Kluwer Copyright Blog

EAÜ v MTÜ Safari Seiklused: An interesting Estonian case about damages awardable for copyright infringement

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In its recent judgment in EAÜ v MTÜ Safari Seiklused (the "Safari" case), the Estonian court held that where a person has signed a licence agreement with an authors' collecting society, with the intention of using the rights of authors commercially for a public performance, they must unquestioningly fulfil all of the terms of that agreement. According to the licence agreement signed between an Estonian concert organiser, MTÜ Safari Seisklused, and the Estonian Authors' Society (EAÜ) the amount of the licence fee did not depend on how many authors EAÜ in fact represents. Therefore, although in this case EAÜ represented only one author from three whose works were being played publicly in the concert organised by MTÜ Safari Seiklused, the parties had not agreed on reducing the licence fee payable to the collecting society if such an event occurred and MTÜ Safari Seiklused was not entitled to unilaterally reduce the licence fee payable to EAÜ.

It is notable that in this case the Tallinn Circuit Court emphasised that the defendant, MTÜ, was well aware of the obligation to acquire a licence and pay a licence fee to the relevant authors in relation to a second concert it organised, but the defendant intentionally infringed authors' rights by not entering into a licence agreement prior to the concert. Therefore, it was just and fair to impose a duty for the defendant to pay EAÜ a licence fee that was double what it would have been in the ordinary course of trade. Damages which are awarded in a higher amount than the usual licence fee must be considered to be proportionate and in compliance with the objective of protecting authors' rights. All the persons who are using the economic rights of authors should be motivated to act in a legitimate manner. The court reached this conclusion applying Section 81^7 of Copyright Act "Protection of copyright and related rights under civil law" that provides that "*in the case of the unlawful use of a work or an object of related rights, the author or holder of related rights may, amongst others, claim the following: 1) compensation, pursuant to § 1043 of the Law of Obligations Act, for the patrimonial and non-patrimonial damage caused through the unlawful use of a work or an object of related rights; 2) termination of the unlawful use of a work or an object of related rights and refrainment from further violation pursuant to § 1055 of the Law of Obligations Act; 3) delivery of that which was received by way of the unlawful use of a work or an object of related rights pursuant to §§ 1037 and 1039 of the Law of Obligations Act*."

This case is a landmark case for determining the fair amount of damages awardable to right holders in cases of copyright infringement. In general the Estonian legal system does not recognise the

institute of “punitive damages”, but in this case the court clearly pointed out that awardable damages for copyright infringement should motivate the persons who are using the economic rights of authors to act in a legitimate manner.

This case is reported in full on Kluwer IP Law.

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This entry was posted on Tuesday, April 21st, 2015 at 1:34 pm and is filed under Case Law, Collective management, Estonia, Infringement, Remedies
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