Federal Supreme Court determines user information to be provided by YouTube

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In a decision (I ZR 153/17) of 10 December 2020, the Bundesgerichtshof (Federal Supreme Court – BGH), Germany's highest ordinary court, ruled that the information that must be disclosed concerning a user who has illegally uploaded copyright-protected content to a video-sharing platform does not include their e-mail address, telephone number or IP address. The court therefore followed the preliminary ruling of the Court of Justice of the European Union (CJEU) of 9 July 2020 (C-264/19).

The dispute concerned an action brought by a film distributor against the YouTube Internet platform. The film distributor was demanding that YouTube, in accordance with Article 101(3)(1) of the German *Urheberrechtsgesetz* (Copyright Act – UrhG), provide the e-mail addresses, telephone numbers and IP addresses of users who had uploaded the copyright-protected films (see Article 2(1)(6)(2) UrhG) *Parker* and *Scary Movie 5* to the video portal in 2013 and 2014. The distributor held exclusive exploitation rights in respect of these films.

YouTube is a video portal whose users can watch, upload and review video clips, as well as make them accessible to other Internet users, free of charge. In order to upload videos, users must register with the platform and provide their e-mail address, name and date of birth. If they want to post a video lasting more than 15 minutes, they must also provide a telephone number for additional verification. Users must also consent to their IP address being logged.

According to the BGH and the lower-instance courts, the right to information under Article 101(3)(1) UrhG was derived from the fact that works had been made available to the public in the sense of Article 19a UrhG illegally through the uploading of copyright-protected works without the permission of the film distributor, who owned the associated exploitation rights (Article 101(2)(1) UrhG). The right to information from YouTube under Article 101(3)(1) concerned the users' names and addresses. However, the interpretation of the term "address" was disputed, in particular whether or not it included the user's e-mail address, IP address and telephone number. Article 101(2)(1) UrhG implements Article 8(2)(a) of Directive 2004/48/EC on the enforcement of intellectual property rights and should therefore be interpreted in accordance with the directive. The CJEU was therefore asked how the term "address" in Article 8(2)(a) of the directive should

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be interpreted. According to the CJEU, in everyday language and in other legal instruments, the term "address" does not refer to an e-mail address, telephone number or IP address, therefore, the same should apply when interpreting the term "address" in Article 101(3)(1) UrhG. In line with the CJEU's reply, the BGH therefore rejected the claim for information based on the UrhG. It also decided that a general claim to information under the rules of good faith should be dismissed.

BGH, Urteil vom 10.12.2020 (I ZR 153/17)

https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&nr=113487&pos=8&anz=544

Federal Supreme Court judgment of 10 December 2020 (I ZR 153/17)

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