



Press and Information

Court of Justice of the European Union

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Judgment in Case C-149/17

Bastei Lübbe GmbH & Co. KG v Michael Strotzer

The owner of an internet connection used for copyright infringements through file-sharing cannot be exonerated from liability simply by naming a family member who might have had access to that connection

Rightholders must have at their disposal an effective remedy or means of allowing the competent judicial authorities to order the disclosure of necessary information

The German publisher Bastei Lübbe seeks, before the Landgericht München I (Regional Court, Munich I), monetary compensation from Mr Michael Strotzer on account of an audio book in which it holds the copyright and related rights being shared, for the purpose of downloading, with an unlimited number of users of a peer-to-peer internet exchange by means of an internet connection owned by Mr Strotzer.

Mr Strotzer denies having himself infringed copyright. Furthermore, he maintains that his parents, who live in the same household, also had access to that connection without, however, providing further details as to when and how the internet was used by his parents. According to the Landgericht München I, it is apparent from the case-law of the Bundesgerichtshof (Federal Court of Justice, Germany) that, having regard to the fundamental right to protection of family life, such a defence is sufficient under German law to exclude the owner of the internet connection from liability.¹

In that context, the Landgericht München I asks the Court of Justice to interpret the provisions of EU law on the protection of intellectual property rights.²

In today's judgment, the Court answers that **EU law precludes national legislation (such as that at issue, as interpreted by the relevant national courts) 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.**

The Court considers that a fair balance must be struck between the various 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.

¹ The Landgericht München I explains, in that regard, that 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 the connection at the time of the infringement. However, that presumption may be rebutted if other persons 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 simply by naming the family member without being required to provide further details as to when and how the internet was used by that family member.

² 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 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).

There is no such fair balance where almost absolute protection is guaranteed for the family members of the owner of an internet connection, through which copyright infringements were committed by means of file-sharing.

If a national court before which a tortious action has been brought cannot require, on application of the claimant, that it be provided with evidence relating to the opposing party's family members, proving the alleged copyright infringement and who was responsible for it are rendered impossible, which, consequently, seriously infringes the fundamental rights to an effective remedy and to intellectual property, as enjoyed by the copyright holder.

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, for example, by which, in such a situation, the owner of the internet connection in question could, consequently, be held liable in tort.

In addition, it is, ultimately, for the Landgericht München I 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 that case, copyright infringement and who infringed it be provided.

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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