

# Kluwer Copyright Blog

## The CJEU considers that the non-payment of fair compensation for private copying is a matter relating to tort, delict or quasi-delict

Patricia Mariscal (Elzaburu) · Tuesday, June 14th, 2016

The question referred to the CJEU in the [Austro-Mechana case \(C-572/14\)](#) was whether a claim for payment of fair compensation for private copying, as per Article 5(2)(b) of [Directive 2001/29](#), can be considered to be a matter relating to tort, delict or quasi-delict and, therefore, whether Article 5(3) of [Regulation 44/2001](#) on jurisdiction in civil and commercial matters is applicable. That provision constitutes an exception to the general rule of international jurisdiction as it permits, in such cases, the action to be filed in the place where the harmful event occurred, regardless of where the defendant is domiciled.

Austro-Mechana is the Austrian collecting society that manages the copyright of authors of musical works. It is responsible for collecting the fair remuneration that the Austrian Copyright Act (UrhG) provides for under the private copying exception. Amazon, headquartered in Luxembourg and Germany, sells goods on the Internet, including recording materials falling within the provisions of the UrhG. As one might guess, Austro-Mechana brought legal proceedings against Amazon in the Austrian courts on the grounds that, since the latter was the first to place the recording materials on the market in Austria, it was liable to pay the remuneration due under the UrhG. The action was dismissed both at first instance and on appeal on the grounds that the dispute did not fall within Article 5(3) of Regulation 44/2001, and so there was no international jurisdiction. The case went to the Supreme Court, which decided to make a reference to the CJEU for a preliminary ruling.

Although the main proceedings giving rise to the reference for a preliminary ruling were limited to an international jurisdiction issue, the CJEU was asked to rule on the legal nature of the obligation provided for in both the Austrian UrhG and in Directive 2001/29 to pay fair compensation in Member States where there is a private copying exception in force. Basically, the aim was to elucidate whether this legal obligation, or more specifically, the breach of same by the persons liable for payment, falls under the concept of tort, delict or quasi-delict. Whether or not Amazon, domiciled in Germany, could be sued in the Austrian courts depended on the CJEU's response.

In light of the extensive case-law from the CJEU, fair compensation for private copying has become a sufficiently broad EU concept so as to enable Member States to define issues such as who is liable for payment and to whom the collection of the remuneration can be entrusted. In that regard, although the person ultimately liable to pay this compensation is the user who makes the copies, and the party eligible for economic redress is the holder of the reproduction right, there is

nothing to stop a national law, such as Austrian law, from establishing, for operative reasons, that the person liable for payment is an intermediary, i.e., the person who is the first to place the recording material or equipment on the market in Austria (provided that the cost is then passed onto the user), and that an interposed entity (the collecting society) is responsible for collecting that compensation and subsequently paying it to the rightholders.

In order to be able to impute a harmful event to the defendant, it is necessary to establish a causal connection between the damage and the event that gave rise to it. In this case, a harmful event has occurred, i.e., the collecting society's, and thus the rightholders', failure to receive the fair compensation to which they are entitled, and this may be imputed to Amazon, who was liable for payment. In that regard, the fact that the party who suffers the damage (the rightholder) is not the party which directly collects the payment, and that the party causing the damage, Amazon, is not the party which ultimately pays the compensation, is irrelevant. The CJEU therefore concluded that a claim for payment of compensation that is owed by virtue of a national law that applies the system of fair compensation regulated in Article 5(2)(b) of Directive 2001/29/EC, falls within "matters relating to tort, delict or quasi-delict" within the meaning of Article 5(3) of Regulation 44/2001.

Following establishment of the above, it is now for the Austrian court to decide whether the harmful event occurred in Austria, in which case, the Austrian courts would have jurisdiction in accordance with the aforementioned provision of the EU Regulation.

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

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This entry was posted on Tuesday, June 14th, 2016 at 3:21 pm and is filed under [Austria](#), [Case Law](#), [Collective management](#), [European Union](#), [Jurisdiction](#), [Liability](#), [Remuneration \(equitable\)](#)

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