

# Piracy Liability Dispute Between Universal Music and Cloudflare Reaches EU's Highest Court

November 21, 2025 by **Ernesto Van der Sar**

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*A legal battle that began over a Sarah Connor album posted on a German pirate site has escalated into a landmark case that will shape EU copyright law. The lawsuit between Universal Music and Cloudflare has reached the highest German court, which recently asked the EU's top court to step in. At stake is the legal definition of "temporary caching" and whether CDNs face the same liability risks as content platforms.*

Pirate sites have proven to be quite a headache for Cloudflare and have landed the San Francisco-based tech company in court on several occasions.

These legal battles include a case in Germany, where the local branch of Universal Music sued Cloudflare for offering its services to pirate site DDL-Music.

The origins of this case date back to June 2019, when the German branch of Universal Music sent a copyright infringement notice to Cloudflare, listing DDL-Music links, which in



turn linked to third-party sites that hosted tracks from [Sarah Connor](#).

The lawsuit didn't make any headlines, at least not initially. But when Cloudflare [displayed an 'Error 451'](#) to DDL-Music users in early 2020, it was clear that something was up. Error 451 is still relatively rare and typically reserved for cases where content has been made inaccessible for legal reasons.

In this case, Universal had obtained a [preliminary injunction](#) against Cloudflare that required the company to stop providing its CDN services to the pirate site. Failure to comply could've invoked a fine of up to 250,000 euros or even a six-month prison sentence for Cloudflare's managing director.

Cloudflare was disappointed with the outcome and decided to appeal. The case eventually made its way to the Cologne Higher Regional Court, which [largely confirmed](#) the liability finding in 2023. That was another setback for Cloudflare which appealed to Germany's highest court.

## High Stakes, Highest Courts

The Federal Court of Justice (Bundesgerichtshof) took on the appeal in what has become a landmark case. The Court's ruling is expected to be leading when it comes to the liability of CDN services for the copyright-infringing actions of customers.

Realizing the potential for broad repercussions, Germany's highest court is actively seeking advice from the EU's highest judicial body: the Court of Justice of the European Union (CJEU).

Specifically, it asks the EU's top court to provide guidance on two key questions that affect the potential liability of linking sites and CDN providers.

The questions were formally submitted earlier this year and were posted in the [Official Journal](#) of the European Union this week.

*The referred questions*

**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 6 August 2025 –  
Cloudflare Inc. v Universal Music GmbH**

**(Case C-534/25, Cloudflare)**

(C/2025/5938)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Defendant and appellant in the appeal on a point of law:* Cloudflare Inc.

*Applicant and respondent in the appeal on a point of law:* Universal Music GmbH

**Questions referred**

1. Can an act of making a phonogram available to the public within the meaning of Article 3(2)(b) of Directive 2001/29/EC <sup>(1)</sup> be carried out only by persons in whose own access sphere the protected recording is located? Or can such an act of making a phonogram available to the public be carried out by posting a hyperlink – and, if so, under what conditions?
2. Are the criteria developed by the Court of Justice of the European Union as regards an act of communication to the public, pursuant to Article 3(1) of Directive 2001/29/EC, by the operator of a video-sharing platform or share-hosting platform to be applied also when assessing the question of whether the operator of a content delivery network, who may be exempted from liability pursuant to Article 13(1) of Directive 2000/31/EC <sup>(2)</sup> or Article 5(1) of Regulation (EU) 2022/2065, <sup>(3)</sup> has carried out its own separate act of making available to the public pursuant to Article 3(2) of Directive 2001/29/EC? If the foregoing question is answered in the negative: What criteria are to be applied for the purposes of determining whether the operator of a content delivery network carries out its own separate act of making available to the public?

## Q1: Storing vs. Linking?

The German questions were translated into English and other languages, but not in a way that they are easy to grasp for the public.

**Question 1:** Can an act of making a phonogram available to the public within the meaning of Article 3(2)(b) of Directive 2001/29/EC <sup>(1)</sup> be carried out only by persons in whose own access sphere the protected recording is located? Or can such an act of making a phonogram available to the public be carried out by posting a hyperlink – and, if so, under what conditions?

The first question touches on the linking vs. hosting argument that's common in piracy disputes. In this case, DDL-Music did not host the music files itself. Instead, it provided links to third-party cyberlockers like Nitroflare.

The German judges seem conflicted about the definition of copyright infringement when it comes to linking.

Generally speaking, the German Federal Court operates under the assumption that to “make a work available” to the public, the infringer must have control over the file within their own “access sphere” (e.g. their website/server).

However, there are also EU rulings that found linking [can sometimes](#) constitute a “communication to the public” and the German court asks the CJEU to clarify: Can a site operator be liable for “making a phonogram available” if they simply hyperlink to it?

## Q2: Hosting or Caching?

The second question is arguably even more complex and harder to grasp. Not just due to the legal jargon, but also because of the implications concerning the liability of CDN providers.

**Question 2:** Are the criteria developed by the Court of Justice of the European Union as regards an act of communication to the public, pursuant to Article 3(1) of Directive 2001/29/EC, by the operator of a video-sharing platform or share-hosting platform to be applied also when assessing the question of whether the operator of a content delivery network, who may be exempted from liability pursuant to Article 13(1) of Directive 2000/31/EC (2) or Article 5(1) of Regulation (EU) 2022/2065, (3) has carried out its own separate act of making available to the public pursuant to Article 3(2) of Directive 2001/29/EC? If the foregoing question is answered in the negative: What criteria are to be applied for the purposes of determining whether the operator of a content delivery network carries out its own separate act of making available to the public?

With the second question, Germany’s Federal Court seeks clarification on the legal status of Cloudflare’s CDN infrastructure. It effectively asks if it classifies as a hosting provider or a caching service.

Cloudflare sees its CDN mostly as a caching service, which operates as a neutral intermediary that should not be liable for the bits that it passes on. Universal Music,

however, disagreed and pointed out that some files are cached by Cloudflare for up to a year.

If Cloudflare is seen as a hosting service, Germany's Federal Court would like to know if the liability criteria previously determined in the [landmark YouTube vs. Cyando](#) case also apply here.

In that matter the CJEU ruled that platforms such as YouTube are not liable for pirated content uploaded to their service. Liability only comes into play if a service actively and deliberately contributes to the infringement.

Finally, if the YouTube standards don't apply, the German court wants to know exactly what criteria should be used to determine if a CDN is directly liable for the pirated content it delivers.

## Going forward

The questions are now in the hands of the CJEU, which is expected to share its view on the matter next year. Given the stakes involved, the matter will be followed closely by Internet infrastructure providers and rightsholders alike.

The final verdict is also expected to provide more insight into a technical debate regarding ["Time to Live" \(TTL\)](#) caching settings.

In its referral order, the German court noted that while Cloudflare's servers could theoretically cache a file for a year or longer, this doesn't necessarily mean the company has abandoned its role as a neutral intermediary.

The German judges appear open to the idea that "temporary" storage shouldn't be measured in time, but by its function. If a file is stored for a long time purely to improve loading times or security, it might still qualify as "caching" rather than "hosting".

However, if the CJEU decides that long-term storage is indeed active hosting, Cloudflare could lose its liability shield. This would effectively require CDN services to make sure that

content hosted (or linked) by customers is rendered inaccessible when rightsholders complain.

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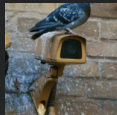
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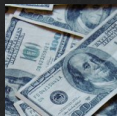
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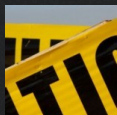
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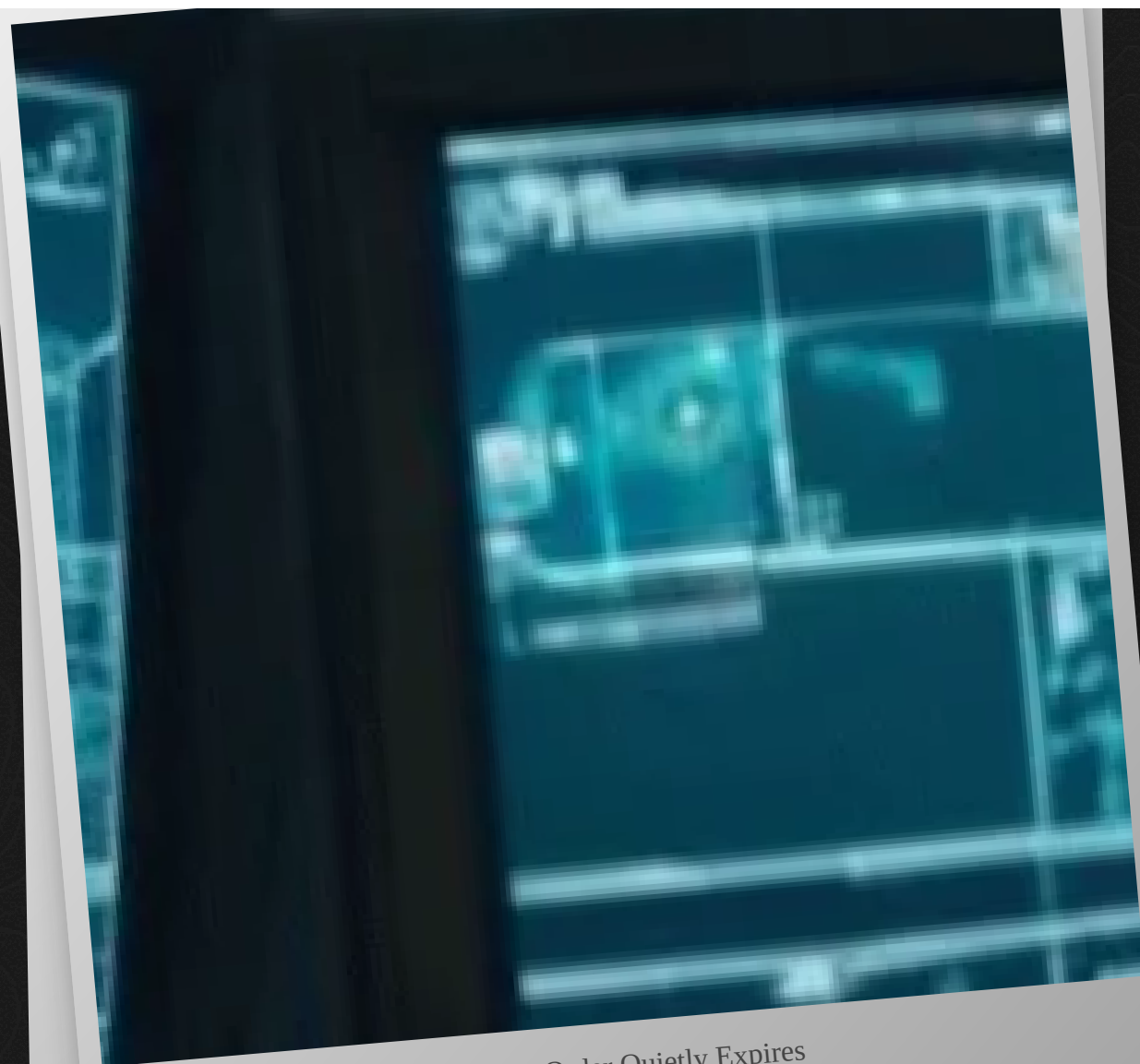
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