

# **EUIPO's Data – Online publication and access to judgments (national and Union courts) – Practice**

## **1. Online publication and access to judgments (national and Union Courts) – Practice**

This note refers to the online publication and access to court judgments, compilation undertaken by the EUIPO, as established under Article 113(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (“EUTMR”).

The note is based on the EDPS response to the consultation sent by the Office's DPO, on the same subject of online publication of court judgments, as received on 13/05/2016.

Accordingly, the goal of the present note is to provide guidance on the practical implementation of the legal strategy employed (e.g. the online publication of judgments).

## **2. Background on legal issues relating to online publication of court judgments**

Following the recommendation received by the EDPS, as a result of a complaint (Case 2011-0009), and which was made in view of the lack of a clear legal basis for the publication on EUIPO's website of judgments of national courts in infringement cases, the Office has established the practice of anonymising all the personal data in these judgments.

However, the EUTMR introduced Article 113(2) on “Online access to decisions”, which expressly allows the Office to “provide online access to judgments of national and Union courts related to its tasks in order to raise public awareness of IP matters and promote convergence of practices”. It further stipulates that “the Office shall respect the conditions of the initial publication with regard to personal data”.

The above amendments gave rise to the [DPO formal consultation before the EDPS \(dated 17/12/2015\), relating to EUIPO's online publication of court judgments matter](#).

The consultation defined the following legal issue:

“In the view of the EDPS, does this provision mean that OHIM does no longer have to systematically anonymize all the national court judgments received from the national IP offices before publishing them in OHIM's website, but only have to ensure that they are published in the same conditions as in their initial publication with regard to personal data?”

The above consultation was [replied by the EDPS](#) on 13 May 2016. In its response, the EDPS recommended “a careful balancing test between the interests of transparency at stake (*i.e.* the purposes pursued by the publication) and the protection of the privacy and personal data of individuals.” and expressed various concerns.

Nevertheless, the EDPS left the final decision under the discretion of the Office, having in mind to which extent will the publication of personal data contained in the judgments of the national and EU courts be relevant and necessary for achieving the EUIPO objectives, *i.e.*, to raise the public awareness of intellectual property matters and promote convergence of practices.

## **3. Way forward on online publication of court judgments**

Having considered the above legal matter and other criteria, the Data Protection Office considers that, in the presence of clear legal basis for the online publication of judgments of national and Union courts, as established by the new Regulation, and taking into consideration the interest of the concerned individuals, the EUIPO could make available the judgments in the manner they were initially published at national and EU level, without applying any changes to the data contained (*i.e.* the personal data).

Firstly, the DPO agrees with the EDPS' approach as regards due verification by the EUIPO, prior to the online publication, of where/when the publication of court judgments occurred at first and under

which conditions (such as anonymity or not).

Therefore, the DPO recommended that preliminary measures are taken to ensure that the judgments are to be published under the same conditions as first made public from the court.

Furthermore, it should be noted that the anonymisation of the personal data contained in the judgments to be published requires a considerable effort by the EUIPO, which is not to be ignored when deciding upon the approach to anonymisation.

Finally, in order to ensure taking into consideration the interests of the individuals concerned, the DPO suggested ensuring that any party to the proceedings that led to the rendering of the judgments might request the removal of any personal data included in the judgments. This is clearly established by the Regulation in respect to the decisions of the Office (Article 113(1) EUTMR) and can be safely applied *mutatis mutandis*, in as much as the judgments of the national and Union courts are concerned. It is furthermore in line with the “right to be forgotten” approach, which the EU courts currently support.

Moreover, it should be noted that the Office also offers machine translation on its website which is currently available for the decisions of the Boards of Appeal. Judgments of the General Court and of the European Court of Justice are planned to be in scope in the short term. This implies that the right to request the deletion of personal data should be applied to automatic translations of judgments as well.<sup>1</sup>

In conclusion, considering the risks, safeguards and benefits above, the DP Office takes the view that the balance of interests lies in disclosing the judgments of the national and EU courts and publishing them online in the form they are received from the respective national and EU authorities, i.e., respecting the conditions of the initial publication, including personal data. Notwithstanding, the parties concerned are always to be allowed to request a deletion of any personal data from the judgments published.

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<sup>1</sup> Starting in 2018, with the aim of offering our customers, in particular SMEs in the EU, access to relevant IP information in their own language, in collaboration with the European Commission, the Office will provide an automatic translation service for IP related judgments of the General Court, the Court of Justice and the decisions of the Boards of Appeal through the eSearch Case Law application. In this context, the machine translation technology (MT) for eSearch Case Law is now available for BoA decisions only. In the short term, first instance decisions and ECJ judgments will also be in scope.