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Advocate General's Opinion in Case C-470/21 | La Quadrature du Net and Others (Personal data and action to combat copyright infringement)

Advocate General Szpunar: the retention of, and access to, civil identity data linked to the IP address used should be allowed in cases where those data are the only means of investigation that make it possible to identify the perpetrators of copyright infringements committed exclusively on the internet

According to the Advocate General, the graduated response mechanism ensured by the administrative authority responsible for protecting copyright in France is compatible with the EU-law requirements in the field of personal data protection

Today's Opinion is delivered in the context of the reopening of the proceedings in this case. At the request of the Grand Chamber, the Court [decided](#) to refer the case to the full Court and to put questions for an oral reply at the hearing on 15 and 16 May 2023. First Advocate General Maciej Szpunar delivered his Opinion for the first time on 27 October 2022 (see PR No [172/22](#)).

The task of the Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet (High Authority for the dissemination of works and the protection of rights on the internet – Hadopi) ¹ in France is to ensure the enforcement of property rights. Where an infringement of copyright by an internet user is detected, Hadopi issues a recommendation to that user requesting him or her to abstain from further infringements, followed by a new warning in the event of a recurrence of the infringement. If the first two warnings have not been taken into account and a third infringement occurs, Hadopi may refer the matter to the competent judicial authority for the purpose of initiating criminal proceedings.

This graduated response system presupposes that Hadopi can identify the person responsible for the infringement in order to notify him or her of those recommendations. In order to do so, a decree adopted in 2010 allows Hadopi to request electronic communications operators to provide it with the civil identity data of the user to whom the IP address used to commit the offence has been assigned.

Four associations for the protection of rights and freedoms on the internet have brought legal proceedings to challenge the adoption of that decree. The Conseil d'État (Council of State, France) asks the Court of Justice whether the collection of civil identity data corresponding to IP addresses and the automated treatment of those data for the purpose of preventing infringements of intellectual property rights, without prior review by a court or an

¹ On 1 January 2022, the Conseil supérieur de l'audiovisuel (Higher Audiovisual Council – CSA) and Hadopi became the Autorité de régulation de la communication audiovisuelle et numérique (Authority for the Regulation of Audiovisual and Digital Communications – Arcom). However, the facts at issue come within the scope of Hadopi's activities.

independent administrative entity, are compatible with EU law.

In today's Opinion, First Advocate General Szpunar takes the view that EU law **does not preclude** providers of electronic communications services from being required to retain IP addresses and corresponding civil identity data and does not preclude an administrative authority responsible for protecting copyright against infringements of those rights committed on the internet from obtaining access to such addresses and data.

The Advocate General considers that the IP address, the civil identity of the person having a right of internet access and the information relating to the work in question **do not make it possible to draw precise conclusions about the private life of the person presumed to have infringed copyright**. All that is revealed is a viewing of content at a particular time which, taken on its own, does not make it possible to establish a detailed profile of the person who viewed the content.

That measure is intended to allow that authority to **identify** the holders of those addresses who are suspected of having committed the infringements and, if appropriate, to take action against them. Moreover, it is **not necessary** that that access should be subject to a prior review by a court or an independent administrative authority. Those data are the **only means of investigation** that make possible the identification of the person to whom that address was assigned at the time when the infringement was committed.

The Advocate General makes clear that this is not a departure from existing case-law but a pragmatic development of that case-law, making it possible to achieve a nuanced solution in particular and very narrowly defined circumstances. According to the Advocate General, that analysis is the result of a **balancing of the various interests involved**, in accordance with the principle of proportionality, justifying **the refinement of the case-law** of the Court relating to the retention of, and access to, data such as the IP addresses linked to civil identity data, in order thereby to avoid a systemic impunity of offences committed exclusively online.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 EU law or the validity of an EU 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.

Unofficial document for media use, not binding on the Court of Justice.

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

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