

# Copyright vs data protection: CJEU grappling with the right to information about infringers

Kluwer Copyright Blog  
September 2, 2020

Giulia Priora (Sant'Anna School of Advanced Studies, Pisa)

Please refer to this post as: Giulia Priora, 'Copyright vs data protection: CJEU grappling with the right to information about infringers', *Kluwer Copyright Blog*, September 2 2020, <http://copyrightblog.kluweriplaw.com/2020/09/02/copyright-vs-data-protection-cjeu-grappling-with-the-right-to-information-about-infringers/>



On 9 July 2020, the Court of Justice of the European Union (CJEU) delivered its judgment in *Case C-264/19 Constantin Film Verleih v YouTube and Google Inc.* Providing clarification on the scope of the copyright holder's right to information, the CJEU decided that the notion of "address", as set in *Directive 2004/48/EC* (Enforcement Directive), does not encompass IP addresses, email addresses and phone numbers of online users, unless otherwise specified by national law.

## Facts

The dispute arose with the unauthorized upload by some users of the online video sharing platform YouTube of full-length versions of two films distributed by the German company Constantin Film Verleih GmbH. The latter demanded that YouTube and its parent company Google disclose information about the users involved in such acts of infringement. Having received fictitious usernames and postal addresses, the German film distribution company asked for additional data, i.e. email addresses and phone numbers of the individual users, as well as IP addresses used for the upload of the infringing video and for the most recent access to the related accounts. However, YouTube and Google refused to disclose this information.

The Court of first instance rejected Constantin Film Verleih GmbH's request in full, whereas the Court of Appeal approved the disclosure of email addresses, but not of the remainder. The case landed before the German Federal Supreme Court, which referred it to the CJEU seeking clarification on whether the notion of address, as set in Art.8(2)(a) Enforcement Directive, encompasses IP addresses, email addresses, and phone numbers of copyright infringers. The CJEU rendered its judgment on 9 July 2020.

## Analysis

At the heart of the dispute lies the question of which personal data can be disclosed to a copyright holder who is the victim of a manifest infringement of his/her exclusive rights online. Art.8 Enforcement Directive ensures the possibility for national judicial authorities to order the disclosure of information relating to the origin and distribution channels of acts in violation of intellectual property rights, including "name and address" of the individual infringer. The provision explicitly includes providers of commercial services used to perpetuate the infringement among the possible addressees of such an order, thus potentially encompassing intermediaries, Internet Service Providers (ISPs), and online platforms like YouTube.

### The EU autonomous concept of "address"

Following the arguments posited by Advocate General (AG) Øe in his delivered *Opinion*, the CJEU asserts that the notion of address, as set in Art.8(2)(a) Enforcement Directive, is to be interpreted as an autonomous concept of EU law. The Court points out both the lack of references to the law of the Member States to determine the scope and meaning of the term, and its missing definition in the Directive, which lead to the need for an independent and uniform interpretation.

The term is construed according to its usual understanding in everyday life, which is found to be "the place of a given person's permanent address or habitual residence", thus covering postal addresses only. The historical analysis of the Enforcement Directive supports this interpretation, as nothing in its *travaux préparatoires* and explanatory documents suggests a meaning of "address" that would include phone numbers, email or IP addresses. The CJEU further looks at the context in which the term is used, scrutinizing other sources of EU law and highlighting how the EU legislator consistently refers to email addresses and IP addresses using the respective specific terms, instead of the generic notion of address. The restrictive interpretation of the term is found to also be in line with the general objective of the Enforcement Directive, that is to provide an effective remedy to the copyright holder enabling him/her to identify the infringement perpetrators, but, at the same time, to do so by way of a minimum harmonization.

### Fair balance between copyright and data protection

The CJEU emphasizes the intention underlying the Enforcement Directive, that is to strike a fair balance between the rights and interests of, on the one side, copyright holders and, on the other, users and the public. More precisely, the clash is between the copyright holder's right to information and the protection of users' personal data.

The balancing required by Art.8 Enforcement Directive is not new to the CJEU, who tackled it in its 2015 decision in *Case C-580/13 Coty Germany GmbH v Stadtsparkasse Magdeburg*. In both judgments, the Court stresses the need to reconcile the opposing fundamental rights and achieve a fair balance. A fair balance, which, the CJEU highlights, shall be reached also where national Parliaments, enabled by Art.8(3)(a) Enforcement Directive, grant a more extensive right to information to copyright holders (see, for instance, an explanation of the broader protection provided by the Dutch legislator [here](#)).

## Conclusion

The CJEU judgment is of particular interest, as it touches upon two legal fields in rapid evolution and lively debated in the EU and beyond. As I elaborate in more detail [here](#), the analysis of the decision offers valuable insights on three main points.

First, the EU uniform interpretation of "address" as covering solely postal addresses raises concerns regarding the overly formalistic and outdated approach to the understanding of the term (see also [here](#) and [here](#)). It seems trite, yet necessary to point out that email addresses have assumed and, to a large extent, replaced the role and functionality of physical addresses in today's language and society.

Second, the approach pursued by the CJEU seems not only to lack pragmatism, but also to entangle the picture of teleological interpretations of copyright law in the EU. Firmly rejecting a purpose-oriented line of reasoning, the Court has in fact added inconsistency to the deployment of this interpretative tool, which often supports arguments in defense of the protection of copyright holder's rights and interests in disputes landing in Luxemburg. In this light, the question remaining unanswered is why teleological aspects of both copyright law and data protection law as from *Regulation (EU) 2016/679* (GDPR) were left underemphasized, if not completely unaddressed.

Third and last, even though very cautiously, the CJEU judgment displays an interesting sensitivity towards the protection of personal data of online users. Against a background of thorny legal questions and a significant number of preliminary ruling referrals, it is worth stressing how the case for a stronger protection of users' personal data successfully made its way through the impervious fair balance exercise by way of a straightforward literal and contextual interpretation of EU law.