16 Directive of the European Parliament and of the Council of 24 October 1995 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). In accordance with Article 2(a) of that directive, 'personal data' is to mean any information relating to an identified or identifiable natural person.

17 Regulation of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

18 The Court has already had occasion to hold that the IP address, even taken in isolation, may constitute personal data. See judgments of 24 November 2011, Scarlet Extended (C-70/10, EU:C:2011:771, paragraph 51), and of 19 October 2016, Breyer (C-582/14, EU:C:2016:779, paragraph 49).

19 Judgment of 16 July 2015, Coty Germany (C-580/13, EU:C:2015:485, paragraphs 31 to 33).

20 See, by analogy, judgment of 15 September 2016, Mc Fadden (C-484/14, EU:C:2016:689, paragraphs 69 to 71).

21 Agreement on trade-related aspects of intellectual property, which is contained in Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1, 'the TRIPS Agreement'). In accordance with Article 47 of that agreement, entitled 'Right of information', 'Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution'.

22 See, to the same effect, judgment of 29 January 2008, Promusicae (C-275/06, EU:C:2008:54, paragraph 60).

In any event, although it is true that EU legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the European Union (see, inter alia, judgment of 7 December 2006, SGAE, C-306/05, EU:C:2006:764, paragraph 35 and the case-law cited), Article 47 of the TRIPS Agreement cannot authorise the Court to disregard the clear wording of Article 8(2)(a) of Directive 2004/48.