

By Eleonora Rosati, 10 October 2013

Where to sue in a case of alleged online copyright infringement?

Readers who follow all things copyright will remember Case C-170/12 *Pinckney*, an exciting reference from the French Court of Cassation concerning jurisdiction in online infringement cases and interpretation of Article 5(3) of the [Brussels I Regulation](#). The case was recalled a few days ago in the context of new reference C-441/13 *Pez Ejduk* ([here](#)).

The fate of the *Pinckney* case was uncertain, as Advocate General [Niilo Jääskinen's Opinion](#) ([here](#)) was that the the Court of Justice of the European Union (CJEU) should declare it inadmissible. Thankfully, after a summer spent thinking about this case, the Court did not follow the AG on this point, and a few days ago released its handy 48-paragraph [judgment](#), declaring the reference ... admissible.

Background

The request for a preliminary reference was made in the context of proceedings between Mr



Pinckney, a French resident, and Mediatech, a company established in Austria, concerning a claim for damages resulting from the infringement of Pinckney's copyright in twelve songs.

In 2006 Pinckney discovered that those songs had been reproduced without his consent on a CD pressed in Austria by Mediatech, then marketed by two UK companies through various internet websites accessible from his residence in Toulouse.

Mr Pinckney sued Mediatech before the Toulouse Regional Court seeking compensation for damages sustained on account of the infringement of his copyrights.

The defendant unsuccessfully challenged the jurisdiction of the French courts. Mediatech appealed against, arguing that the only courts having jurisdiction were the courts of the place of

the defendant's domicile (Austria), or the courts of the place where the damage was caused (UK). This time the Toulouse Court of Appeal agreed with Mediatech, so it was the turn of Mr Pinckney to appeal the decision before the French Court of Cassation. This decided to stay the proceedings and refer the following questions to the CJEU:

1. *Is Article 5(3) of ... [the Regulation] to be interpreted as meaning that, in the event of an alleged infringement of copyright committed by means of content placed online on a website,*
 - *the person who considers that his rights have been infringed has the option of bringing an action to establish liability before the courts of each Member State in the territory of which content placed online is or has been accessible, in order to obtain compensation solely in respect of the damage suffered on the territory of the Member State before which the action is brought,*
 - or
 - *does that content also have to be, or to have been, directed at the public located in the territory of that Member State, or must some other clear connecting factor be present?*
2. *Is the answer to Question 1 the same if the alleged infringement of copyright results, not from the placing of dematerialised content online, but, as in the present case, from the online sale of a material carrier medium which reproduces that content?*

The response of the CJEU

First of all, as it often happens, the CJEU reformulated the questions of the French court as essentially seeking clarification

whether Article 5(3) of the Brussels I Regulation must be interpreted as meaning that where 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 CJEU then recalled that the expression 'place where the harmful event occurred or may occur' in Article 5(3) is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places.

While it is true that copyright is subject to the principle of territoriality, 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. 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.

This means that

the answer to the questions referred is that Article 5(3) of the Regulation 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.

The one provided by the CJEU may look like a sensible interpretation of the Brussels I Regulation. However, it also shows the shortcomings and practical difficulties posed by the principle of territoriality in the context of both dematerialisation of works and their online exploitation and, above all, infringement (see [here!](#)).

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