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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 22 June 2021 (requests for a preliminary ruling from the Bundesgerichtshof — Germany) — Frank Peterson v Google LLC, YouTube LLC, YouTube Inc., Google Germany GmbH (C-682/18) and Elsevier Inc. v Cyando AG (C-683/18)

(Joined Cases C-682/18 and C-683/18) ⁽¹⁾

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights — Making available and management of a video-sharing platform or a file hosting and -sharing platform — Liability of the operator for infringements of intellectual property rights by users of its platform — Directive 2001/29/EC — Article 3 and Article 8(3) — Concept of ‘communication to the public’ — Directive 2000/31/EC — Articles 14 and 15 — Conditions for exemption from liability — No knowledge of specific infringements — Notification of such infringements as a condition for obtaining an injunction)

(2021/C 320/02)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellants: Frank Peterson (C-682/18), Elsevier Inc. (C-683/18)

Respondents: Google LLC, YouTube LLC, YouTube Inc., Google Germany GmbH (C-682/18), Cyando AG (C-683/18)

Operative part of the judgment

1. Article 3(1) 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 must be interpreted as meaning that the operator of a video-sharing platform or a file-hosting and -sharing platform, on which users can illegally make protected content available to the public, does not make a ‘communication to the public’ of that content, within the meaning of that provision, unless it contributes, beyond merely making that platform available, to giving access to such content to the public in breach of copyright. That is the case, inter alia, where that operator has specific knowledge that protected content is available illegally on its platform and refrains from expeditiously deleting it or blocking access to it, or where that operator, despite the fact that it knows or ought to know, in a general sense, that users of its platform are making protected content available to the public illegally via its platform, refrains from putting in place the appropriate technological measures that can be expected from a reasonably diligent operator in its situation in order to counter credibly and effectively copyright infringements on that platform, or where that operator participates in selecting protected content illegally communicated to the public, provides tools on its platform specifically intended for the illegal sharing of such content or knowingly promotes such sharing, which may be attested by the fact that that operator has adopted a financial model that encourages users of its platform illegally to communicate protected content to the public via that platform.

2. Article 14(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') must be interpreted as meaning that the activity of the operator of a video-sharing platform or a file-hosting and -sharing platform falls within the scope of that provision, provided that that operator does not play an active role of such a kind as to give it knowledge of or control over the content uploaded to its platform.

Article 14(1)(a) of Directive 2000/31 must be interpreted as meaning that, for such an operator to be excluded, under that provision, from the exemption from liability provided for in Article 14(1), it must have knowledge of or awareness of specific illegal acts committed by its users relating to protected content that was uploaded to its platform.

3. Article 8(3) of Directive 2001/29 must be interpreted as not precluding a situation under national law whereby a copyright holder or the holder of a related right may not obtain an injunction against an intermediary whose service has been used by a third party to infringe his or her right, that intermediary having had no knowledge or awareness of that infringement, within the meaning of Article 14(1)(a) of Directive 2000/31, unless, before court proceedings are commenced, that infringement has first been notified to that intermediary and the latter has failed to intervene expeditiously in order to remove the content in question or to block access to it and to ensure that such infringements do not recur. It is, however, for the national courts to satisfy themselves, when applying such a condition, that that condition does not result in the actual cessation of the infringement being delayed in such a way as to cause disproportionate damage to the rightholder.

(¹) OJ C 82, 4.3.2019.

Judgment of the Court (Grand Chamber) of 22 June 2021 (request for a preliminary ruling from the Satversmes tiesa — Latvia) — Proceedings brought by B

(Case C-439/19) (¹)

(Reference for a preliminary ruling — Protection of natural persons with regard to the processing of personal data — Regulation (EU) 2016/679 — Articles 5, 6 and 10 — National legislation providing for public access to personal data relating to penalty points imposed for road traffic offences — Lawfulness — Concept of 'personal data relating to criminal convictions and offences' — Disclosure for the purpose of improving road safety — Right of public access to official documents — Freedom of information — Reconciliation with the fundamental rights to respect for private life and to the protection of personal data — Re-use of data — Article 267 TFEU — Temporal effect of a preliminary ruling — Ability of a constitutional court of a Member State to maintain the legal effects of national legislation incompatible with EU law — Principles of primacy of EU law and of legal certainty)

(2021/C 320/03)

Language of the case: Latvian

Referring court

Satversmes tiesa

Parties to the main proceedings

Applicant: B

Other party: Latvijas Republikas Saeima