

# AG Backs Softening of Data Retention Jurisprudence for Internet Infringements

## News

Thomas Wahl

On 28 September 2023, First [Advocate General \(AG\) Szpunar](#) confirms his [viewpoint](#) that the retention of and access to civil identity data linked to the IP address used is to be permitted if this data represents the only clue for establishing the identity of persons who have committed copyright infringements exclusively on the internet. This opinion clarifies certain aspects of a previous opinion delivered in October 2022 (→ [eucrim 3/2022, 190-191](#)) in the context of the preliminary ruling in the case *La Quadrature du Net - lutte contre la contrefaçon* (C-470/21). The second opinion follows the reopening of the oral proceedings before the CJEU.

According to the AG, Union law does not prevent this, even if there is no prior control by a court or an independent administrative body. IP addresses do not make it possible to determine the civil identity of the owner of an internet access and the information about the work in question does not allow any conclusions to be drawn about the private life of the persons. This is not a departure from previous case law, but a “pragmatic development” that prevents “systemic impunity of offences committed exclusively online”; it also takes sufficient account of the conflicting interests in accordance with the principle of proportionality, the AG points out.

Thus, the AG recommends the ECJ providing a “nuanced solution” regarding the exception of the prohibition of the general and indiscriminate data retention, which has been confirmed several times by the ECJ (cf. *Joined Cases C-511/18, C-512/18 and C-520/18, La Quadrature du Net and Others* → [eucrim 3/2020, 184-186](#) and *Joined Cases C-793/19 and C-794/19, SpaceNet and Telekom Deutschland* → [eucrim 3/2022, 188-189](#)).

The case refers to practice by the *Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet* (High Authority for the dissemination of works and the protection of rights on the internet – Hadopi) which requests civil identity data from electronic communications operators in order to tackle infringements of property rights on the internet. Various NGOs questioned this procedure and filed lawsuits in French courts. The case is currently one of the most important cases before the CJEU: it was referred from the Grand Chamber to the Full Court.

### AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

---

Published in  
2023, Vol. 18(2) [eucrim](#) p 150  
ISSN: 1862-6947  
<https://eucrim.eu>

---



---

## About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to [eucrim-subscribe@csl.mpg.de](mailto:eucrim-subscribe@csl.mpg.de) to receive alerts for new releases of issues.

The project is co-financed by the **Union Anti-Fraud Programme (UAFP)**, managed by the **European Anti-Fraud Office (OLAF)**.



**Co-funded by  
the European Union**