

Estonian Authors' Society vs. City of Tartu ("Miina Härma Gymnasium" case): An interesting Estonian court case about public performance of works in a school concert

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The Estonian court recently examined the conditions under which the public performance of works at a school concert falls within the free use exception. The Estonian Authors' Society (an authors' collecting society) filed a claim against the City of Tartu (through the City Government of Tartu), which administers Miina Härma Gymnasium and had organised a public school concert. The EAÜ claimed that the defendant had committed copyright infringement and was obliged to pay monetary damages. The public performance of copyright works took place at a concert that was held in the assembly hall of the University of Tartu in November 2015. The concert was advertised via various public channels, was not free and allowed entrance to anyone who had bought a ticket for EUR 7. The claimant therefore argued that in the present case, the act of public performance could not be regarded as falling within the free use exception. The defendant, on the other hand, alleged that this was a school concert, directed solely at students, teachers and alumni of Miina Härma Gymnasium. Only a few tickets were sold to third persons, therefore the audience of the concert did not consist of a real "public" within the meaning of "public performance of works". The aim of this concert was to fulfill educational and cultural needs. Furthermore, the defendant also alleged that the concert should be considered part of the teaching process.

It is remarkable that in this case the court held that the public performance of works at a (school) concert falls within the exception for free use only if all of the conditions laid down in Section 22 of the Estonian Copyright Act are met. Otherwise it is not permissible to perform works publicly without the authors' prior authorisation and without paying a licence fee. In the present case, the organiser of the concert managed only to refer to the names of the authors and to the titles of the works used in the concert. The organiser failed to meet the rest of the pre-conditions - i.e.: (i) the public performance of works takes place in the educational institution and (ii) in the direct teaching process (iii) by the teaching staff and students and (iv) the audience consists of the teaching staff and students or other persons (parents, guardians, caregivers, etc.) who are directly connected with the educational institution where the works are performed in public. In conclusion, the court found that by performing the works publicly at this school concert the defendant had infringed the authors' rights. As a result, the court satisfied the claim brought by the EAÜ and ordered the defendant to pay damages.

A full report of this case has been published on [Kluwer IP Law](#)