



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 105/21

Luxembourg, 17 June 2021

Judgment in Case C-597/19

M.I.C.M.

The systematic registration of IP addresses of users and the communication of their names and postal addresses to the holder of intellectual property rights or to a third party in order to enable an action for damages to be brought is permissible under certain conditions

The request for information from a holder of intellectual property rights is not to be abusive and must be justified and proportionate

The undertaking Mircom International Content Management Consulting (M.I.C.M.) Limited ('Mircom') submitted a request for information against Telenet BVBA, an internet service provider, to the Ondernemingsrechtbank Antwerpen (Companies Court, Antwerp, Belgium). That request seeks a decision requiring Telenet to produce the identification data of its customers on the basis of IP addresses collected, by a specialised company, on behalf of Mircom. The internet connections of Telenet's customers have been used to share films in the Mircom catalogue, on a peer-to-peer network, using the BitTorrent protocol. Telenet challenges that request.

It is in that context that the referring court, first of all, asked the Court whether the sharing of pieces of a media file containing a protected work on that network constitutes a communication to the public under EU law. Next, it sought to ascertain whether the holder of intellectual property rights, such as Mircom, which does not use them, but claims damages for alleged infringements, can benefit from the measures, procedures and remedies provided for by EU law in order to ensure that those rights are enforced, for example by requesting information. Finally, the referring court asked the Court to clarify the question of the lawfulness, first, of the way in which the customers' IP addresses have been collected by Mircom and, second, of the communication of the data requested by Mircom from Telenet.

In its judgment, the Court holds, first, that uploading of pieces of a media file onto a peer-to-peer network, such as that at issue, constitutes making available to the public within the meaning of EU law.¹ Second, 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.² Third, the systematic registration of IP addresses of users and the communication of their names and postal addresses to that holder of intellectual property rights or to a third party in order to enable an action for damages to be brought are permissible under certain conditions.³

¹ Article 3(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).

² Articles 3(2) and 8 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).

³ Point (f) of the first subparagraph of Article 6(1) of Regulation (EU) 2016/679 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/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1), read in conjunction with Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ 2002 L 201, p. 37), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009, L 337, p. 11).

Findings of the Court

In the first place, the Court, which has already ruled on the concept of ‘communication to the public’ in the context of copyright protection, clarifies that the uploading of 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.

It should be noted that any user of that network can easily reconstruct the original file from pieces available on the computers of other users. By downloading the pieces of a file, that user simultaneously makes them available for uploading by other users. In that regard, the Court finds that the user must not in fact download a minimum threshold of pieces and that any act by which he or she gives access to protected works in full knowledge of the consequences of his or her conduct may constitute an act of making available. The present case indeed concerns such an act, because it refers to an indeterminate number of potential recipients, involves a fairly large number of persons and is carried out with regard to a new public. That interpretation seeks to maintain the fair balance between the interests and fundamental rights of the holders of intellectual property rights, on the one hand, and users of protected subject matter, on the other.

In the second place, the Court considers that the holder of intellectual property rights, such as Mircom, which acquired those rights by assigning claims and does not use them, but seeks damages from alleged infringers, may, in principle, benefit from the measures, procedures and remedies provided for by EU law, unless that holder’s claim is abusive. The Court states that any finding of such an abuse is a matter for the referring court, which could, for example, ascertain, for that purpose, whether legal proceedings have actually been brought in the event of an amicable settlement being refused. As regards, in particular, a request for information, such as that made by Mircom, the Court finds that it cannot be regarded as inadmissible on the ground that it is made during a pre-litigation stage. However, that request must be rejected if it is unjustified or disproportionate, which is for the referring court to determine. By that interpretation, the Court seeks to ensure a high level of protection of intellectual property in the internal market.

In the third place, the Court holds 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 (upstream processing of data), or the communication of the names and of postal addresses of users to that holder or to a third party for the purposes of an action for damages (downstream processing of data). However, initiatives and requests in that regard 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. The Court states that the latter does not impose an obligation on a company such as Telenet to communicate personal data to private individuals in order to be able to bring proceedings before the civil courts for copyright infringements. However, EU law allows Member States to impose such an obligation.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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