

# Top 10 IP&TMT CJEU judgments of 2020

What to expect in 2021



# Introduction

The whirlwind that was 2020 brought about an abundance of significant judgments from the Court of Justice of the European Union (CJEU) in the area of intellectual property, technology and data protection. As the Court hands down more judgments, it becomes particularly important to track these rulings, seeing as the unified EU legal system increasingly begins to resemble a common law precedent-based model. While legislation in the form of international treaties and EU regulations remains the main source of law within the EU, it is greatly supplemented by the case law flowing from the CJEU.

This is why we have reviewed the CJEU decisions, handpicked the **top 10 IP&T cases of 2020** and ranked them by relevance and impact on law and, above all, on business. We considered the gravity of the implications of various CJEU judgments and decided to include the ten we believe will influence both legal professionals and the business the most, with *Schrems II* on the top of our list. It is undeniably the most important judgment having huge impact on data transfer to, *inter alia*, American tech giants such as Facebook and Google.

2020 brought two cases related to technology and internet law that, in our opinion, deserve their positions on the podium. The *Telenor* case, confirms that it is prohibited to block or slow down traffic related to the use of applications and services other than zero-rated ones when the user's data cap is reached while the *Star Taxi* case qualified an app used to get in touch with taxi drivers as an information society service and with all its benefits, in particular, that no authorization should be required for the purpose of providing this type of service. It should be noted, however, that Star Taxi App was neither employing nor controlling the drivers in any way.

We draw your attention to several media law cases that were ruled on in 2020. They include the *Groupe Canal+* case, which addressed not only the limits of territorial exclusivity granted in license agreements, but also the principle of proportionality that must be respected by the European Commission must respect. Additionally, there are two noteworthy trademark cases in our ranking that consider the genuine use of the marks (*Ferrari Testarossa*) and the reputation of a person applying for a trademark (*Messi*).



**Karol Laskowski**  
Head of Warsaw Intellectual  
Property and Technology  
practice team

Our note comprises bite-size case digests containing everything there is to know from a detailed summary of the facts, to the judgment and legal reasoning behind it, as well as expert commentaries from the **Dentons Warsaw IP&T team experts**. We also provide an alert on **what to watch out for in IP law in 2021** to always stay ahead of the legal curve.



# Messi

17 September 2020

Joined Cases C 449/18 P and C 474/18 P

#IP #trademarks #reputation

Background



Back in 2011 the super star footballer Lionel Messi submitted an application for an EU trademark for the figurative sign “MESSI”. The goods fell in classes 9, 25 and 28 and in general included clothing, footwear or sporting articles.

After the trademark was published, there was an opposition filed by the owner of an EU word mark “MASSI” registered for similar classes of goods. The European Union Intellectual Property Office (EUIPO) upheld the opposition and also did so after Messi’s appeal, ruling that there was a likelihood of confusion on the grounds that the classes of products were identical or extremely similar and the marks “MESSI” and “MASSI” were similar both visually and phonetically. Consequently, Messi filed for annulment of this decision to the General Court, which ruled in favor of the player. EUIPO and the opposing parties filed an appeal to the CJEU contesting the decision.

## Judgment

The CJEU in its judgment addressed several matters related to this case and ruled in favor of Messi confirming in particular that **Messi’s reputation constituted a relevant factor for the purposes of establishing a conceptual difference between the terms ‘messi’ and ‘massi’**. An average consumer, when seeing the “MESSI” trademark on clothing, gymnastic or sporting articles, will most likely not disregard the referral to the famous football player’s name. The other party to the dispute argued that it might lead to a situation in which famous people would have the right to automatically register their name as a trademark, regardless of the fact that it is practically identical to an earlier trademark.

Only a negligible part of the relevant public would not directly associate the term “messi” with the family name of the famous football player. According to the court, **a well-informed average consumer who**

**purchases athletic apparel will indeed associate the term with Messi’s name.**

**The fame of Messi worldwide and across Europe was considered a notorious fact and it did not have to be proven.** The CJEU noted, however, that it has already been established in earlier proceedings and it was not therefore considered to be new.

**The conceptual differences may neutralize the visual and phonetic similarities between the concerned signs** and in this case, the General Court indeed established that the relevant public perceived the contested signs as conceptually different.

## Experts’ comments



**Aleksandra Politańska-Kunicka**, counsel, Intellectual Property and Technology:

*In relation to this judgment, many practical questions arise in the context of assessment of the reputation of the entity filing the trademark application, which has not been relevant so far, including:*

is it necessary to present evidence of the reputation of the person submitting the trademark or assume that the relevant office will judge it on the basis of commonly known facts? Messi did not provide any evidence of the reputation of his name and the office considered this fact notorious. If we were faced with such a task, we would recommend gathering and presenting evidence of this fact,

how to approach the process of proving reputation before the office - e.g. Is it sufficient to prove the reputation in one EU country of a significant territory



or should the reputation of the person filing the trademark application be proved in a different way? If we were to answer this question, we would recommend showing the reputation in the broadest possible territorial scope.



**Marek Trojnarowski**, counsel, Intellectual Property and Technology:

*It is well established in case-law that the reputation of a mark plays an important role in determining whether a new application may be found to be confusingly similar to an existing, registered trademark. Briefly, the more renowned the prior trademark, the more likely it is that the relevant public will associate a new application with the existing, renowned trademark. The “Messi” ruling provides for a reciprocal effect of the trademark reputation. It turns out that the reputation of a new trademark application also plays an important role in determining if there may be confusion with an existing, registered trademark. No doubt “Messi” is a well-known name, and hence a renowned designation. As a result the CJEU held that the public will automatically associate clothing or sports goods with the MESSI trademark and differentiate them from a similar MASSI trademark. As a result, there should be no confusion.*



**Piotr Zabost**, senior associate, Intellectual Property and Technology:

*At first glance, this appears to be a common sense judgement. Most of the readers would be somehow puzzled if the CJEU expected Lionel Messi to prove the reputation of his name.*

*However, this decision creates uncertainty for trademark holders and litigants. Many holders and applicants of well-known trademarks may now hesitate if they should provide evidence of the reputation of their marks or if EUIPO would consider this a notorious fact. Bearing in mind the uncertainty, I would be very cautious when attempting to use this exception in trademark proceedings*



# Recorded Artist Actors Performers

8 September 2020

C-265/19

#media #music #remuneration

Background

9

The dispute, which led to the preliminary ruling delivered by the CJEU, was initiated in Ireland between Recorded Artists Performers Limited (RAAP) and Phonographic Performance (Ireland) Limited (PPI). The former is a Collective Management Organization (CMO) for performers, whereas the latter for phonogram producers. The two entities entered into agreement governing how the PPI, which collects fees for playing music in public, shall further pay a part of those fees to RAAP. The parties disagreed about this matter when it came to music performed by a person living or residing outside the EEA.

Directive 2006/115 on rental right and lending right and on certain rights related to copyright in the field of intellectual property provides that Member States must provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram is published for commercial purposes.

RAAP claimed that all the fees payable must be shared, regardless of the performer's nationality and residence while the PPI declared that it could not be executed where Irish performers do not receive equitable remuneration in third countries.

## Judgment

The CJEU established that Directive 2006/115 **precludes a Member State from limiting the right to a single equitable remuneration of performers who live or reside outside the EEA, when phonograms are used in the EU.** It also precludes that producers of phonograms receive remuneration without sharing it with the performer who has contributed to that phonogram.

The Court emphasized that the right to a single equitable remuneration derives from the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty (WPPT) with which the Directive shall be consistent. Therefore,

**it cannot be limited by national legislature only to nationals of the EEA.** Moreover, the Directive itself does not include any condition under which the performer or phonogram producer should live or reside in an EEA Member State. On the other hand, the CJEU explained that there might be some limitation but, **as is provided for in the Charter of Fundamental Rights of the European Union, such limitation related to copyright must be provided by law clearly and precisely. In addition, it should be determined solely by EU legislature and not the national legislatures.**

## Experts' comments



**Małgorzata Domalewska**, senior associate, Intellectual Property and Technology:

*The Court's ruling concerns certain remuneration rights granted under the Directive 2006/115 that reflect the remuneration rights under Article (15(1)) WPPT. However, the Court confirmed the general rule of the primacy, resulting from Article 216(2) TFEU, which international agreements concluded by the European Union have over other categories of secondary legislation. The remuneration rights have been interpreted not only in light of Article 15(1) WPPT but also in light of Article 4(1) WPPT which states that each contracting party must grant the rights without distinction to its own nationals and to 'nationals of other Contracting Parties'.*



**Karol Laskowski**, partner, Intellectual Property and Technology:

*It rarely happens that two CMOs are in dispute, especially one that would be eventually resolved by the CJEU. As for the matter of the dispute, we often notice a tendency of CMOs to exclude non-EEA members from the distribution of royalties. In addition, the organizations often represent towards the users that the fees they are collecting do not cover the royalties that are due to non-EEA members. We believe that the approach of the CMOs should be verified after that judgment.*



**Kamil Januszek**, associate, Intellectual Property and Technology:

*This CJEU ruling definitely has a positive outcome for performers residing outside the EU. The Court stated that in light of EU law all musical record performers, regardless of nationality, are entitled to equitable remuneration from collecting societies, without exception. Bearing in mind that most of the music made available publicly in the EU on radio and TV, is of US origin, this ruling may have significant impact on the EU music industry as the collecting societies will have to include in the share in equitable remuneration also performers e.g. from the United States, even though the United States themselves do not operate a system of paying public performance royalties to performers.*





# Constantin Film

9 July 2020

C-264/19

#media #film #infringement

Background



Constantin Film is a holder of the exclusive exploitation rights in respect of two films, Parker and Scary Movie, in Germany. These films were both uploaded to YouTube in 2013 and 2014 without the right holder's consent. As a result, Constantin Film requested that YouTube and Google, which is a parent company of the former, provide it with information on each of the users who had uploaded the films, in particular with their email addresses, telephone numbers and IP addresses. Constantin Film based its request on Directive 2004/48 on the enforcement of intellectual property rights, which provides that **judicial authorities may order that information on the origin and distribution networks of the goods or services, which infringe an intellectual property right, be disclosed**. That information includes, *inter alia*, the "addresses" of the infringers. The court of appeal, after the first instance court dismissed the request, ordered both YouTube and Google to provide Constantin Film with the email addresses. As a result, Constantin Film filed a further appeal demanding disclosure of all the information requested while YouTube and Google claimed that the request should be dismissed as a whole. Thus, the German Federal Court referred to the CJEU for a preliminary ruling regarding the meaning and scope of the word "addresses" used in the above-mentioned Directive.

## Judgment

The Court established that given that the Directive lacks the definition of the term "addresses", it should be regarded as it is used in everyday language, covering **only the postal address**, which is the place of a given person's permanent address or habitual residence.

The Court further confirmed that without any further clarifications, the term "addresses" **shall not include e-mail address, telephone number or IP address**. Even though the Member States are not obliged

to provide the judicial authorities with a possibility to order a disclosure of more information than the postal address, they have such an option.

## Experts' comments



**Małgorzata Domalewska**, senior associate, Intellectual Property and Technology:

*The Court ruling could not be any different. The term "addresses" is used in Article 8(2)(a) of Directive 2004/48, not the email addresses, telephone numbers and IP addresses. The Court also reasonably held that the EU legislature expressly provided for the possibility for the Member States to grant holders of intellectual property rights the right to receive fuller information. Some of the Member States have used this right. However, it might be another case to decide whether such national legislature kept a fair balance between the various fundamental rights involved and the principle of proportionality.*



**Karol Laskowski**, partner, Intellectual Property and Technology:

*This is a very favorable judgment for YouTube and Google, but not for producers and distributors, especially since users of YouTube and Google usually do not provide their actual postal address. Therefore, an IP address and email address would be much more relevant. One could say that this is a perfect example where the law does not follow the technology.*

25 November 2020

C-372/19

#media #cmo #copyrightfee #competition

## Background

SABAM is a Collective Management of copyright and related rights Organization (CMO) responsible for the collection and distribution of fees for the reproduction and communication to the public of musical works. SABAM is in fact the only such organization in Belgium and has a monopoly on this market.

SABAM collects fees from music festival organizers calculated based on so-called “tariff 211” which covers two methods – “minimal tariff” calculated on the basis of area or the number of available seats, or the “basic tariff” - calculated on the basis of gross revenues from ticket sales. A music festival organizer is entitled to reduction of the fee based on the share of musical works from the SABAM repertoires actually performed during the events on condition that they provide SABAM with lists of such works within indicated periods of time. However, there are only three base rates of discount – if the share of music from SABAM’s repertoire performed during the festival amounts to less than one-third, or less than two-thirds, of the total volume of music played during the festival.

In this case, SABAM initiated proceedings against two music festival organizers (Weareone.World and Wecandance), which were obliged to pay the copyright fees to SABAM for the musical works performed during their festivals based on the “basic tariff”. The organizers refused to do so as they claimed that the fees exceed the economic value of SABAM’s work. They criticized the method of calculation of the reduction as well as the “basic tariff” claiming that the price of the ticket covers not only the cost of the musical works but also the entire background of the festival, which guarantees its uniqueness.

## Judgment

The CJEU addressed the referring court questions and ruled that when a CMO introduces a tariff table based on a percentage of the revenue generated from a musical event without the possibility to deduct all burdens related to the organization of such events from those revenues, it does not constitute an abuse of the dominant position and should be considered a normal exercise of copyright and is in principle reasonably related to the economic value of the service provided by that CMO. Such behavior, however, may be subject to prohibition under EU law if the amount of the fee actually determined based on this tariff table does not show a reasonable link with the economic value of the services and is therefore excessive. That would be determined by the national court.

Use of a tariff table that takes into account one-third, two-thirds of the quantity of musical works actually performed rule may be abusive if there is an alternative method, which allows a more precise identification of the use of those works and can pursue the same legitimate aim of protecting the interests of authors, composers and music publishers.

## Experts’ comments



**Małgorzata Domalewska**, senior associate,  
*Intellectual Property and Technology:*

*The CJEU confirmed previous judgments held with respect to broadcasters and clubs that a model which provides for the calculation of fees on the basis of the total revenue is reasonable. However,*





the CJEU underlined that national courts should take into account if the fee actually determined corresponds to the economic value on a case by case basis. The CJEU also confirmed its previous position that the fee of the CMO must be based on the actual use of work. Even the tariff of SABAM that uses the discount based on the work actually performed may be abusive if there is an alternative method, which allows a more precise identification of used work. The judgment may affect the tariffs of CMOs that collect a flat remuneration based only on the number of participants from festival's organizers.



**Karol Laskowski**, partner, Intellectual Property and Technology:

It is also worth noticing that there is yet another CJEU judgment which confirms that competition law is applicable to CMOs' monopoly. Therefore, CMOs are subject to specific rules and should aim to collect royalties that are linked to the revenues generated by the user and actual use of repertoire represented by the given CMO. The organizers of festivals to whom flat remuneration is proposed by CMOs will now have strong arguments to object to the method of royalties calculation.



**Kamil Januszek**, associate, Intellectual Property and Technology:

The approach taken by the CJEU, in this case towards SABAM and music festival organizers, seems to be reasonable. It is hard to imagine other economic CMO fee calculation criteria for the use of the musical works during festivals, other than that based on a percentage of the revenue generated from the admission. However, by leaving the door open in terms of fee calculation based on alternative methods, the national jurisdictions and local CMOs may develop other calculation criteria, which would also include the burdens incurred by the organizers. Such alternative methods may be sought especially now – in the post-pandemic reality, where e.g. the recurring music festivals market might try to look for savings also in this respect.



In March 2018 the Romanian data protection authority fined Orange Romania, a mobile telecommunication service provider, for collecting and storing copies of customers' identity documents without their valid consent. Orange Romania appealed against the decision. In the proceeding the court found that even though not every contract included a relevant consent for storing such copies of IDs, Orange Romania did not refuse to conclude a contract with customers who refused to consent to the storage of copies of their IDs.

The questions asked by the court focused on whether, in those circumstances, such consent can be regarded as validly given and whether the signing of a contract with a consent clause can prove the existence of such consent. Thus, the CJEU analysis was focused on the analysis of the conditions, which must be fulfilled in order for the consent to be regarded as specific, informed and freely given.

## Judgment

Due to the circumstances of the case, the CJEU analysis included the requirements arising from both Directive 95/46<sup>1</sup> and the GDPR<sup>2</sup>.

The CJEU focused on verifying whether a contract, which contains a clause confirming that the data subject has been informed of and has consented to, the collection and storage of personal data is capable of demonstrating that such consent has been validly given.

The requirements for consent which operates in the applicable laws, and were confirmed in numerous judgments of the CJEU are that it should be a *freely given, specific, informed and unambiguous* indication

*of the data subject's wishes made in the form of a statement or by a clear affirmative action evidencing agreement to the processing of personal data.*

The CJEU explained how each of these conditions should be fulfilled to ensure the lawfulness of the processing. Any pre-checked checkboxes, silence or inactivity excludes the possibility for valid consent, since it is practically impossible to confirm whether the data subject actually consented to such processing. The term "specific" means that the person has to agree to the actual processing of data, in this case to storing identity documents, and such consent cannot be inferred from an indication of wishes for other purposes. It has to be easily distinguishable from other matters and written in clear language, especially when it is pre-written by the data controller. A consent is informed when the data subject is provided with all the information regarding the processing. The CJEU emphasized that a consent is freely given when the data subject is not misled about the possibility of concluding the contract even if he or she refuses to consent to the processing of his or her data.

Having regard to these requirements, it is the controller's obligation to demonstrate that the data subject gave consent by active behavior and has obtained, beforehand, relevant information regarding the processing of his or her personal data in intelligible and easily accessible form, using clear and plain language. The lack of any of these elements results in invalidity of the consent.

<sup>1</sup> Directive 95/46/EC 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.

<sup>2</sup> 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).



## Experts' comments



**Izabela Tarłowska**, associate, Intellectual Property and Technology:

*The requirement for the collection of valid consent is one of the fundamental aspects of personal data protection law. It was already analyzed in several judgments issued by the CJEU and the local courts and authorities, including the Planet 49 case<sup>3</sup>. In Orange Romania, the CJEU goes further and sheds some light on the concept of consent, analyzing the active, freely-given, and informed nature of consent. As regards the active nature of consent, the CJEU states that the consent is not valid if the data controller has checked the check-box prior to the signing of that contract.*



**Aleksandra Danielewicz**, senior associate, Intellectual Property and Technology:

*The judgment includes clear and understandable instructions for all controllers on how the consents should be collected. It will have an impact on any service providers who rely on standardized and pre-formulated clauses to obtain consent – every provider must be able to demonstrate that their customers have freely given their consent, and that they have not used misleading practices in obtaining valid consent. Although the requirements are plain, clear and remain unchanged for several decades, controllers still struggle sometimes to create and collect valid consent, especially in the online environment, e.g. consent for use of cookie files and other tracking technologies. It also invites national courts to interpret consent to the highest standards, and companies should make further efforts to update their consent collection practices in order to meet the CJEU's requirements.*



**Dariusz Czuchaj**, counsel, Intellectual Property and Technology:

*The conclusions drawn by the CJEU in the Orange Romania case significantly raise the standards of consent, insisting that the data subject should have absolute control when giving his or her consent, and will undoubtedly have a significant influence in practice. The CJEU laid emphasis on freely given and informed consent building an important connection between data protection and consumer law as the judgment recognizes the role of transparency and the potential for misleading practices when seeking consent.*

<sup>3</sup> JUDGMENT OF THE COURT (Grand Chamber) 1 October 2019 (\*) (Reference for a preliminary ruling — Directive 95/46/EC — Directive 2002/58/EC — Regulation (EU) 2016/679 — Processing of personal data and protection of privacy in the electronic communications sector — Cookies — Concept of consent of the data subject — Declaration of consent by means of a pre-ticked checkbox)

# Ferrari Testarossa

22 October 2020

Joined Cases C-720/18 and C-721/18

#IP #trademarks #genuineuse

## Background

Ferrari is a proprietor of the trademark “Testarossa”, which was registered with the WIPO in 1987 and with the German Patent and Trade Mark Office in 1990 for Class 12 which includes land vehicles, in particular motor cars and parts thereof.

The German Regional Court ordered the cancellation of the marks in the territory of Germany as it **claimed that Ferrari had not made genuine use of those marks**. Under Directive 2008/95 (now replaced by Directive 2015/2436), a trademark is liable to revocation if **within a continuous period of five years, it has not been put to genuine use in the Member State in connection with the goods or services in respect of which it is registered**.

Ferrari filed an appeal to the Higher Court claiming that it used those trademarks as it had been reselling its luxury sport cars, as well as using the mark to identify replacement and accessory parts of the cars. During the proceedings, it was established that the car itself was sold in the 80s and 90s and merely one piece was produced in 2014. Ferrari did use the trademark for the replacement parts, but it only generated turnover of around EUR 17,000 between 2011 and 2016. Now, there are only 7000 cars bearing the mark “Testarossa”. Considering all these facts, the Higher Court decided to refer its questions to the CJEU for a preliminary ruling.

## Judgment

The most relevant part of the proceedings before the CJEU was to **establish whether the use of “Testarossa” mark by Ferrari could be considered as “genuine”**. The Court emphasized that the fact that a mark is not used for goods newly available on the market but for goods that were sold in the past does not mean that its use is not genuine, if the proprietor makes use of the same mark for component parts. It also noted that a trademark registered for a category of goods (and replacement

parts thereof) **must be regarded as having been put to “genuine use” in connection with all the goods in that category, even if it has been used only in respect of some of those goods**, such as high-priced luxury sports cars, or only with regard to replacement parts of some of those goods.

When it comes to the use of trademark in respect of the **resold second-hand goods**, the CJEU came to the conclusion that even though, under Directive 2008/95 (2015/2436), the proprietor cannot prohibit third parties from using the trademark for goods that are already on the market, it does not mean that he cannot use it himself in respect of such goods and that **use shall be seen as “genuine”**. However, it should be **done in accordance with its essential function, which is to guarantee the identity of the origin of the goods**. A similar opinion was presented in the case of **services provided by the proprietor of a trademark** as the Court ruled that **it should be considered a genuine use, on condition that those services are provided under the mark**.

## Experts’ comments



**Aleksandra Politańska-Kunicka**, counsel, Intellectual Property and Technology:

*This judgment will certainly be used in cases concerning the revocation of trademarks. It is reasonable and comes in helpful especially for those reputable brands that have a wide range of products. It should be sufficient to show the use of the trademark for some of the goods in that category in order to save a full category of goods, without having to show the use of the trademark for each individual product.*



**Marek TrojnarSKI**, counsel, Intellectual Property and Technology:

Trademark laws provide for the so called rule of exhaustion of IP rights. In simple words and disregarding exceptions, a trademark owner may not oppose the resale of goods bearing the registered trademark. This rule might create concerns as to whether Ferrari genuinely used the trademarks when reselling used Testarosa cars. In fact, the rule of exhaustion provides that the trademark owner may not prohibit the **use** of the trademark by resellers. Formally, reselling used cars constitutes usage of trademarks. The CJEU confirmed that such usage by the trademark owner constitutes the **“genuine”** use of trademarks.



**Aleksandra Żebrowska**, associate, Intellectual Property and Technology:

This judgment is especially important for the luxury goods industry, in particular the automotive sector, in which manufacturers may face difficulties proving the “genuine” use of a trademark registered for goods no longer sold. It is often the case that limited edition goods are released or the production of a certain product (e.g. model of a car) can be discontinued. At the same time, such goods remain on the market long after their production has ceased, and manufacturers offer replacement parts and after-sale services for their iconic models. With this in mind, the CJEU confirmed that the owner’s use of the trademark in respect of the replacement parts forming an integral part of the previously sold goods may constitute “genuine” use of that mark. Such use includes not only the replacement parts themselves, but also products to which those parts are dedicated. In this case, the trademark owner does not have to prove the use of the mark for each individual good within the category for which the mark is registered. This provides significant arguments for the luxury brand owners, however, it should be emphasized that the judgment cannot be applied without limitations.



# Groupe Canal+

9 December 2020

C-132/19 P

#media # territorialexclusivity

Background

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Viacom Inc. and its subsidiary Paramount Pictures International Ltd (together referred to as “Paramount”) concluded licensing agreements with the main TV broadcasters in the EU, which included Sky and Groupe Canal+. In 2014 European Commission opened an investigation in order to establish if certain provisions of the said agreements are in conflict with the EU competition law reflected in the TFEU and the Agreement on the European Economic Area (EEA).

The clauses that were investigated by the Commission, *inter alia*, prohibited Sky from responding positively to unsolicited requests from consumers residing in the EEA but outside the United Kingdom and Ireland, for the purposes of the provision of television distribution services. The Commission established that those provisions could lead to territorial exclusivity and thus restrict competition. Groupe Canal+ was admitted to the proceedings as an interested third party. Paramount asserted that it will no longer comply with such provisions leading to the broadcasters’ absolute territorial protection. As a result, it notified Groupe Canal+ that it no longer wishes to ensure the absolute territorial exclusivity on the French market that was granted to Groupe Canal+.

The case before the CJEU resulted from the fact that according to Groupe Canal+, the decision of the Commission could not apply to it, as the proceedings involved only Paramount and the Commission. Therefore, Groupe Canal+ is seeking its annulment.

## Judgment

The CJEU addressed several allegations brought by Groupe Canal+ against the General Court, which dismissed its appeal. First, Groupe Canal+ claimed that the Commission misused its power as by its decision it terminated the territorial exclusivity in the film production sector throughout the EEA and therefore circumvented the legislative process. The Court did not agree with that argument claiming that first, the decision was adopted under powers that were granted to the Commission and second, it did not result in the adoption of a legislative text.

The CJEU shared the General Court’s view that the **relevant clauses in the agreements with Paramount could infringe Article 101(1) of the TFEU**. The Court noted that they contained provisions construed in order to eliminate the cross-border provision of broadcasting services for the audio-visual content. It also held that such agreements could **threaten the competition and jeopardize the proper functioning of the single market as they were aimed at partitioning national markets within the EEA**.

When it comes to the effect of the commitments on the interests of third parties, in this case of Groupe Canal+, the CJEU ruled that the General Court erred in law in the light of the principle of proportionality. Consequently, it concluded that **the Commission deprived third parties from its contractual rights, including Canal+ in relation to Paramount, and thus breached the principle of proportionality. This conclusion finally resulted in the annulment of the decision by the CJEU.**





## Experts' comments



**Małgorzata Domalewska**, senior associate,  
Intellectual Property and Technology:

*The annulment of the Commission decision was based on the principle of proportionality. The Court held, that, while deciding on making commitments binding, the Commission must assess the proportionality of the commitments in connection with the protection of the contractual rights of third parties. The Court maintained its previous position that the provisions of license agreements providing obligations aimed at eliminating the cross-border provision of audiovisual content broadcasting services and granting full protection to each broadcaster may be considered as provisions restricting competition within the meaning of Article 101(1) of the TFEU.*



**Karol Laskowski**, partner, Intellectual Property  
and Technology:

*It is a very important lesson for the Commission - while accepting certain commitments from the film studio (and accepting them in the decision), the Commission should also observe the third party rights of the broadcaster. Certainly territorial exclusivity is of key importance under any Pay-TV contract.*

# Star Taxi

3 December 2020

C-62/19

#IT #informationsociety #taxiapp

## Background



Star Taxi App, a company established in Romania, operates a mobile application of the same name that enables direct contact between users of taxi services and taxi drivers. When the user enters his or her destination, it searches for nearby drivers and presents the user with a list containing the tariff, rating and comments about the driver. The app itself does not redirect the orders to the drivers and the fare price is paid directly to the taxi driver after the ride. Star Taxi App provides this service by concluding service contracts directly with professional taxi drivers, but does not choose or control them. The application is free of charge for the users.

In December 2017, Bucharest Municipal Council adopted Decision No 626/2017 (“Decision”), which extended the definition of an activity of “dispatching services” requiring prior authorization for activities of the same type carried out using an IT application. Because of non-compliance with this provision, Star Taxi was fined around EUR 925. It objected to this claiming that its activities constitute an **information society service which cannot be subject to prior authorization or any other requirement having an equivalent effect** in accordance with Article 4 of Directive 2000/31 (“e-Commerce Directive”). The district court of Bucharest referred questions to the CJEU for a preliminary ruling in order to establish whether Star Taxi App should be considered an “information society service” and whether the above-mentioned Council’s Decision is compliant with EU law.

## Judgment

According to Article 1(1)(b) of Directive 2015/1535, the term **“information society service” covers “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”**.

After considering all the circumstances, the CJEU concluded that **the service performed by Star Taxi App falls into this definition**. It is irrelevant that such a service is provided free of charge to the person seeking a taxi driver, as the remuneration is paid to the drivers. The CJEU also established that **the service could not be defined as “provision of transport”** due to the fact that it is only an add-on to pre-existing organized taxi transport service. Moreover, Star Taxi App does not organize the overall operation of the transport service, as it does not select or control the drivers nor does it set and charge the price for the journey.

Next, the CJEU ruled on whether the Bucharest Municipal Council’s Decision is compliant with EU law. First, it concluded that since it applies to all kinds of “dispatching services”, not only the ones provided by IT applications, it is not a “technical regulation” in the meaning of Directive 2015/1535 and does not have to be communicated to the Commission prior to its adoption. Then, the CJEU found that the analyzed authorization scheme did not fall within the scope of Article 4(1) of the e-Commerce Directive that excludes prior authorizations or any other requirements having equivalent effect for “information society services”. In that regard, the CJEU noted that the authorization scheme at hand **did not target information society services specifically and exclusively but was previously applicable to providers of economically equivalent services other than information society services**. However, the CJEU left it for the referring court to verify, inter alia, whether it is non-discriminatory, justified by an overriding reason relating to the public interest, and proportionate.



## Experts' comments



**Bartosz Dobkowski**, associate, Intellectual Property and Technology:

*After Elite Taxi (C-434/15), Uber France (C-320/16) and Airbnb Ireland (C-390/18), Star Taxi App is another important case for online platforms, particularly ride-hailing services. Applying the reasoning developed in Elite Taxi, the CJEU concluded that the service putting taxi passengers in touch with licensed drivers which does not forward bookings to drivers and does not set the fare, constitutes an “information society service”. This classification does not mean, however, that Member States cannot subject those services to prior authorization. Such authorization may still be required if it is not specifically and exclusively targeted at “information society services” and fulfils the conditions laid down in Article 9 and 10 of Directive 2006/123. It remains to be seen whether this regulatory framework will be affected by the Digital Services Act.*



**Karol Laskowski**, partner, Intellectual Property and Technology:

*Star Taxi App SRL was different from Uber, because it did not organize the process of transport. In particular, it did not hire the drivers. They have only provided the app, which enabled communication between the driver and passenger. As such, it qualified as an information society service and with all its benefits; in particular, no authorization should be required to provide this type of service.*



15 September 2020

Joined Cases C-807/18 and C-39/19

#IT #internetlaw #telecom #netneutrality

## Background

Telenor, a Hungarian Internet access provider, offered its customers two packages (MyChat and MyMusic) where the data traffic generated by certain applications and services did not count towards the data volume the customers purchased. In addition, once that volume was used up, customers could continue to use those specific applications and services without restriction, while the other applications and services available to the end-user were blocked or slowed down.

The Hungarian regulator (*Nemzeti Média- és Hírközlési Hatóság*) found that both packages involved traffic management measures that were incompatible with the obligation of equal and non-discriminatory treatment laid down in Regulation 2015/2120. Following an appeal brought by Telenor, the Hungarian court adjudicating the case decided to refer four questions to the CJEU for a preliminary ruling.

## Judgment

The CJEU held that zero-rating practices, such as those applied by Telenor, if based on commercial considerations, are incompatible with the principle of net neutrality established in Regulation 2015/2120. According to the CJEU, the traffic management measure applied by the provider of Internet access services is based on such “commercial considerations”, in particular, when it does not rely on objective differences and results in the content, applications or services offered by the various providers not being treated equally and without discrimination.

The CJEU emphasized that **in order to make that finding of incompatibility with the principle of net neutrality, there is no need to assess the effect of zero-rating on the exercise of end-users’ rights.** At the same time, however, **the CJEU found that zero-rating combining a “zero tariff” with**

**measures blocking or slowing down traffic related to the use of the remaining applications or services is indeed liable to limit the exercise of end-users’ rights within the meaning of the regulation.**

Such packages are liable to increase the use of favored applications and services and, accordingly, to reduce the use of the other applications and services available, having regard to the measures by which the provider of the internet access services makes that use technically more difficult, if not impossible. Furthermore, the greater the number of customers concluding subscription agreements to such packages, the more likely it is that, given its scale, the cumulative effect of those agreements will result in a significant limitation of the exercise of end-users’ rights, or even undermine the very essence of those rights.

## Experts’ comments



**Bartosz Dobkowski**, associate, *Intellectual Property and Technology*:

*Despite controversies, the judgment seems to be in line with BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules. While it confirms that it is prohibited to block or slow down traffic related to the use of applications and services other than zero-rated ones when the user’s data cap is reached, it does not prevent providers of Internet access services from offering zero-rated applications or services as long as they too are blocked or throttled when the data cap is reached. However, as this type of zero-rating also creates an economic incentive to use particular applications or*

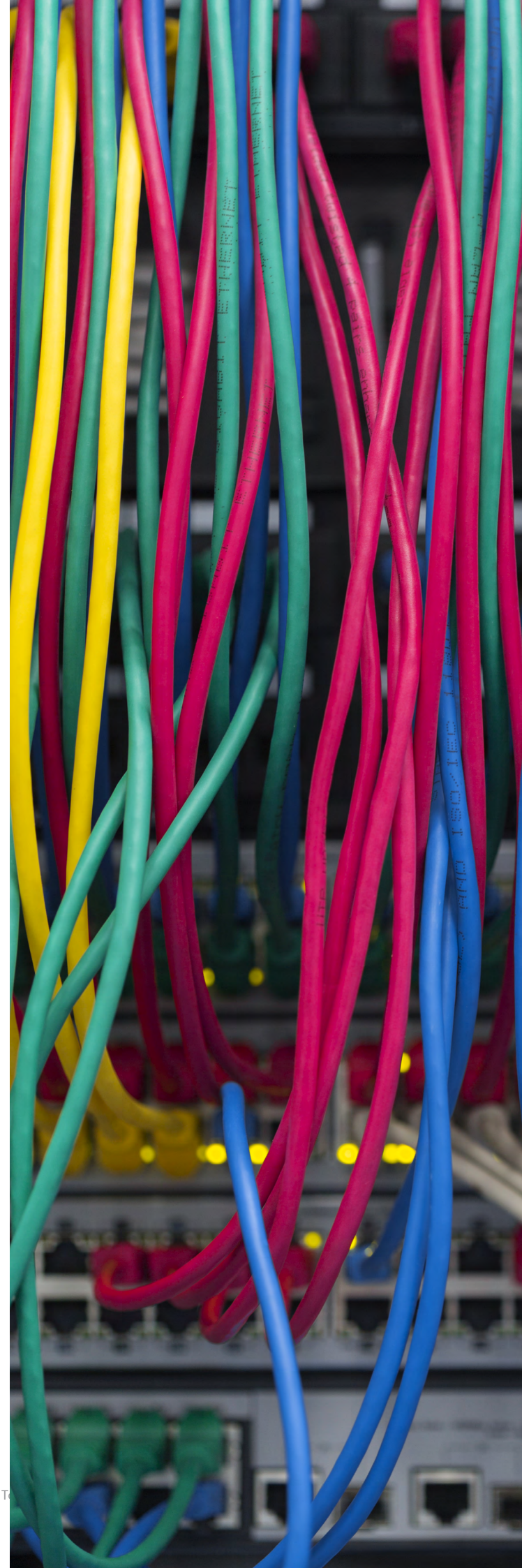


services instead of competing ones, it may still pose some regulatory risks. Although the judgment does not expressly refer to zero-rating practices where the providers of Internet access services apply or offer zero-rating to an entire category of applications (e.g. all video or all music streaming applications), it seems that such zero-rating models may also be questioned as long as they are based on commercial considerations.



**Karol Laskowski**, partner, Intellectual Property and Technology:

Notwithstanding the above, the CJEU ruling does not exclude the use of certain traffic management measures by the providers of Internet access services if they are, *inter alia*, based on the “objectively different technical quality of service requirements of specific categories of traffic”. What is more, derogation from the obligation of equal treatment of traffic may still exceptionally take place in the cases strictly specified in the third subparagraph of Article 3(3) of Regulation 2015/2120.



# Schrems II

16 July 2020

C-311/18

#dataprotection #gdpr #privacyshield #datatransfer

## Background



The judgment was issued as the result of a complaint filed by Maximillian Schrems, an Austrian activist, against Facebook Ireland Limited with the Irish Data Protection Commissioner.

Maximillian Schrems has been a Facebook user and, as is the case for other users residing in the EU, Facebook Ireland Limited transferred part of his personal data to the United States. Schrems demanded that such transfers are prohibited, since the United States do not offer sufficient protection against access by the public authorities, in particular the National Security Agency and Federal Bureau of Investigation, to the transferred data.

The EU data protection laws (both the Directive 95/46<sup>4</sup> and the GDPR<sup>5</sup>) require that the transfer of personal data outside the European Union should meet specific conditions ensuring security of the transferred data. There are numerous measures which can be used by EU-based controllers and processors when transferring personal data outside the EU. This included, the EU controller to the non-EU processor Standard Contractual Clauses<sup>6</sup> (SCC), adequacy decisions issued by the European Commission and, with respect to the United States or the EU-U.S. Privacy Shield.

## Judgment

In this judgment, the CJEU focused on analyzing two transfer mechanisms, i.e. the SCCs and the EU-U.S. Privacy Shield.

The CJEU stated that data subjects whose personal data are transferred to a third country pursuant to the SCCs must be afforded a level of protection essentially equivalent to that guaranteed within the EU by the GDPR. The assessment of that level of protection must take into consideration:

the contractual clauses agreed between the data exporter established in the EU and the recipient established in the third country and

the relevant aspects of the legal system of that third country when it comes to any access by the public authorities of that third country to the transferred data.

Moreover, until a valid European Commission's adequacy decision is issued, the competent supervisory authorities are required to suspend or prohibit a transfer of personal data to third countries, if EU data exporters do not suspend or end such transfer. Such steps should be undertaken when the SCCs are not or cannot be complied with in the recipient country and when the level of protection of the data transferred required by EU law cannot be ensured by other means.

4 Directive 95/46/EC 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.

5 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).

6 2010/87/EU: Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council.

Lastly, the CJEU addressed the validity of two decisions of the European Commission and declared:

The SCCs to be valid, since its validity cannot be questioned by the mere fact that, due to their contractual nature, bind the authorities of the third country to which data may be transferred. It should rather depend on whether the mechanisms included in the decision can be used effectively, in practice, to ensure compliance with the level of protection required by EU laws.

The EU-U.S. Privacy Shield to be invalid, due to the fact that the requirements of US national security, public interest and law enforcement have primacy over data protection of persons whose data are transferred to the US, and that the level of protection essentially equivalent to that guaranteed within the EU cannot be guaranteed in this third country.



**Aleksandra Danielewicz**, senior associate,  
*Intellectual Property and Technology*:

*The most important takeaway for controllers and processors is the necessity to review all executed data transfer agreements to ensure that they are compliant with the GDPR requirements and recommendations made by the CJEU. Due to Brexit, specific attention should be paid to all agreements executed with UK-based recipients. In essence, what is really needed is a Transfer Impact Assessment – but the Data Protection Authorities across the EU may struggle to create a uniform approach, just as they are not currently in response to Schrems II.*

## Experts' comments



**Dariusz Czuchaj**, counsel, *Intellectual Property and Technology*:

*The implications of the Schrems II judgment go far beyond the data transfers to the United States, as the conclusions made by the CJEU apply to all data transferred to third countries. Although the EU regulatory bodies and supervisory authorities issued guidelines<sup>7</sup>, which should be followed by the EU controllers and processors, this topic is still difficult for numerous entities. The upcoming new Standard Contractual Clauses<sup>8</sup> may solve the problem. However, the controllers and processor should still apply caution when engaging the providers located outside the European Union. Companies transferring personal data outside the EEA should obtain legal advice to help them navigate the new privacy landscape and to support them with their international data transfers.*

<sup>7</sup> E.g. the recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protections of personal data.

<sup>8</sup> The draft text of new Standard Contractual Clauses was published on 12 November 2020. Public consultation of the draft were closed on 10 December 2020.



## What to expect in 2021?

We all look forward to seeing what will happen in 2021, but it seems as uncertain as the unlamented year of 2020. However, the CJEU will likely address some of the issues we have been waiting for, including whether the **embedding of works in a website from other websites using automatic links requires the authorization of the holder of the rights in those works** (C392/19). This was already addressed by Advocate General Maciej Szpunar, who differentiated between clickable links in a webpage, even using the framing technique and the embedding with the use of automatic/inline links. As regards clickable links to works that have been made freely available to the public, no authorization from the rightholder is necessary, as it is presumed that it forms part of the public, which was taken into account by that rightholder when those works were initially made available. Automatic/inline linking on the other hand, which makes the embedded content appear no different from the content of the host page, does require authorization by the rightholder.

We should also expect a judgment on whether **hosting/sharing platform operators, such as YouTube, are directly liable for the illegal uploading of protected works by users of that platform** (Joined Cases C 682/18 and C683/18). While the new Directive 2019/790 (whose implementation period ends on 7 June 2021) will make platform operators liable for works illegally uploaded on them, the legislation is not yet in force and has not been transposed into national law by all Member States. Under the current EU framework derived from Directive 2001/29, there is no such liability. Advocate General Saugmandsgaard Øe suggests that platforms like YouTube do not directly ‘communicate the work to the public’ under Article 3 of Directive 2001/29. They merely provide an intermediary technological means enabling said communication. He further argues that the said Directive concerns purely primary liability, which in these joined cases falls onto the user. Rightholders may nonetheless opt to obtain injunctions against online platforms as a way to enforce their rights, bypassing the need to evidence improper conduct by the intermediary operator.

Another case that might be ruled on in 2021 regards protection of databases (C-762/19). The CJEU will have to establish whether **using a hyperlink to redirect end users to another website containing job advertisements could be regarded as ‘reutilization’ of such database** in the meaning of Article 7(2)(b) of the Directive 96/9/EC and whether **information containing the meta tags that is shown in the defendant’s search engine could be interpreted as falling within the definition of ‘extraction’** of said Directive. The Advocate General M. Szpunar has recently stated in his opinion that a search engine which copies and indexes the whole or a substantial part of the contents of databases freely accessible on the internet and then allows its users to carry out searches in those databases effects an extraction and a reutilization of those contents. He also underlined, which seems to be in line with previous CJEU judgments, that a maker of a database can only prevent such extraction and reutilization if it adversely affects its investment in the database and could possibly deprive him of expected profits.

In the area of data protection, we can expect a judgment in a case concerning the **commencement of judicial proceedings by the so-called ‘lead’ data protection authority**. The lead data protection authority is an authority of a Member State in which a company has its main EU entity. In the case C-645/19, the Belgian authority initiated proceedings against Facebook (including Facebook Inc., Facebook Ireland Ltd, which is Facebook’s main EU entity and Facebook Belgium) in order to prevent it from placing, without users’ consent, certain cookies on individuals’ devices they use when they browse a web page in the Facebook.com domain. It also requested destruction of all personal data obtained by means of cookies and social plugins of users from Belgium. Facebook argued that the Belgian authority could not commence the proceedings as they can only be brought by the lead authority, which in this case is the Irish data protection authority. Advocate General M. Bobek concluded that the lead data protection authority has general competence over cross-border data processing, including the commencement of proceedings for the breach of the GDPR, but it cannot be the sole enforcer of the GDPR and any local entity should be able to initiate proceedings when it comes to cross-border data processing.

More information on upcoming CJEU judgments can be found at the end of our summary.



```
#define ASM_VMX_VMREAD_RDX_RAX
```

```
static __always_inline unsigned long vmcs_readl
```

```
{  
    unsigned long va
```

```
    asm volatile ( __ex_clear(ASM_VMX_VMREAD_RDX_RAX,  
        : "=r"(value) : "0"(value)
```

```
    return value;
```

```
}  
#include <stdint.h>
```

```
int main(int argc, char *argv) {  
    int64_t src = argc
```

```
    int64_t dst;  
    volatile
```

## Key upcoming CJEU judgments

Subject matter	Case reference	Date of the lodging of the application initiating proceedings	Summary	Opinion of the AG (yes/no)
Data protection	"C-645/19 <i>Facebook Ireland and Others</i> "	30/08/2019	<p>"The Belgian data protection authority commenced proceedings before the Belgian court in order to prevent Facebook (Facebook Inc., Facebook Ireland and Facebook Belgium) from placing, without users' consent, certain cookies on the devices those individuals use when they browse a web page in the Facebook.com domain and it requested destruction of all personal data obtained by means of cookies and social plugins of users from Belgium. The case was brought against Facebook Belgium as the court established that it has no jurisdiction over other Facebook entities. Facebook argued that the proceedings could only be brought by the Irish data protection authority as the main EU entity of Facebook is based in Ireland. The Belgian court asked the Court of Justice if the GDPR actually prevents a national data protection authority other than the lead data protection authority from engaging in court proceedings in its Member State against infringements of its rules with respect to cross-border data processing.</p> <p>AG M. Bobek underlined in his opinion that the lead data protection authority has general competence over cross-border data processing, including the commencement of judicial proceedings for the breach of the GDPR and local authorities have more limited power. However, this entity cannot be a sole enforcer of the GDPR and therefore the AG claimed that the data protection authority of a Member State can bring proceedings before a court of that State for an alleged infringement of the GDPR with respect to cross-border data processing even if it is not the lead authority."</p>	Yes
	"C-817/19 <i>Ligue des droits humains</i> "	31/10/2019	<p>The CJEU will establish whether a law, which for the purposes of combating illegal immigration and improving border controls, authorizes a system of collection and processing of data relating to passengers 'travelling to or from Belgium, or transiting through Belgian territory', is in line with the GDPR.</p>	No

Data protection	"C-466/20 <i>Google</i> "	24/09/2020	<p>"We can look forward to the Court clarifying whether it is compatible with the data subject's right to respect for private life and to the protection of personal data, when the link, the de-referencing of which the applicant is requesting, leads to content that includes factual claims and value judgements based on factual claims the truth of which is denied by the data subject, and the lawfulness of which depends on the question of the extent to which the factual claims contained in that content are true. The second question will answer whether in the case of a request for de-referencing made against the data controller of an internet search engine, which in a name search searches for photos of natural persons which third parties have introduced into the Internet in connection with the person's name, and which displays the photos which it has found in its search results as preview images (thumbnails), the context of the original third-party publication should be conclusively taken into account, even if the third-party's website is linked by the search engine when the preview image is displayed but is not specifically named, and the resulting context is not shown with it by the internet search engine."</p>	No
	"C-319/20 <i>Facebook Ireland</i> "	15/07/2020	<p>"The applicant is requesting an order to cease and desist from displaying personal data of consumers residing in Germany on the App Centre platform on Facebook, as well as an injunction against using clauses enabling certain App Centre games to post status updates and photos on the consumer's behalf. The defendant is continuing to seek dismissal of the action by appealing on a point of law. The Court will answer whether the rules in Chapter VIII of the GDPR preclude national rules which – alongside the powers of intervention of the supervisory authorities responsible for monitoring and enforcing the GDPR and the options for legal redress for data subjects – empower, on the one hand, competitors and, on the other, associations, entities and chambers entitled under national law, to bring proceedings for breaches of the GDPR, independently of the infringement of specific rights of individual data subjects and without being mandated to do so by a data subject, against the infringer before the civil courts on the basis of the prohibition of unfair commercial practices or breach of a consumer protection law or the prohibition of the use of invalid general terms and conditions. "</p>	No



IP	"C-597/19 <i>M.I.C.M.</i> "	06/08/2019	<p>"In this case the court has to determine whether the downloading of a file via a peer-to-peer network and the simultaneous provision for uploading of parts of this file can be regarded as communication to the public in the meaning of Directive 2001/29.</p> <p>AG M. Szpunar claimed in his opinion that by offering the possibility to download pieces of files containing copyright-protected works from their computers, whether at the time that those files are downloaded (as in case of BitTorrent) or independently of that download, the users of peer-to-peer networks make those works available to the public within the meaning of Article 3 of Directive 2001/29. Among others, he also addressed the issue of recording of the IP addresses of persons whose internet connections have been used to share protected works on peer-to-peer networks. He came to a conclusion that under Article 6(1)(f) of the GDPR such recording constitutes the lawful processing of personal data where that recording is carried out in the pursuit of a legitimate interest of the controller or a third party."</p>	Yes
	"C-762/19 <i>CV-Online Latvia</i> "	17/10/2019	<p>"The CJEU has to establish whether the defendant's activities, which consist of using a hyperlink to redirect end users to the applicant's website, where they can consult a database of job advertisements, be interpreted as falling within the definition of 're-utilisation' in Article 7(2)(b) of the Directive Directive 96/9/EC and also whether the information containing meta tags that is shown in the defendant's search engine should be interpreted as falling within the definition of 'extraction' in Article 7(2)(a) of the Directive Directive 96/9/EC.</p> <p>AG M. Szpunar stated in his opinion that a search engine which copies and indexes the whole or a substantial part of databases which are freely accessible on the Internet and then allows its users to carry out searches in those databases effects an extraction and a reutilisation of those contents. He also underlined that the maker of a database is entitled to prevent the extraction or the reutilisation of the whole or a substantial part of the contents of that database only on condition that such extraction or reutilisation adversely affects its investment in obtaining, verifying or presenting those contents."</p>	Yes



IP	"C-466/20 HEITEC"	25/09/2020	<p>"The first question to be answered by the Court is whether measures precluding acquiescence can include not only an administrative action or court action, but also conduct not involving a court or administrative authority.</p> <p>We will also have clarification on whether the issuing of a warning letter, in which the proprietor of the earlier sign, before initiating legal proceedings, requires the proprietor of the later sign to refrain from using the sign and to enter into an obligation to pay a contractual penalty in the event of an infringement, and threatens to commence legal proceedings if such an agreement cannot be reached, constitutes conduct excluding acquiescence.</p> <p>Additionally, the Court will shed some light on the moment of 'initiating of an action', which is decisive for the five-year acquiescence period, as well as answer which of the entitled party's claims are caught by the limitation of rights."</p>	No
Tele-communications	"C-793/19 SpaceNet"	29/10/2019	<p>It is for the CJEU to ascertain in this case if German data retention law is in line with the GDPR. SpaceNet, which is a German Internet provider, sued the Federal Republic of Germany seeking a judgment relieving it from an obligation to store telecommunications traffic data of its clients. German Telecommunications law requires phone and Internet providers to store data on their clients to aid in law enforcement investigations. SpaceNet argues that such provisions are contrary to the GDPR, in particular the principle that any person other than the users is prohibited from storing, without the consent of the user concerned, the traffic data related to electronic communications. It also raises an argument that such storing does not comply with the requirement under Article 6 of the GDPR that the processing and storage of traffic data are permitted only to the extent necessary and for the duration necessary for the billing and marketing of services and the provision of value added services.</p>	No
	"C-5/20 Vodafone"	07/01/2020	<p>"This ruling will answer the question of whether art. 3(1) of the TSM regulation means that the end-user's right to use terminal equipment of their choice via their internet access service also includes the right to use that internet access service from other terminal equipment (via tethering).</p> <p>If the above question is interpreted positively, we will also get clarification on whether under art. 3(1) and (2) that will constitute an impermissible limitation of the end-user's choice of terminal equipment, seeing as tethering, unlike regular data volumes, is not covered by a zero-cost tariff, but instead offset against a basic volume and calculated separately in the event the basic volume is exceeded."</p>	No

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