



## FLASH NEWS

3/20

# MONITORING OF PRELIMINARY RULINGS

## OVERVIEW OF THE MONTHS OF APRIL AND MAY 2020



### Germany – Federal Court of Justice

[Planet49 judgment, [C-673/17](#)]

#### **Protection of personal data - Consent to processing by means of a default tick box - Cookies**

In a dispute concerning online games, the Federal Court of Justice ruled in particular on the conditions to which the installation of cookies on the terminal equipment of the users of a website is subject. In particular, it held that a user's consent in this regard is not validly given when the storage of information or access to information already stored in the user's terminal equipment, through the use of cookies, is authorised by means of a default check box which that user must uncheck in order to refuse to give his or her consent.

*Bundesgerichtshof, judgment of 25/05/2020, VI ZR 252/19 (DE)*  
[Press release \(DE\)](#)



### Germany – Federal Court of Justice

[Pelham et al. judgment, [C-476/17](#)]

#### **Copyright and related rights - Reproduction rights - Sampling**

A dispute was brought before the Federal Court of Justice concerning the removal, within the framework of the recording of a musical title, of a rhythmic sequence of approximately two seconds from a phonogram of the group Kraftwerk. The Court held in particular that, in accordance with the criteria laid down by the Court of Justice, there was an infringement of the reproduction right enjoyed by the producer of the phonogram under Directive 2001/29/EC, since the sequence in question was recognisable when listened to and no exception or limitation to that right provided for by that Directive could be relied on in the present case. The case was referred back to the appellate court to make the factual findings necessary for the assessment of such an infringement.

*Bundesgerichtshof, judgment of 30/04/2020, I ZR 115/16 (DE)*  
[Press release \(DE\)](#)



### Germany – Federal Court of Justice

[Funke Medien NRW judgment, [C-469/17](#)]

#### **Copyright and related rights - Reproduction rights - Use of works for the purpose of reporting current events**

In a dispute between the Federal Republic of Germany and the operator of the Internet portal of a German daily newspaper, the Federal Court of Justice ruled that the publication by the press of classified military situation reports on interventions by the German armed forces, drawn up by the government for the purpose of restricted distribution, could not be prohibited on the basis of copyright. Without deciding whether such reports could be protected as "literary works" under that right, it considered that their dissemination by the press was permissible, as it was proportionate, in that its purpose was to report on current events.

*Bundesgerichtshof, judgment of 30/04/2020, I ZR 139/15 (not yet available)*  
[Press release \(DE\)](#)

[Spiegel Online judgment, [C-516/17](#)]

This decision stems from a dispute between the operator of an information portal on the Internet and a German Member of Parliament. In the present case, the Federal Court of Justice ruled that the latter could not object, on the basis of copyright, to the publication, in the context of an article appearing on this portal, of certain documents, with sensitive and controversial content, which he had previously written. In view of the fact that the article in question dealt with the current position of the person concerned with regard to the documents in question in an electoral context, it considered that such a publication was permissible, as it was proportionate, in that it sought to report on current events.

*Bundesgerichtshof, judgment of 30/04/2020, I ZR 228/15 (not yet available)*  
[Press release \(DE\)](#)



## Croatia – Supreme Court

[I.N. judgment, [C-897/19 PPU](#) (GC)]

***EEA Agreement - Agreement between the Union, Iceland and Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway - Extradition of an Icelandic national to a third State***

Agreeing with the Court's reasoning in judgment C-897/19 PPU, handed down following the first reference for a preliminary ruling by the Supreme Court, the latter decided to annul the order of the court of first instance allowing the extradition of an Icelandic national to Russia and referred the case back to the court for reopening of the proceedings and a new decision.

In this respect, the Supreme Court ordered the said court to inform Iceland urgently of the existence of the request for extradition to Russia, in order to enable it to request the surrender of its national and, if necessary, to accede to that request. It also enjoined the court to rule on the extradition request as a matter of urgency, after verifying that it would not infringe the rights referred to in Article 19 of the Charter.

Vrhovni sud, [order of 20/04/2020, I Kž 528/2019-16 \(HR\)](#)

The Research and Documentation Directorate's intranet site lists all the analyses of follow-up decisions received and processed by the Directorate since 1 January 2000, classified by year according to the date on which the case was brought before the Court. All the analyses drawn up in the context of the follow-up to preliminary rulings are also available, in particular via the internal portal, under each preliminary ruling, under the heading 'Litigation at national level', and on Eureka, under the source 'Analyses', under the heading 'National decision'.