Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 2 April 2020[1]

Case C-264/19

Constantin Film Verleih GmbH
v
YouTube LLC,
Google Inc.

(Request for a preliminary ruling
from the Bundesgerichtshof (Federal Court of Justice, Germany))

(Reference for a preliminary ruling — Copyright and related rights — Internet-based video-sharing platform — YouTube — Uploading of a film without the consent of the rightholder — Proceedings concerning an infringement of an intellectual property right — Directive 2004/48/EC — Article 8 — Rightholder's right to information — Article 8(2)(a) — Concept of 'names and addresses' — Scope — Email address, IP address and telephone number — Not included)

I. Introduction

1. This request for a preliminary ruling has arisen in the context of a dispute between Constantin Film Verleih GmbH, a film distributor established in Germany, and YouTube LLC and its parent company Google Inc., both of which are established in the United States.

2. The dispute concerns the refusal by YouTube and Google to provide certain information required by Constantin Film Verleih with regard to users who have placed several films online in breach of Constantin Film Verleih's exclusive exploitation rights. More specifically, Constantin Film Verleih is asking YouTube and Google to provide it with the email addresses, telephone numbers and IP addresses used by those users.

3. The Bundesgerichtshof (Federal Court of Justice, Germany) asks, in essence, whether such information is covered by Article 8(2)(a) of Directive 2004/48/EC,[2] in accordance with which the competent judicial authorities may order the disclosure of the 'names and addresses' of certain categories of persons who have a connection with the goods or services which infringe an intellectual property right.

4. For the reasons which I shall set out in this Opinion, I am convinced that the concept of 'names and addresses', set out in Article 8(2)(a) of Directive 2004/48, does not include any of the information set out above.

1 Original language: French.

2 Directive 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).

II. Legal framework

A. EU Law

5. Recitals 2, 10 and 32 of Directive 2004/48 are worded as follows:

‘(2) The protection of intellectual property should allow the inventor or creator to derive a legitimate profit from his/her invention or creation. It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it should not hamper freedom of expression, the free movement of information, or the protection of personal data, including on the Internet.

…

(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.

…

(32) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.[3] In particular, this Directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of th[e] Charter.’

6. Article 2 of that directive, entitled ‘Scope’, provides, in paragraphs 1 and 3(a):

‘1. Without prejudice to the means which are or may be provided for in [EU] or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by [EU] law and/or by the national law of the Member State concerned.

…

3. This Directive shall not affect:

(a) the [EU] provisions governing the substantive law on intellectual property, Directive 95/46/EC …’

7. Article 8 of Directive 2004/48, entitled ‘Right of information’, provides:

‘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

3 ‘The Charter’.

(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:

(a) grant the rightholder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his/her own participation or that of his/her close relatives in an infringement of an intellectual property right;

or

(e) govern the protection of confidentiality of information sources or the processing of personal data.'

B. German law

8. Under the first sentence of Paragraph 101(1) of the Urheberrechtsgesetz (Law on Copyright, 'the UrhG'), anyone who, on a commercial scale, infringes copyright or another right protected by that law may be required by the injured party to provide immediately information as to the origin and distribution channel of infringing copies or other products.

9. In the event of manifest infringement, without prejudice to Paragraph 101(1) of the UrhG, that right to information may also be exercised, under point 3 of the first sentence of Paragraph 101(2) of that law, against a person who, on a commercial scale, has provided services used to engage in infringing activities.

10. The person who is required to provide the information must, under Paragraph 101(3)(1) of the UrhG, state the names and addresses of the producers, suppliers and other previous holders of copies or other products, the users of the services and the intended wholesalers and retailers.

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

11. Constantin Film Verleih is a film distributor established in Germany.

12. YouTube, which is owned by Google and established in the United States, operates the internet platform with the same name.

13. In Germany, Constantin Film Verleih has exclusive exploitation rights in respect of the cinematographic works *Parker* and *Scary Movie 5*.

14. Between the months of June 2013 and September 2014, those two works were posted online on the 'YouTube' platform without Constantin Film Verleih's consent. On 29 June 2013, the cinematographic work *Parker* was uploaded in its full-length version and in German under the username 'N1'. It was viewed more than 45 000 times before it was blocked on 14 August 2013. During the month of September 2013, the cinematographic work *Scary Movie 5* was uploaded in its full-length version under the username 'N2'. It was viewed more than 6 000 times before it was blocked on 29 October 2013. On 10 September 2014, another copy of the second work was uploaded under the username 'N3'. It was viewed more than 4 700 times before it was blocked on 21 September 2014.

15. Constantin Film Verleih demanded that YouTube and Google provide it with a set of information for each of the users who had uploaded those works.

16. The referring court found that the conditions for the right to information were satisfied. Consequently, the scope of the dispute in the main proceedings is limited to the content of the information that YouTube and/or Google must provide to Constantin Film Verleih. More specifically, the dispute concerns the following information:

– the user's email address,

– the user's telephone number,

– the IP address used by the user to upload the files at issue, together with the precise point in time at which such uploading took place, and

– the IP address last used by the user to access his or her Google/YouTube account, together with the precise point in time at which that access took place.

17. Ruling at first instance, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany) rejected Constantin Film Verleih's request that such information be provided.

18. On appeal, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany) ordered YouTube and Google to provide the email addresses of the users concerned, rejecting Constantin Film Verleih's request as to the remainder.

19. By its appeal on a point of law, brought before the Bundesgerichtshof (Federal Court of Justice), Constantin Film Verleih requested that YouTube and Google be ordered to provide it with all of the abovementioned information, including users' telephone numbers and IP addresses. By their own appeal on a point of law, YouTube and Google requested that Constantin Film Verleih's request be rejected in its entirety, including in so far as it concerns users' email addresses.

20. Taking the view that the outcome of the two appeals on a point of law depended on the interpretation of the concept of 'addresses' contained in Article 8(2)(a) of Directive 2004/48, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do the addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers, mentioned in Article 8(2)(a) of Directive [2004/48] and covered, as appropriate, by the information referred to in Article 8(1) of [that] directive, also include

(a) the email addresses of service users and/or

(b) the telephone numbers of service users and/or

(c) the IP addresses used by service users to upload infringing files, together with the precise point in time at which such uploading took place?

(2) If the answer to Question 1(c) is in the affirmative:

Does the information to be provided under Article 8(2)(a) of Directive [2004/48] also cover the IP address that a user, who has previously uploaded infringing files, last used to access his or her Google/YouTube user account, together with the precise point in time at which access took place, irrespective of whether any infringement [of intellectual property rights] was committed when that account was last accessed?'

21. The reference for a preliminary ruling was received at the Registry of the Court of Justice on 29 March 2019.

22. Constantin Film Verleih, YouTube, Google, and the European Commission submitted written observations.

23. Representatives of Constantin Film Verleih, YouTube, Google, and the Commission took part in the hearing held on 12 February 2020 and presented oral argument.

IV. Analysis

24. Under Article 8 of Directive 2004/48, Member States are obliged to provide, in their legal order, for the possibility, for the competent judicial authorities, to order that certain information be provided in the context of proceedings concerning an infringement of an intellectual property right.

25. Accordingly, by its two questions, which it is appropriate to examine together, the referring court asks whether Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the Member States are obliged to provide for the possibility, for the competent judicial authorities, to order, in respect of a user who has uploaded files which infringe an intellectual property right, that the email address, the telephone number, the IP address used to upload those files and the IP address used when the user's account was last accessed be provided.

26. YouTube and Google, as well as the Commission propose that those questions be answered in the negative, in contrast to Constantin Film Verleih.

27. In accordance with the position maintained by YouTube, Google, and the Commission, and for the reasons set out below, I take the view that that provision does not cover any of the information set out in the questions referred for a preliminary ruling.

28. As a preliminary point, I note that Article 8(2)(a) of Directive 2004/48 contains no reference to the law of the Member States. Consequently, and in accordance with settled case-law, the concept of 'names and addresses' is a notion of EU law which must be given an autonomous and uniform interpretation.[4]

4 See, in respect of the concept of 'appropriate compensation', used in Article 9(7) of Directive 2004/48, judgment of 12 September 2019, *Bayer Pharma* (C-688/17, EU:C:2019:722, paragraph 40). See also, again with regard to intellectual property, judgments of 22 June 2016, *Nikolajeva* (C-280/15, EU:C:2016:467, paragraph 45), and of 27 September 2017, *Nintendo* (C-24/16 and C-25/16, EU:C:2017:724, paragraphs 70 and 94).

29. Moreover, the concept of 'names and addresses' is not defined in Directive 2004/48. Again according to settled case-law, the meaning and scope of terms for which EU law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part.[5]

30. Therefore, the *usual meaning in everyday language* must be the starting point in the process of interpreting the concept of 'names and addresses' used in Article 8(2)(a) of Directive 2004/48. There is little doubt that, in everyday language, the concept of a person's 'address', about which the referring court asks in particular, covers only the postal address, as YouTube and Google have rightly submitted.[6] That interpretation is confirmed by the definition of the French word 'adresse' given in the *Dictionnaire de l'Académie française*, namely 'la désignation du *lieu*[7] où l'on peut joindre quelqu'un' (the designation of the *place* where you can reach someone).

31. With regard to the telephone number, the second item of information referred to in the questions referred for a preliminary ruling, I do not consider it necessary to discuss at length the fact that it cannot be included in the concept of persons' 'names and addresses', as envisaged in Article 8(2)(a) of Directive 2004/48, whether in everyday language or in any other context.[8]

32. The status of the other two items of information referred to in those questions, namely the email address and the IP address, warrants further consideration.

33. As I have just noted, in everyday language, the starting point in the interpreting process, the term 'address' refers only to the postal address. Therefore, when it is used without any further clarification, that term does not cover the email address or the IP address.

34. This is especially the case in a context which I would describe as 'general', that is to say going beyond the strict context of the internet, as is the case with Article 8(2)(a) of Directive 2004/48.

5 See, inter alia, judgments of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43, paragraph 28); of 6 September 2018, *Kreyenhop & Kluge* (C-471/17, EU:C:2018:681, paragraph 39); and of 12 September 2019, *Bayer Pharma* (C-688/17, EU:C:2019:722, paragraph 41).

6 I have not noticed any inconsistency in the different language versions of that provision, which all refer to the concept of an 'address': see, by way of illustration, 'direcciones' in the Spanish version, 'adresse' in the Danish version, 'Adressen' in the German version, 'addresses' in the English version, 'indirizzo' in the Italian version, 'adres' in the Dutch version, 'endereços' in the Portuguese version, 'adresele' in the Romanian version, and 'adress' in the Swedish version.

7 My italics.

8 The fact, on which Constantin Film Verleih relies, that the telephone number may have a 'routing address' function for the transmission of data, in particular in connection with telephone calls or applications that use a telephone number, such as WhatsApp, cannot change my view in that regard. The concept of *persons*' 'names and addresses', as envisaged in Article 8 of Directive 2004/48, clearly has no connection with the functional intended purpose of the data flow, notwithstanding the fact that the latter may have been described as a 'routing address'.

35. An examination of other EU legislation that refers to the email address or IP address supports that interpretation. Where the EU legislature has intended to refer to the email address[9] or the IP address,[10] it has done so expressly by supplementing the word 'address', as noted by YouTube and Google. To my knowledge, there are no examples of EU legislation where the terms 'names and addresses', used alone and in a general context, refer to the telephone number, IP address or email address.

36. Consequently, it follows from a literal interpretation of Article 8(2)(a) of Directive 2004/48 that the terms used by the EU legislature, namely the terms 'names and addresses', do not include any of the information set out in the questions referred for a preliminary ruling, as YouTube, Google, and the Commission have submitted.

37. That interpretation is confirmed by the historical interpretation set out by the Commission. The travaux préparatoires which led to the adoption of Directive 2004/48[11] contain nothing to suggest, even implicitly, that the term 'address', used in Article 8(2)(a) of that directive, should be understood as referring not only to the postal address, but also to the email address or the IP address of the persons concerned.

38. The Commission explained, in that regard, that, when Directive 2004/48 was adopted in 2004, the EU legislature had never intended to include more modern forms of an 'address', such as the email address or the IP address.

39. Accordingly, it follows from a historical interpretation that Directive 2004/48 must be interpreted as referring to only the traditional meaning of that term, namely the postal address.

40. It follows from the foregoing that, according to a literal and a historical interpretation, Article 8(2)(a) of Directive 2004/48 does not include the email address, the telephone number and the IP addresses used by the persons covered by that provision.

41. Constantin Film Verleih contests that interpretation, focusing on the purpose of Article 8 of Directive 2004/48 and, more generally, the objectives of that directive.

42. According to Constantin Film Verleih, the purpose of Article 8 of Directive 2004/48 is to enable the holder of intellectual property rights to identify the persons mentioned in that provision. Accordingly, and irrespective of its wording, Constantin Film Verleih takes the view that paragraph 2 of that article should be interpreted as referring to 'any information that makes it possible to identify' those persons and such information may include, depending on its availability, the telephone number, the email address, the IP address or even bank details.

9 With regard to the email or 'electronic' address, see inter alia Article 88(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1); Article 14(1) of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ 2013 L 165, p. 1); Article 54(2) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65), and Article 45(2)(a) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35).

10 With regard to the IP address, see inter alia Article 10(1)(e) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1); Article 5(1)(k) of Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ 2017 L 168, p. 1); Article 17(8), Article 34(4)(j) and Article 52(2)(g) of Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ 2018 L 236, p. 1).

11 See, in particular, Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights of 30 January 2003 (COM(2003) 46 final) and the Opinion of the European Economic and Social Committee of 29 October 2003 (OJ 2004 C 32, p. 15) and the Report of 5 December 2003 by the European Parliament (A5-0468/2003) on that proposal. The proposal for a directive contains no explanation as to the meaning to be given to the terms 'names and addresses'. Moreover, the Parliament did not propose any amendment in respect of the wording of the future Article 8(2)(a) of Directive 2004/48.

43. In my view, to adopt that interpretation would be tantamount to the Court rewriting that provision. I understand of course that a rightholder such as Constantin Film Verleih would like Directive 2004/48 to be amended to enable it to identify possible infringers more easily in the specific context of the internet. However, rewriting that legislation falls not to the Court, but to the EU legislature.

44. It was open to the legislature, if that had been its intention, to include, in Article 8(2) of Directive 2004/48, 'any information that makes it possible to identify' the persons concerned. At the hearing, the Commission emphasised that the EU legislature had expressly chosen to provide for minimum harmonisation limited to names and addresses, without including other items of information which enable a person to be identified, such as a telephone number or social security number.

45. I should point out that a 'dynamic' or teleological interpretation of that provision, as Constantin Film Verleih has called for, must be ruled out in this context. The terms used in Article 8(2)(a) of Directive 2004/48 do not offer sufficient room for interpretation to enable a dynamic or teleological interpretation with a view to including the information set out in the questions referred for a preliminary ruling.

46. In that regard, I agree wholeheartedly with the reasoning developed by Advocate General Bobek in points 33 to 35, 38 and 39 of his Opinion in *Commission* v *Germany*. In accordance with the prohibition of *contra legem* interpretation and the principle of the separation of powers, a dynamic or teleological interpretation is only possible where 'the text of the provision itself *[is] open* to different interpretations, presenting some degree of textual ambiguity and vagueness'.[12]

47. However, that is not the case in this instance. As I explained above, literal and historic interpretations preclude any ambiguity as to the scope of the terms 'names and addresses' used in Article 8(2)(a) of Directive 2004/48.

48. Constantin Film Verleih also refers, more generally, to the objectives pursued by Directive 2004/48. In my view, that line of argument cannot call into question the interpretation of the abovementioned provision, given the lack of ambiguity in its wording. Nevertheless, for the sake of completeness, I will examine that argument below.

49. Admittedly, it cannot be disputed that Directive 2004/48 seeks to ensure a high level of protection of intellectual property in the internal market, as stated in recitals 10 and 32 thereof and in accordance with Article 17(2) of the Charter.

50. Nor can it be disputed that the interpretation proposed by Constantin Film Verleih would increase the level of protection of intellectual property in the internal market.

51. However, it must be borne in mind that Directive 2004/48, like all legislation on intellectual property,[13] strikes a *balance* between, on the one hand, the interest of holders in protecting their intellectual property right, enshrined in Article 17(2) of the Charter and, on the other, the protection of the interests and fundamental rights of users of protected subject matter, and the public interest.

12 C-220/15, EU:C:2016:534, point 34.

13 See, inter alia, judgments of 16 February 2012, *SABAM* (C-360/10, EU:C:2012:85, paragraphs 42 to 44); of 29 July 2019, *Funke Medien NRW* (C-469/17, EU:C:2019:623, paragraph 57); of 29 July 2019, *Pelham and Others* (C-476/17, EU:C:2019:624, paragraph 32); and of 29 July 2019, *Spiegel Online* (C-516/17, EU:C:2019:625, paragraph 42).

52. As the Court has held on numerous occasions, there is nothing whatsoever in the wording of Article 17(2) of the Charter or in the Court's case-law to suggest that the right to intellectual property enshrined in that article is inviolable and must for that reason be absolutely protected.[14]

53. Therefore, Article 17(2) of the Charter does not require that all available technical means be used to assist the holder in identifying possible infringers, without account being taken of the wording of the provisions of Directive 2004/48.

54. With regard, in particular, to Article 8 of Directive 2004/48, the Court has already had occasion to specify, in the judgment in *Coty Germany*, that the aim of that provision is to reconcile compliance with various rights, inter alia the right of holders to information and the right of users to protection of personal data.[15]

55. In the context of the case in the main proceedings, the data requested by Constantin Film Verleih are, by definition, personal data within the meaning of Article 2(a) of Directive 95/46/EC,[16] now Article 4(a) of Regulation (EU) 2016/679,[17] since they must enable Constantin Film Verleih to identify the persons concerned.[18]

56. Although it is clear from recital 32 of Directive 2004/48 that that directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of the Charter, at the same time it is clear from Article 2(3)(a) and recitals 2 and 15 of that directive that the protection of intellectual property is not to hamper, inter alia, the protection of personal data guaranteed in Article 8 of the Charter, so that that directive cannot, in particular, affect Directive 95/46.[19]

57. I note, in that regard, the importance of Article 8(3)(b) to (e) of Directive 2004/48, in accordance with which that article is to apply without prejudice to the provisions which set out, or even restrict, the holder's right to information, and in particular the provisions which govern the processing of personal data.

58. In that context, I take the view that it is not for the Court to alter the scope of the terms used by the EU legislature in Article 8(2) of Directive 2004/48, which would have the effect of upsetting the balance that the legislature had intended to achieve when adopting that directive. The EU legislature alone has the competence to strike that balance.[20]

59. To supplement what I said in point 43 of this Opinion, to adopt the interpretation suggested by Constantin Film Verleih would be tantamount to the Court not only rewriting Article 8(2) of Directive 2004/48, but also upsetting the balance that was struck by the EU legislature in such a way as to favour the interests of holders of intellectual property rights.

14 See, inter alia, judgments of 29 January 2008, *Promusicae* (C-275/06, EU:C:2008:54, paragraphs 62 to 70); of 16 February 2012, *SABAM* (C-360/10, EU:C:2012:85, paragraph 41); of 19 April 2012, *Bonnier Audio and Others* (C-461/10, EU:C:2012:219, paragraph 56); of 3 September 2014, *Deckmyn and Vrijheidsfonds* (C-201/13, EU:C:2014:2132, paragraph 26); and of 29 July 2019, *Funke Medien NRW* (C-469/17, EU:C:2019:623, paragraph 72).

15 Judgment of 16 July 2015 (C-580/13, EU:C:2015:485, paragraph 28).

16 Directive of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31). In accordance with Article 2(a) of that directive, 'personal data' is to mean any information relating to an identified or identifiable natural person.

17 Regulation of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

18 The Court has already had occasion to hold that the IP address, even taken in isolation, may constitute personal data. See judgments of 24 November 2011, *Scarlet Extended* (C-70/10, EU:C:2011:771, paragraph 51), and of 19 October 2016, *Breyer* (C-582/14, EU:C:2016:779, paragraph 49).

19 Judgment of 16 July 2015, *Coty Germany* (C-580/13, EU:C:2015:485, paragraphs 31 to 33).

20 See, by analogy, judgment of 15 September 2016, *Mc Fadden* (C-484/14, EU:C:2016:689, paragraphs 69 to 71).

60. I would add that the dynamic interpretation suggested by Constantin Film Verleih also runs counter to the general scheme of Directive 2004/48, which is based on the minimum harmonisation intended by the EU legislature, as the Commission has noted.

61. That institution rightly states that a dynamic interpretation of that kind is not appropriate in the present case since, under Article 8(3)(a) of Directive 2004/48, the EU legislature expressly provided for the possibility for the Member States to address that dynamic concern by granting rightholders 'rights to receive fuller information'.

62. In other words, a dynamic interpretation of Directive 2004/48 by the EU Courts, in order to bring it into line with new behaviour on the internet, is not necessary since the Member States have the power to adopt additional measures targeting that behaviour.

63. For the sake of completeness, I would point out, lastly, that Article 47 of the TRIPS Agreement,[21] which establishes a mere ability to provide for a right to information, cannot be relied on in support of the interpretation proposed by Constantin Film Verleih.[22]

64. For all of those reasons, I consider that Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the concept of 'names and addresses' set out in that provision does not cover, in respect of a user who has uploaded files which infringe intellectual property rights, the email address, the telephone number, the IP address used to upload those files or the IP address used when the user's account was last accessed.

65. Accordingly, the Member States are not obliged, under that provision, to provide for the possibility, for the competent judicial authorities, to order that that information be provided in the context of proceedings concerning an infringement of an intellectual property right.

V. Conclusion

66. In the light of the foregoing, I propose that the Court should answer the questions referred for a preliminary ruling by the Bundesgerichtshof (Federal Court of Justice, Germany) as follows:

Article 8(2)(a) 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 meaning that the concept of 'names and addresses' set out in that provision does not cover, in respect of a user who has uploaded files which infringe intellectual property rights, the email address, the telephone number, the IP address used to upload those files or the IP address used when the user's account was last accessed.

Accordingly, the Member States are not obliged, under that provision, to provide for the possibility, for the competent judicial authorities, to order that that information be provided in the context of proceedings concerning an infringement of an intellectual property right

21 Agreement on trade-related aspects of intellectual property, which is contained in Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1, 'the TRIPS Agreement'). In accordance with Article 47 of that agreement, entitled 'Right of information', 'Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution'.

22 See, to the same effect, judgment of 29 January 2008, *Promusicae* (C-275/06, EU:C:2008:54, paragraph 60). In any event, although it is true that EU legislation must, *so far as possible*, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the European Union (see, inter alia, judgment of 7 December 2006, *SGAE*, C-306/05, EU:C:2006:764, paragraph 35 and the case-law cited), Article 47 of the TRIPS Agreement cannot authorise the Court to disregard the clear wording of Article 8(2)(a) of Directive 2004/48.