

Translation of Court Order of Regional Court of Bonn of 16 July 2018

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Docket no. 10 O 171/18



Regional Court of Bonn

Court Order

In the preliminary injunction proceedings

of Internet Corporation for Assigned Names and Numbers, 12025 Waterfront Drive, Suite 300, Los Angeles, CA 90094-2536, USA,

Applicant,

Attorneys of record: JONES DAY Rechtsanwälte, Breite Straße 69,
40213 Düsseldorf

versus

EPAG Domainservices GmbH, represented by its managing director, [REDACTED]
[REDACTED]

Defendant,

Attorneys of record: Attorneys Rickert
Rechtsanwaltsgesellschaft mbH, Kaiserplatz 7-9,
53113 Bonn,

Fieldfisher Germany LLP, [REDACTED]
[REDACTED]

On July 16, 2018,

the 10th Civil Chamber of the Regional Court of Bonn

through presiding judge at the Regional Court [REDACTED] Judge at the Regional Court

[REDACTED] and Judge at the Regional Court [REDACTED]

ordered:

The Applicant's immediate appeal of 13 June 2018 against the decision of the Chamber of 29 May 2018 will not be remedied and the case will be referred for a decision to the Higher Regional Court of Cologne as the court of appeal.

Justification:

Given the reasons set forth in the appeal, there was no basis to grant relief, either in view of the original (main) application or in view of the now submitted alternative application.

I.

The fact that - which is in dispute between the parties – the option to deposit contact data also for the so-called Admin-C and Tech-C is technically no longer provided by the Defendant, insofar even a voluntary provision by the registrant is currently not possible, does not lead to a change of the Chamber's interpretation of the law according to the contested decision of 29 May 2018.

Insofar as the Applicant with its original (main) application demands substantively a continuation of the Defendant's previous practice, according to which it enabled the registrant to refer to third parties as Tech-C and Admin-C by providing a corresponding input option, this proves impermissible under data protection law. Because verification of consent of third parties indicated under the categories Tech-C and Admin-C - different from the registrant's personal data - and verification of actual authorization for the collection of their data did not take place and could technically not have taken place within the framework of the registration process described. Thus, in terms of data protection law this practice had to be measured against the general justifications for storing and processing data. However, the Chamber does still not see the necessity to collect personal data for the additional categories Tech-C and Admin-C. It is true, that from an abstract perspective a larger amount of data naturally also offers wider possibilities to acquire information for the storing entity. However, the fact that the contact data for the Admin-C and Tech-C categories was also in the past always collected on a voluntary basis, since the registrant was able but not required to make entries here, e.g., to provide his own data under these categories, makes it clear that these additional data, the future collection of which the Applicant also requires from the Defendant, are not necessary. If an input was

(and would continue to be) purely optional in this respect, the Applicant may also not claim any "necessity" for the purposes brought forward by it.

Insofar as the Applicant now (also) attempts to justify the necessity of storing the data of third parties in the Admin-C and Tech-C categories with the corresponding needs of the registrant itself, these are not in any case of decisive importance for the legal relationship between the Applicant and the Defendant. Nor does the Chamber have any idea to what extent the right of delegation of the registrant, brought forward by the Applicant in this respect, should be affected. The registrant may use third parties for the technical and administrative administration of its domain as in former times, without their lack of registration having a detrimental effect on this. The fact that these support persons due to the absence of their contact details cannot be contacted directly by the Defendant as registrar affects in no way the legal position of the registrant. If necessary, the registrant's additional organizational effort is limited to merely forwarding notifications by the Defendant addressed to the registrant to the support persons employed by the registrant for the technical or administrative area.

II.

Insofar as the Applicant now asserts that the Defendant is responsible, on the basis of the contract concluded between the parties, to collect contact data for the so-called Admin-C and Tech-C based on consent or in case no personal data is involved, this should, in the view of the Chamber, be correct. However, the alternative application submitted by the Applicant in the immediate appeal is inadmissible because it does not have an enforceable content. The application is too vague to determine how consent is to be secured or recorded in the registration process in the future and what specific action is therefore requested from the Applicant [sic!].

In any case, the Defendant's previous registration practice is in this respect not suited to collect, store and process data in a way that complies with data protection law, in particular because the Defendant in the context of the existing registration process cannot verify whether the registrant has received the consent of the third party. Even if the registrant had to make such a declaration at the time of registration, the Defendant, as the storage and processing entity, should not automatically rely on this. In this respect, it is also not sufficient for the Defendant to subsequently check that unauthorized contact data could be sorted out under the categories Tech-C and Admin-C. Rather, the Defendant may only store and process the correspondingly recorded data - even for a possibly short interim period - if the Defendant has obtained the consent of the natural person concerned.

The same concerns apply to the second dimension of the alternative application insofar as this application addresses cases where, exceptionally, the data collected under the Admin-C or Tech-C categories are not personal data, but rather those of a legal person on which the registrant conferred the technical or administrative management of the domain concerned. Here, too, it would naturally only be possible to carry out a subsequent check by the Defendant. The question of whether personal data are involved can always only be assessed after the registrant has already made corresponding data entries.



Certified

Clerk of the court

Regional Court of Bonn

[Seal of the Regional Court of Bonn]