



# Copyright Enforcement in Germany

18<sup>th</sup> Annual US-EU-DE Copyright Summit

October 22<sup>nd</sup>, 2020

**Mirko Brüß**

German attorney-at-law  
Content Protection Coordinator



**MPA**

EMEA

# Constantin / YouTube – CJEU and German FCJ

## The case:

- Constantin found full copies of several movies on YouTube
- YouTube was asked for disclosure of information about:
  - the name, postal address, email address, telephone number and IP address of the uploader(s)
- YouTube disclosed the „names“ of its users:
  - „wholeMovies4u“, „Ultrafield“ and „schwermax“

# Constantin / YouTube – CJEU and German FCJ

## The law:

- Art. 8 Enforcement Directive (2004/48/EC) = Right of information
  - Transposed in Germany in § 101 UrhG
- Grants a ROI against intermediaries to obtain the „*names and addresses*“ of infringers

# Constantin / YouTube – CJEU and German FCJ

## The questions:

- What is covered by Article 8 Enforcement-Directive and § 101 UrhG?
- Does the term „addresses“ include
  - the email address?
  - the telephone number?
  - the IP address?

# Constantin / YouTube – CJEU and German FCJ

## **The CJEU's position (C-264/19):**

- The term „addresses“ only refers to the postal address
- EU chose to provide for minimum harmonisation
- Member states have option to provide for broader ROI

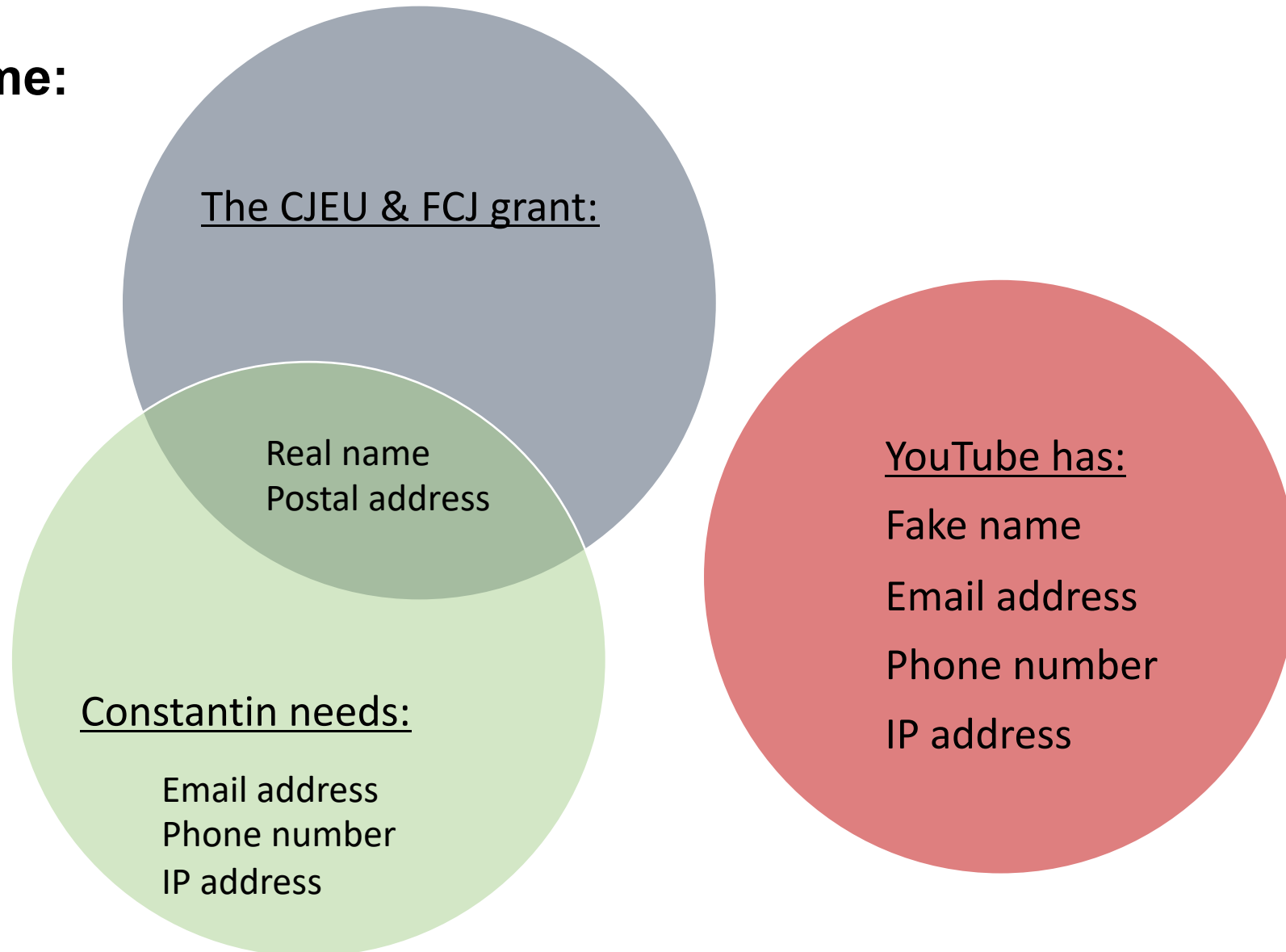
# Constantin / YouTube – CJEU and German FCJ

## **Back to the FCJ (I ZR 153/17):**

- FCJ sided with CJEU
- Found that German legislator chose to provide for minimum harmonisation
- No other grounds for ROI available, as § 101 UrhG = *lex specialis*

# Constantin / YouTube – CJEU and German FCJ

## The outcome:



# Constantin / YouTube – CJEU and German FCJ

## Going forward:

- Current status does not provide for an effective remedy
  - Rightsowners cannot act upon infringement
- Level of harmonisation too low
  - Different scope of ROI in all Member States
- Real name and postal address regularly unavailable or false
  - KY(B)C
- German legislator must act
  - Provide for more complete ROI in national law





ALLIANCE FOR  
**Creativity and  
Entertainment**

**Thanks for your attention!**

**Mirko Brüß**

mirko@bruess.law



**MPA**

EMEA