



YouTube e' obbligata a indicare email e ip di chi carica contenuti senza autorizzazione ?

di Valentino Spataro

Una causa pilota, ecco le conclusioni dell'avvocato generale che potrebbero anche essere ribaltate
del 2020-04-03 su [Civile.it](https://www.civile.it), oggi e' il 17.04.2024

CONCLUSIONI DELL'AVVOCATO GENERALE

HENRIK SAUGMANDSGAARD ÅE

presentate il 2 aprile 2020 (1)

Causa C-264/19

Constantin Film Verleih GmbH

contro

YouTube LLC,

Google Inc.

[domanda di pronuncia pregiudiziale proposta dal Bundesgerichtshof (Corte federale di giustizia, Germania)]

Â«Rinvio pregiudiziale Â€ Diritto d'autore e diritti connessi Â€ Piattaforma di condivisione di video su Internet Â€ YouTube Â€ Pubblicazione online di un film senza il consenso del titolare Â€ Azione relativa ad una violazione di un diritto di propriet  intellettuale Â€ Direttiva 2004/48/CE Â€ Articolo 8 Â€ Diritto d'informazione del titolare Â€ Articolo 8, paragrafo 2, lettera a) Â€ Nozione di 'nome e indirizzo' Â€ Portata Â€ Indirizzo di posta elettronica, indirizzo IP e numero di telefono Â€ EsclusioneÂ»

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IV. Analysis

24. Under Article 8 of Directive 2004/48, Member States are obliged to provide, in their legal order, for the possibility, for the competent judicial authorities, to order that certain information be provided in the context of proceedings concerning an infringement of an intellectual property right.

25. Accordingly, by its two questions, which it is appropriate to examine together, the referring court asks whether Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the Member States are obliged to provide for the possibility, for the competent judicial authorities, to order, in respect of a user who has uploaded files which infringe an intellectual property right, that the email address, the telephone number, the IP address used to upload those files and the IP address used when the user's account was last accessed be provided.

...

43. In my view, to adopt that interpretation would be tantamount to the Court rewriting that provision. I understand of course that a rightholder such as Constantin Film Verleih would like Directive 2004/48 to be amended to enable it to identify possible infringers more easily in the specific context of the internet. However, rewriting that legislation falls not to the Court, but to the EU legislature.

...

That institution rightly states that a dynamic interpretation of that kind is not appropriate in the present case since, under Article 8(3)(a) of Directive 2004/48, the EU legislature expressly provided for the possibility for the Member States to address that dynamic concern by granting rightholders 'rights to receive fuller information'.

62. In other words, a dynamic interpretation of Directive 2004/48 by the EU Courts, in order to bring it into line with new behaviour on the internet, is not necessary since the Member States have the power to adopt additional measures targeting that behaviour.

63. For the sake of completeness, I would point out, lastly, that Article 47 of the TRIPS Agreement, (21) which establishes a mere ability to provide for a right to information, cannot be relied on in support of the interpretation proposed by Constantin Film Verleih. (22)

64. For all of those reasons, I consider that Article 8(2)(a) of Directive 2004/48 must be interpreted as meaning that the concept of 'names and addresses' set out in that provision does not cover, in respect of a user who has uploaded files which infringe intellectual property rights, the email address, the telephone number, the IP address used to upload those files or the IP address used when the user's account was last accessed.

65. Accordingly, the Member States are not obliged, under that provision, to provide for the possibility, for the competent judicial authorities, to order that that information be provided in the context of proceedings concerning an infringement of an intellectual property right.

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=224899&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1>
- Curia

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