

## Legal News – EU | German law

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### Liability of the owner of an internet connection used for copyright infringements

[Court of Justice of the European Union, Judgment of du 18 October 2018, Bastei Lübbe GmbH & Co. KG / Michael Strotzer, Case C-149/17](#)

There is no fair balance between 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, 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, rightholders must have at their disposal another effective remedy, for example, by which, in such a situation, the owner of the internet connection in question could be held liable in tort.

*EU Law precludes “national legislation, such as that at issue in the main proceedings, under which, as interpreted by the relevant national courts, 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.”*

- German law in question

Paragraph 97 of the Law on copyright and related rights (Gesetz über Urheberrecht und verwandte Schutzrechte — Urheberrechtsgesetz) of 9 September 1965, as amended by Law of 1 October 2013:

“1. Any person who unlawfully infringes copyright or any other right protected under this Law may be the subject of an action by the injured party for an injunction ordering the removal of the infringement or, where there is a risk of recurrence, for an injunction prohibiting any further commission of the infringement. The right to seek a prohibitory injunction shall exist even when the risk of infringement arises for the first time.

2. Any person who intentionally or negligently performs such an act shall be obliged to make good the damage arising from it. In the determination of damages, any profit obtained by the infringer as a result of the infringement of the right may also be taken into account. Entitlement to damages may also be assessed on the basis of the amount the infringer would have had to pay in equitable remuneration if the infringer had requested authorisation to use the right infringed. Authors, writers of scientific editions (Paragraph 70), photographers (Paragraph 72) and performing artists (Paragraph 73) may also seek monetary compensation for damage which is non-pecuniary in nature, provided and to the extent that this is equitable.”

According to the case-law of the Federal Court of Justice (Bundesgerichtshof), as interpreted by the referring court, it is for the applicant to allege and prove the infringement of copyright.

The Federal Court of Justice) considers, moreover, that the owner of an internet connection is presumed to have committed such an infringement, provided that no other person was able to use the internet connection at the time of the infringement.

However, if the internet connection was not sufficiently secure or was knowingly made available to other persons, then the owner of that connection is not presumed to have committed the infringement.

- **Questions to the Court for a preliminary ruling of the Regional Court, Munich I, Germany (Landgericht München I)**

1) Should Article 8(1) and (2), in conjunction with Article 3(1), of Directive 2001/29/EC be interpreted as meaning that “effective and dissuasive sanctions” for infringements of the right to make works available to the public are still provided for even when the owner of an internet connection used for copyright infringements through file-sharing is excluded from liability to pay damages if the owner of that internet connection can name at least one family member who, besides him or her, might have had access to that internet connection, without providing further details, established through appropriate investigations, as to when and how the internet was used by that family member?

2) Should Article 3(2) of Directive 2004/48/EC be interpreted as meaning that “effective” measures for the enforcement of intellectual property rights are still provided for even when the owner of an internet connection used for copyright infringements through file-sharing is excluded from liability to pay damages if the owner of that internet connection can name at least one family member who, besides him or her, might have had access to that internet connection, without providing further details, established through appropriate investigations, as to when and how the internet was used by that family member?