[DE] Federal Supreme Court submits questions to the CJEU on YouTube's duty to publish information on copyright infringements

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In a decision of 21 February 2019, the I. Zivilsenat (first civil chamber) of the Bundesgerichtshof (Federal Supreme Court - BGH), which is responsible for copyright-related cases, submitted to the Court of Justice of the European Union (CJEU) a number of questions concerning the scope of information that the YouTube video platform must disclose in relation to users who infringe copyright.

In the case at hand, a film distributor had launched an action against YouTube LLC and its parent company, Google Inc., claiming an infringement of its exclusive rights to exploit the films "Parker" and "Scary Movie 5", which had been uploaded to the platform by various users without its permission in 2013 and 2014. The plaintiff had asked for the email addresses, telephone numbers and IP addresses of the user accounts from which the films had been uploaded at the time they had been uploaded and at the time the relevant accounts had most recently been accessed. It hoped to use the IP addresses to identify the people responsible and, if appropriate, instigate legal proceedings against them.

In order to be able to upload videos to the YouTube platform, users must register and provide their name, email address and date of birth. They also consent to the storage of IP addresses. A telephone number must also be provided for videos lasting longer than 15 minutes.

In the first instance, the Landgericht Frankfurt am Main (Frankfurt am Main district court) had rejected the application. On hearing the appeal, the Oberlandesgericht Frankfurt am Main (Frankfurt am Main district appeal court) decided that the right to third-party information in the case of copyright infringements included the user's email address, but not their telephone number or IP address. It based its decision on the wording of the relevant provision of German copyright law, which only mentioned the user's "name and address". In view of changing communication habits, the court decided that email addresses were covered by the rule, whereas telephone numbers and IP addresses were not. As far as IP addresses were concerned, there was no interest in including them because it had not been shown how, after more than three years, the relevant users could be identified via access providers on the basis of IP addresses. German telecommunications law requires access providers to delete traffic data

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immediately.

As part of its review, the Bundesgerichtshof has now suspended the proceedings and submitted to the CJEU a number of questions on the interpretation of Directive 2004/48/EC on the enforcement of intellectual property rights. The CJEU must now clarify whether the information obligation set out in Article 8(2)(a) of the Directive includes, in addition to a postal address, the email address, telephone number and IP address used to upload the infringing files, together with the exact time at which they were uploaded. If the information did include the IP addresses used to upload the infringing files, the BGH wished to know whether it also covered the IP address that was used the last time the user account was accessed - regardless of whether copyright infringements had been committed on that occasion.

Pressemitteilung des BGH vom 21. Februar 2019

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2019/2019019.html?nn=10690868

Federal Supreme Court press release of 21 February 2019

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