


ECJ Rules on Jurisdiction for Copyright Infringement

Yesterday, the Court of Justice of the European Union delivered its judgment  in *Pinckney v. KDG Mediatech* (Case C-170/12).

Mr Pinckney, who lives in Toulouse (France), claims to be the author, composer and performer of 12 songs recorded by the group Aubrey Small on a vinyl record. When he discovered that those songs had been reproduced without his authority on a compact disc pressed in Austria by Mediatech, then marketed by United Kingdom companies Crusoe or Elegy through various internet sites accessible from his residence in Toulouse, Mr Pinckney brought an action against Mediatech before a French court seeking compensation for damage sustained on account of the infringement of his copyrights. Mediatech challenged the jurisdiction of the French courts.

The European Court understood the question formulated by the referring court to be whether Article 5(3) of the Brussels I Regulation must be interpreted as meaning that where there is an alleged infringement of a copyright which is protected by the Member State of the court seised, that court has jurisdiction to hear an action to establish liability brought by the author of a work against a company established in another Member State, which has in the latter State reproduced that work on a material support which is subsequently marketed by companies established in a third Member State through an internet site which is also accessible in the Member State of the court seised.

The Court reiterated its distinction between infringements of personality rights and of intellectual and industrial property rights, and insisted that the allegation of an infringement of an intellectual and industrial property right, in respect of which the protection granted by registration is limited to the territory of the Member State of registration, must be brought before the courts of that State. It is the courts of the Member State of registration which are the best placed to ascertain whether the right at issue has been infringed. It then applied it to copyrights.

trade mark, is subject to the principle of territoriality. However, copyrights must be automatically protected, in particular by virtue of Directive 2001/29, in all Member States, so that they may be infringed in each one in accordance with the applicable substantive law.

40 In that connection, it must be stated from the outset that the issue as to whether the conditions under which a right protected in the Member State in which the court seised is situated may be regarded as having been infringed and whether that infringement may be attributed to the defendant falls within the scope of the examination of the substance of the action by the court having jurisdiction (see, to that effect, *Wintersteiger*, paragraph 26).

41 At the stage of examining the jurisdiction of a court to adjudicate on damage caused, the identification of the place where the harmful event giving rise to that damage occurred for the purposes of Article 5(3) of the Regulation cannot depend on criteria which are specific to the examination of the substance and which do not appear in that provision. Article 5(3) lays down, as the sole condition, that a harmful event has occurred or may occur.

42 Thus, unlike Article 15(1)(c) of the Regulation, which was interpreted in *Joined Cases C-585/08 and C-144/09 Pammer and Hotel Alpenhof* [2010] ECR I-12527, Article 5(3) thereof does not require, in particular, that the activity concerned to be ‘directed to’ the Member State in which the court seised is situated.

43 It follows that, as regards the alleged infringement of a copyright, jurisdiction to hear an action in tort, delict or quasi-delict is already established in favour of the court seised if the Member State in which that court is situated protects the copyrights relied on by the plaintiff and that the harmful event alleged may occur within the jurisdiction of the court seised.

44 In circumstances such as those at issue in the main proceedings that likelihood arises, in particular, from the possibility of obtaining a reproduction of the work to which the rights relied on by the defendant pertain from an internet site accessible within the jurisdiction of the court seised

45 However, if the protection granted by the Member State of the place of the court seised is applicable only in that Member State, the court seised only has jurisdiction to determine the damage caused within the Member State in

which it is situated.

46 *If that court also had jurisdiction to adjudicate on the damage caused in other Member States, it would substitute itself for the courts of those States even though, in principle, in the light of Article 5(3) of the Regulation and the principle of territoriality, the latter have jurisdiction to determine, first, the damage caused in their respective Member States and are best placed to ascertain whether the copyrights protected by the Member State concerned have been infringed and, second, to determine the nature of the harm caused.*

Final ruling:

Article 5(3) of Council Regulation (EC) No 44/2001 ... must be interpreted as meaning that, in the event of alleged infringement of copyrights protected by the Member State of the court seised, the latter has jurisdiction to hear an action to establish liability brought by the author of a work against a company established in another Member State and which has, in the latter State, reproduced that work on a material support which is subsequently sold by companies established in a third Member State through an internet site also accessible with the jurisdiction of the court seised. That court has jurisdiction only to determine the damage caused in the Member State within which it is situated.

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