AG's Conclusions in eDate Advertising

The Conclusions of Advocate General Pedro Cruz Villalon in the *eDate Advertising* (case C-509/09) and *Martinez* (case C-161/10) cases were presented on March 29th, 2011. They are not available in English as of yet.

The issue before the European Court of Justice in these cases is the application of private international law rules to internet websites, and more specifically in defamation cases.

The opinion of Advocate General Cruz Villalon can be summarized as follows:

Jurisdiction: Applying Art. 5.3 of the Brussels I Regulation to Internet

In *Fiona Shevill*, the ECJ ruled that the court of the place where the event giving rise to the damage occurred has jurisdiction to compensate the entirety of the loss, while the courts of the places where losses were suffered each have jurisdiction to compensate for the loss suffered in the relevant jurisdiction.

The AG proposes to add a new head of jurisdiction for defamation cases. The court of the place of the "center of gravity of the conflict" would also have jurisdiction to compensate for the entirety of the loss. The conflict would be the conflict between the freedom of information and privacy. According to AG Cruz Villalon, this conflict would be located where the alleged victim would have the center of his life and activities, if the media could have predicted that the information would be relevant in that jurisdiction. For the purpose of determining whether information should be considered as relevant in a given jurisdiction, the AG offers to take into account a variety of factors such as the language used, the content of the information (allegations in respect of the life of an Austrian are relevant in Austria). The AG insists, however, that the point would not be to determine the intention of the media, which would not be directly relevant for the purpose of Art. 5.3 (as opposed to Art. 15) of the Regulation.

Choice of Law: on the Impact of the E-Commerce Directive

The German supreme court for civil matters has also interrogated the ECJ on the

impact of the 2000 E-Commerce Directive on choice of law. Although Article 1-4 of the Directive provides that the Directive "does not establish additional rules on private international law", Article 3-2 provides:

> *2. Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.*

It has therefore long been wondered whether Art. 3-2 did in fact establish a choice of law rule providing for the application of the law of the service provider (ie in defamation cases the law of the publisher) or, at the very least, whether Article 3-2 imposes on Member states to amend their choice of law rules insofar as they would stand against the European freedom of service.

In the opinion of AG Cruz Villalon, the answer is no to each of these two questions. As Article 1-4 expressly provides, there is no hidden choice of law rule in the Directive. And Article 3-2 should not even be interpeted as imposing on Member states to amend their own choice of law rules accordingly.