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Court of Justice of the European Union: Austro-Mechana v. Amazon EU and Others

On 21 April 2016, the Court of Justice of the European Union (CJEU) delivered its judgment in Austro-Mechana v. Amazon EU and Others (Case C-572/14), concerning the jurisdiction of Austrian courts to hear legal proceedings where an Austrian copyright-collecting society seeks to obtain payment from Amazon EU for a recording device levy under Austrian copyright law (see IRIS 2013-9/3 for a related judgment).

Under paragraph 42b of the Austrian copyright law (Urheberrechtgesetz - UrhG), persons who are "first to place" certain recording equipment on the market, are required to pay "fair remuneration" to authors of certain works. Notably, the law also provides that copyright-collecting societies "alone" can exercise this right to remuneration. Austro-Mechana is an Austrian collective management society which collects the fair remuneration under UrhG paragraph 42b, while Amazon is a well-known group of companies which sells books, music and other products on the Internet. Of the five group companies listed in the proceedings (Amazon EU Sàrl, Amazon Services Europe Sàrl, Amazon.de GmbH, Amazon Logistik GmbH, Amazon Media Sàrl), three are governed by Luxembourg law and have their headquarters in Luxembourg, and two are governed by German law and have their headquarters in Germany.

Austro-Mechana sought payment from Amazon EU for "fair remuneration" under the UrhG, as Amazon sold recording media in Austria which was installed in mobile telephones enabling music to be reproduced. Austro-Mechana argued that Austrian courts had jurisdiction under Article 5(3) of EU Regulation No 44/2001 which provides that a person domiciled in a member state may be sued in another member state "in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur" (see IRIS 2013-10/4).

The litigation reached the Austrian Supreme Court (Oberster Gerichtshof), which stayed the proceedings, and referred the following question to the CJEU: did a claim for payment of "fair compensation" under Article 5(2)(b) of Directive 2001/29 which, in accordance with Austrian law, is directed against undertakings that are first to place recording material on the domestic market on a commercial basis and for consideration, constitute a claim arising from "tort, delict or quasi-delict" within the meaning of Article 5(3) of Regulation No 44/2001? Therefore, the question for the CJEU was whether Austro-Mechana's claim was a "tort, delict or quasi delict" within the meaning Article 5(3) of Regulation No 44/2001, which is an exception to the general rule under Article 2(1) which attributes "jurisdiction to the courts of the defendant's domicile."

First, the Court noted that Article 5(3) lays down a "rule of special jurisdiction", where "a person domiciled in a Member State may, in another Member State, be sued ... in the courts for the place where the harmful event occurred or may occur." The rationale for the rule was that in matters relating to tort, delict and quasi-delict, "courts for the place where the harmful event occurred are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence."

Second, the Court held that matters relating to tort, delict or quasi-delict are "all actions which seek to establish the liability of a defendant and do not concern "matters relating to a contract." The Court then held that the claim did not concern a contract, and went on to consider whether it aims "to establish the liability of the defendant." This is the case where a "harmful event", within the meaning of Article 5(3), may be imputed to the defendant. In this regard, the Court stated that liability in tort, delict or quasi-delict can only arise provided that "a causal connection can be established between the damage and the event in which that damage originates."

The Court stated that in the present case, the action brought by Austro-Mechana sought to obtain compensation for the harm arising from non-payment by Amazon of the remuneration provided for in Paragraph 42b of the UrhG. The Court noted that "fair compensation" referred to in Article 5(2)(b) of Directive 2001/29, according to the case-law of the Court, "intends to compensate authors for the private copy made without their authorisation of their protected works, so that it must be regarded as compensation for the harm suffered by the authors resulting from such unauthorised copy by the latter." Therefore, according to the Court, the failure by Austro-Mechana to collect the remuneration provided for in Paragraph 42b of the UrhG constitutes a harmful event within the meaning of Article 5(3) of Regulation No 44/2001. It was "irrelevant" that fair compensation must be paid not to the holders of an exclusive reproduction right that it aims to compensate, but to a copyright-collecting society. Thus, Austro-Mechana's claim seeks to establish the liability of the defendant, since that claim is based on an infringement by Amazon of the provisions of the UrhG imposing that obligation on it, and that that infringement is an unlawful act causing harm to Austro-Mechana.

The Court concluded that if the harmful event at issue in the main proceedings occurred or may occur in Austria, which is for the national court to ascertain, the courts of that Member state have jurisdiction to entertain Austro-

Mechana's claim.

• Judgment of the Court (First Chamber) in Case C-572/14 Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte GmbH v. Amazon EU Sàrl, 21 April 2016
http://merlin.obs.coe.int/redirect.php?id=18072

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