



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 October 2018*

(Reference for a preliminary ruling — Copyright and related rights — Directive 2001/29/EC — Enforcement of intellectual property rights — Directive 2004/48/EC — Compensation in the event of file-sharing in breach of copyright — Internet connection accessible by members of the owner's family — Exemption from liability of the owner without the need to specify the nature of the use of the connection by the family member — Charter of Fundamental Rights of the European Union — Article 7)

In Case C-149/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht München I (Regional Court, Munich I, Germany), made by decision of 17 March 2017, received at the Court on 24 March 2017, in the proceedings

Bastei Lübbe GmbH & Co. KG

v

Michael Strotzer,

THE COURT (Third Chamber),

composed of M. Vilaras, President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský (Rapporteur), L. Bay Larsen, M. Safjan and D. Šváby, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2018,

after considering the observations submitted on behalf of:

- Bastei Lübbe GmbH & Co. KG, by B. Frommer, R. Bisle, and M. Hügel, Rechtsanwälte,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the European Commission, by T. Scharf, F. Wilman and K.-P. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2018,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1) and Article 8(1) and (2) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) and of Article 3(2) 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 Bastei Lübbe GmbH & Co. KG, a publisher, and Mr Michael Strotzer concerning an action for damages as a result of copyright infringement through file-sharing.

Legal context

European Union law

Directive 2001/29

- 3 Recitals 3, 9 and 58 of Directive 2001/29 state:
 - ‘(3) The proposed harmonisation will help to implement the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property, including intellectual property, and freedom of expression and the public interest.
 - ...
 - (9) Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. ...
 - ...
 - (58) Member States should provide for effective sanctions and remedies for infringements of rights and obligations as set out in this Directive. They should take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for should be effective, proportionate and dissuasive and should include the possibility of seeking damages and/or injunctive relief and, where appropriate, of applying for seizure of infringing material.’
- 4 Article 3 of that directive, entitled ‘Right of communication to the public of works and right of making available to the public other subject matter’, provides:
 - ‘1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.
 - 2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

...

(b) for phonogram producers, of their phonograms;

...

3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.'

5 Under Article 8(1) and (2) of the directive, entitled 'Sanctions and remedies':

'1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.

2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material as well as of devices, products or components referred to in Article 6(2).'

Directive 2004/48

6 Recitals 3, 10, 20 and 32 of Directive 2004/48 state:

'(3) ... [W]ithout effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished. It is therefore necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied effectively in the Community. In this respect, the means of enforcing intellectual property rights are of paramount importance for the success of the Internal Market.

...

(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.

...

(20) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property rights, it is appropriate to ensure that effective means of presenting, obtaining and preserving evidence are available. The procedures should have regard to the rights of the defence and provide the necessary guarantees, including the protection of confidential information. ...

(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.'

7 Article 3 of that directive, entitled 'General obligation', provides:

'1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.’

8 Under Article 6(1) of the directive:

‘Member States shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, Member States may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.’

9 Article 8 of Directive 2004/48, entitled ‘Right of information’, states:

‘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:

...

- (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;

...’

10 Article 13 of that directive, entitled ‘Damages’, provides:

‘1. Member States shall ensure that the competent judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the rightholder damages appropriate to the actual prejudice suffered by him as a result of the infringement.

...

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages, which may be pre-established.’

German law

11 Paragraph 97 of the Gesetz über Urheberrecht und verwandte Schutzrechte — Urheberrechtsgesetz (Law on copyright and related rights) of 9 September 1965 (BGBl. 2013 I, p. 3728) provides:

‘1. Any person who unlawfully infringes copyright or any other right protected under this Law may be the subject of an action by the injured party for an injunction ordering the removal of the infringement or, where there is a risk of recurrence, for an injunction prohibiting any further commission of the infringement. The right to seek a prohibitory injunction shall exist even when the risk of infringement arises for the first time.

2. Any person who intentionally or negligently performs such an act shall be obliged to make good the damage arising from it. In the determination of damages, any profit obtained by the infringer as a result of the infringement of the right may also be taken into account. Entitlement to damages may also be assessed on the basis of the amount the infringer would have had to pay in equitable remuneration if the infringer had requested authorisation to use the right infringed. Authors, writers of scientific editions (Paragraph 70), photographers (Paragraph 72) and performing artists (Paragraph 73) may also seek monetary compensation for damage which is non-pecuniary in nature, provided and to the extent that this is equitable.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Bastei Lübbe is the holder, as a phonogram producer, of the copyright and related rights in the audio version of a book.

13 Mr Strotzer is the owner of an internet connection through which, on 8 May 2010, that audio book was shared, for the purpose of downloading, with an unlimited number of users of a peer-to-peer internet exchange. An expert correctly attributed the IP address in question to Mr Strotzer.

14 By letter of 28 October 2010, Bastei Lübbe warned Mr Strotzer to cease and desist the infringement of copyright which had occurred. That warning notice was unsuccessful and Bastei Lübbe brought an action before the Amtsgericht München (Local Court, Munich, Germany) against Mr Strotzer as the owner of the IP address in question, seeking damages.

15 However, Mr Strotzer denies having himself infringed copyright and maintains that his connection was sufficiently secure. In addition, he asserts that his parents, who live in the same household, also had access to that connection but that to his knowledge they did not have the work in question on their

computer, were not aware of the existence of the work and did not use the online exchange software. In addition, Mr Strotzer's computer was switched off at the time when the infringement in question was committed.

- 16 The Amtsgericht München (Local Court, Munich) dismissed Bastei Lübbe's action for damages on the ground that Mr Strotzer could not be held liable for the infringement of copyright in question, because he had stated that his parents could also have committed the infringement in question.
- 17 Bastei Lübbe appealed against the decision of the Amtsgericht München (Local Court, Munich) before the Landgericht München I (Regional Court, Munich I, Germany).
- 18 That court is inclined to hold Mr Strotzer liable in that it does not follow from his explanations that a third party used the internet connection at the time of the infringement. It considers that Mr Strotzer is therefore seriously likely to have committed the copyright infringement.
- 19 That court nevertheless considers itself to be compelled to apply Paragraph 97 of the Law on copyright and related rights, as amended by the Law of 1 October 2013, as interpreted by the Bundesgerichtshof (Federal Court of Justice, Germany), which in its view might preclude the defendant from being held liable.
- 20 In fact, according to the case-law of the Bundesgerichtshof (Federal Court of Justice), as interpreted by the referring court, it is for the applicant to allege and prove the infringement of copyright. The Bundesgerichtshof (Federal Court of Justice) considers, moreover, that the owner of an internet connection is presumed to have committed such an infringement provided that no other person was able to use the internet connection at the time of the infringement. However, if the internet connection was not sufficiently secure or was knowingly made available to other persons, then the owner of that connection is not presumed to have committed the infringement.
- 21 In that case, the case-law of the Bundesgerichtshof (Federal Court of Justice) nonetheless places on the owner of the internet connection a secondary burden to present the facts. The owner discharges that secondary burden to the requisite standard by explaining that other persons, whose identity he discloses, where appropriate, had independent access to his internet connection and are therefore capable of having committed the alleged infringement of copyright. Although a family member of the owner of the internet connection had access to that connection, the owner of that connection is not, however, required to provide further details relating to the time and the nature of the use of that connection, having regard to the protection of marriage and family guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter') and the corresponding provisions of the German Basic Law.
- 22 In those circumstances, the Landgericht München I (Regional Court, Munich I) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:
 - (1) Should Article 8(1) and (2), in conjunction with Article 3(1), of Directive 2001/29/EC be interpreted as meaning that "effective and dissuasive sanctions" for infringements of the right to make works available to the public are still provided for even when the owner of an internet connection used for copyright infringements through file-sharing is excluded from liability to pay damages if the owner of that internet connection can name at least one family member who, besides him or her, might have had access to that internet connection, without providing further details, established through appropriate investigations, as to when and how the internet was used by that family member?
 - (2) Should Article 3(2) of Directive 2004/48/EC be interpreted as meaning that "effective" measures for the enforcement of intellectual property rights are still provided for even when the owner of an internet connection used for copyright infringements through file-sharing is excluded from

liability to pay damages if the owner of that internet connection can name at least one family member who, besides him or her, might have had access to that internet connection, without providing further details, established through appropriate investigations, as to when and how the internet was used by that family member?’

Consideration of the questions referred

Admissibility

- 23 In its written observations, the European Commission contests the admissibility of the questions referred on the ground that they are hypothetical. It claims that the questions referred concern the compatibility of the case-law of the Bundesgerichtshof (Federal Court of Justice) with EU law, whereas that case-law is not applicable to the case in the main proceedings.
- 24 In that regard, it is to be remembered that it is not for the Court to rule on the interpretation and applicability of provisions of national law or to establish the facts relevant to a decision in the main proceedings. The Court must take account, under the division of jurisdiction between the EU Courts and the national courts, of the full context, as described in the order for reference, in which the question put to it is set (judgment of 13 June 2013, *Kostov*, C-62/12, EU:C:2013:391, paragraph 25). It is irrelevant whether that context is comprised of facts, legislation or case-law.
- 25 In so far as the case-law of the Bundesgerichtshof (Federal Court of Justice) forms a part of the context in the light of which those questions were referred, as defined by the referring court, it would be inappropriate to regard those questions as inadmissible on the ground that they are allegedly hypothetical.

Substance

- 26 As a preliminary matter, it should be noted that both questions put by the referring court raise the same legal problem in respect of the nature of the penalties and measures to be taken in copyright infringement cases, and are worded in largely identical terms, the only clear difference being the fact that one relates to Directive 2001/29, whereas the other relates to Directive 2004/48.
- 27 However, the Court notes that, regard being had for the requirements deriving from the unity and coherence of the legal order of the European Union, all of the directives on intellectual property must be interpreted in the light of the rules and principles common to that field (see, to that effect, *inter alia*, judgment of 30 June 2011, *VEWA*, C-271/10, EU:C:2011:442, paragraph 27).
- 28 In the light of that case-law and in order to ensure a consistent implementation of Directives 2001/29 and 2004/48, it is appropriate to answer both questions put by the referring court together.
- 29 By its questions, that court asks, in essence, whether Article 8(1) and (2) of Directive 2001/29, read in conjunction with Article 3(1) thereof, and Article 3(2) of Directive 2004/48 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the owner of an internet connection used for copyright infringements through file-sharing cannot be held liable to pay damages if he can name at least one family member who might have had access to that connection, without providing further details as to when and how the internet was used by that family member.
- 30 The Court notes, in the first place, that the primary objective of Directive 2001/29 is, as is clear from recital 9 thereof, to establish a high level of protection of copyright and related rights, since such rights are crucial to intellectual creation.

- 31 In order to achieve that objective, Article 8(1) of Directive 2001/29 read in the light of recital 58 thereof, states that the Member States are to provide for appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in that directive and are to take all the measures necessary to ensure that those sanctions and remedies are applied. That provision also states that those sanctions are to be effective, proportionate and dissuasive.
- 32 Furthermore, under Article 8(2) of the directive, each Member State is to take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages.
- 33 It must be borne in mind, in the second place, that the objective pursued by Directive 2004/48 is, as stated in recital 10 thereof, to approximate the legislative systems of the Member States in respect of the means of enforcing intellectual property rights so as to ensure a high, equivalent and homogeneous level of protection in the internal market.
- 34 For those purposes, Article 3(2) of the directive states that the measures, procedures and remedies provided for by the Member States are to be effective, proportionate and dissuasive.
- 35 In the present case, it is clear from the order for reference that, under the national legislation at issue in the main proceedings, the owner of an internet connection, by means of which copyright has been infringed, is presumed to have committed that infringement, provided that the IP address in question has been correctly attributed to him and that no other person was able to use that connection at the time of the infringement.
- 36 However, it is also clear from the order for reference that the national legislation at issue in the main proceedings provides that that presumption may be rebutted if persons other than the owner of the internet connection might have had access to that connection. Furthermore, if a family member of that owner had access to that connection, the owner may, having regard for the fundamental right to the protection of family life, escape liability merely by naming a family member without being required to provide further details as to when and how the internet was used by that family member.
- 37 Accordingly, it is appropriate to consider whether national legislation such as that at issue in the main proceedings is compatible with the requirement, for the Member State concerned, to provide for appropriate remedies in respect of infringements of copyright and related rights, capable of leading to effective and dissuasive sanctions against their perpetrators, as provided by Article 8(1) of Directive 2001/29 read in the light of recital 58 thereof, and with the obligation to provide for effective and dissuasive measures, procedures and remedies for the purposes of ensuring enforcement of the intellectual property rights set out in Article 3(1) and (2) of Directive 2004/48.
- 38 In that regard, the national legislation at issue in the main proceedings provides that, where the injured party brings an action, the owner of an internet connection, correctly identified as having infringed copyright, is not required to provide, according to the conditions set out in paragraph 36 above, evidence related to that infringement which lies in his control.
- 39 However, as regards, more particularly, Directive 2004/48, Article 6(1) thereof requires Member States to ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified the evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information.
- 40 Furthermore, it is clear from recital 20 of Directive 2004/48, *inter alia*, that evidence is an element of paramount importance for establishing the infringement of intellectual property rights and that it is appropriate to ensure that effective means of presenting, obtaining and preserving evidence are available.

- 41 Thus, Article 6(1) of Directive 2004/48, read in the light of recital 20 thereof, must be interpreted as meaning that Member States must, in an effective manner, enable the injured party to obtain the evidence within the control of the opposing party necessary for supporting its claims, provided that providing such evidence respects the protection of confidential information.
- 42 In addition, as set out in paragraph 36 above, respect for the fundamental right to the protection of family life is, in respect of the national legislation at issue, an obstacle preventing the injured party from obtaining the evidence necessary for supporting its claims from the opposing party.
- 43 It is clear from recital 32 of Directive 2004/48 that that directive respects fundamental rights and observes the principles recognised in particular by the Charter. In particular, that directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of the Charter.
- 44 The present request for a preliminary ruling thus raises the question of the need to reconcile the requirements of the protection of several fundamental rights, namely the right to an effective remedy and the right to intellectual property, on the one hand, and the right to respect for private and family life, on the other (see, by analogy, judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 33).
- 45 In that regard, it must be borne in mind, first, that, according to the Court's case-law, EU law requires that, when transposing directives, the Member States take care to rely on an interpretation of them which allows a fair balance to be struck between the various fundamental rights protected by the EU legal order. Subsequently, when implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation of them which would be in conflict with those fundamental rights or with the other general principles of EU law (judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 34).
- 46 Second, it should be noted that Article 52(1) of the Charter states, inter alia, that any limitation on the exercise of the rights and freedoms recognised by the Charter must respect the essence of those rights and freedoms and that it is apparent from the case-law of the Court that a measure which results in serious infringement of a right protected by the Charter is to be regarded as not respecting the requirement that such a fair balance be struck between the fundamental rights which must be reconciled (judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 35).
- 47 The Court must assess the various elements of the national legislation at issue in the main proceedings in the light of that requirement of a fair balance.
- 48 In that regard, it should be made clear that, as regards respect for private life in a strict sense, it is clear from the wording of Article 7 of the Charter that the protection granted by that article must cover 'everyone' and is not confined only to family members of a person who the judicial authorities have ordered to produce that evidence, since those family members are not intended to enjoy any special protection on that basis.
- 49 However, it cannot be contested that, under Article 7 of the Charter, persons belonging to the same family may, as such, benefit from special protection allowing them not to be compelled to comply with an obligation requiring them to incriminate one another, where one or another of them is suspected of having committed an illegal act.
- 50 Moreover, Article 8(3)(d) of Directive 2004/48, read in conjunction with Article 8(1) and (2) thereof, reflects such concerns in so far as it does not preclude the application of national law and regulation allowing a perpetrator to refuse to provide information which would compel him to acknowledge his own involvement or that of his parents in an infringement of an intellectual property right.

- 51 It must be held that if, in situations such as those at issue in the main proceedings, national legislation, as interpreted by the relevant national courts, has the effect of creating an obstacle to a national court before which a tortious action has been brought from being able to compel, on application of the claimant, the providing and obtaining of evidence relating to the opposing party's family members, proving the alleged infringement of copyright and who was responsible for that infringement are rendered impossible, and, consequently, the fundamental rights to an effective remedy and to intellectual property, enjoyed by the holder of the copyright, are seriously infringed, and thereby the requirement to ensure a fair balance between the various fundamental rights in question is not respected (see, by analogy, judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 41).
- 52 Therefore, by guaranteeing an almost absolute protection for the family members of the owner of an internet connection, through which copyright infringements were committed by means of file-sharing, the national legislation at issue in the main proceedings cannot, contrary to the requirements set by Article 8(1) of Directive 2001/29, be considered to be sufficiently effective and capable of ultimately leading to effective and dissuasive sanctions against the perpetrator of that infringement. Furthermore, the procedure initiated in respect of the remedy at issue in the main proceedings is not capable of ensuring the enforcement of intellectual property rights required by Article 3(1) of Directive 2004/48.
- 53 That would not, however, be the case if, for the purposes of preventing what was regarded as an unacceptable interference with family life, rightholders had at their disposal another effective remedy, allowing them, in particular, in such a situation, to have the owner of the internet connection in question held liable in tort.
- 54 In addition, it is, ultimately, for the referring court to determine whether, if applicable, there are, in the national law concerned, any other means, procedures or remedies which would allow the competent judicial authorities to order that information necessary for proving, in circumstances such as those at issue in the main proceedings, an infringement of copyright and who infringed it be provided (see, to that effect, judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 42).
- 55 In the light of all the foregoing considerations, the answer to the questions referred is that Article 8(1) and (2) of Directive 2001/29, read in conjunction with Article 3(1) thereof, and Article 3(2) of Directive 2004/48 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, as interpreted by the relevant national courts, the owner of an internet connection used for copyright infringements through file-sharing cannot be held liable to pay damages if he can name at least one family member who might have had access to that connection, without providing further details as to when and how the internet was used by that family member.

Costs

- 56 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 (Third Chamber) hereby rules:

Article 8(1) and (2) of Directive 2001/29/EC, of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, read in conjunction with Article 3(1) thereof, and Article 3(2) 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 precluding national legislation, such as that at issue in the main proceedings, under which, as interpreted by the relevant national courts, the owner of an internet connection used for copyright infringements

through file-sharing cannot be held liable to pay damages if he can name at least one family member who might have had access to that connection, without providing further details as to when and how the internet was used by that family member.

[Signatures]