

Court of Justice of the European Union: Case Mircom v. Telenet BVBA

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On 17 June 2021, the CJEU delivered its judgment on Case C-597/19. The request was made in proceedings between Mircom International Content Management Consulting (M.I.C.M.) Limited, referred to as "Mircom", the holder of certain rights over a large number of pornographic films produced by eight undertakings established in the United States and Canada, and the Internet access provider Telenet BVBA. It concerned the latter's refusal to provide information enabling its customers to be identified on the basis of several thousand IP addresses collected from a peer-to-peer network, where certain Telenet clients, by using the BitTorrent protocol, had allegedly made available films from Mircom's catalogue.

In its judgment, the CJEU held that uploading pieces, previously downloaded, of a media file containing a protected work using a peer-to-peer network constitutes "making [a work] available to the public", even though those pieces are unusable in themselves and the uploading is automatically generated when the user has subscribed to the BitTorrent client sharing software in giving his or her consent to its application after having duly been informed of its characteristics.

Moreover, a holder of intellectual property rights such as Mircom may benefit from the system of protection of those rights, but its request for information, in particular, must be non-abusive, justified and proportionate.

Finally, the CJEU held that EU law does not preclude, in principle, the systematic registration, by the holder of intellectual property rights or by a third party on his or her behalf, of IP addresses of users of peer-to-peer networks whose Internet connections have allegedly been used in infringing activities, or the communication of the names and postal addresses of users to that holder or to a third party for the purposes of an action for damages. However, such initiatives and requests must be justified, proportionate, not abusive, and provided for by a national legislative measure which limits the scope of rights and obligations under EU law.

Judgment of the Court of Justice of the European Union (Fifth Chamber) of 17 June 2021, Case C-597/19, Mircom International Content Management & Consulting (M.I.C.M.) Limited v Telenet BVBA (intervening parties: Proximus NV, Scarlet Belgium NV)

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