Court of Justice of the European Union: Ruling on Online Copyright Infringement Jurisdiction

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On 22 January 2015, the Court of Justice of the European Union delivered its judgment in Hejduk v. EnergieAgentur (Case C-441/13) on the question of whether an Austrian court may hear an action for online copyright infringement where the material is placed online in another Member State. The case concerned Pez Hejduk, a professional photographer of architecture, who had taken photographs of various buildings by an Austrian architect. A German company, EnergieAgentur, made the photographs available on its German website without Hejduk's consent and Hejduk brought an action for copyright infringement against EnergieAgentur in an Austrian court, claiming EUR 4,000 in damages. EnergieAgentur argued that the Austrian court lacked jurisdiction because its website was not directed at Austria and the "mere fact that a website may be accessed from Austria" was insufficient to establish jurisdiction.

The Austrian court decided to refer the question to the Court of Justice of the European Union, asking for a preliminary ruling on whether under EU Regulation No. 44/2001 the Austrian court has jurisdiction to hear an action for damages for copyright infringement "resulting from the placing of protected photographs online on a website accessible in its jurisdiction". First, the Court held that the acts liable to constitute copyright infringement "may be localised only at the place where EnergieAgentur has its seat, since it is where the company took and carried out the decision to place the photographs online". It followed, according to the Court, that since this "causal event" took place in another Member State, it did not attribute jurisdiction to the Austrian court.

However, the Court then went on to examine whether the Austrian court may have jurisdiction "on the basis of the place where the alleged damage occurred". EnergieAgentur argued that its website operated under a "country-specific German top-level domain" (".de") and that it was not "directed at Austria". The Court rejected this argument, holding that Regulation No. 44/2001 does not require the "activity concerned to be 'directed to' the Member State in which the court seized is situated" (applying Pinckney v. KDG Mediatech (see IRIS 2013-10/4)).

The Court stated that "it must thus be held that the occurrence of damage and/or the likelihood of its occurrence arise from the accessibility in the Member State of

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the referring court, via the website of EnergieAgentur, of the photographs to which the rights relied on by Ms. Hejduk pertain". Further, the Court stated that "courts of other Member States in principle retain jurisdiction, in the light of Article 5(3) of Regulation No 44/2001 and the principle of territoriality, to rule on the damage to copyright or rights related to copyright caused in their respective Member States, given that they are best placed, first, to ascertain whether those rights guaranteed by the Member State concerned have in fact been infringed and, secondly, to determine the nature of the damage caused".

Thus, the Court concluded that where there is an allegation of infringement of copyright and rights related to copyright guaranteed by the Member State of the court seized, that court has jurisdiction, on the basis of the place where the damage occurred, to hear an action for damages in respect of an infringement of those rights resulting from the placing of protected photographs online on a website accessible in its territorial jurisdiction. That court has jurisdiction only to rule on the damage caused in the Member State within which the court is situated.

Urteil des Gerichtshofs (Vierte Kammer) in der Rechtssache C-441/13 Pez Hejduk gegen EnergieAgentur.NRW GmbH, 22. Januar 2015

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Judgment of the Court (Fourth Chamber) in Case C-441/13 Pez Hejduk v. EnergieAgentur.NRW GmbH, 22 January 2015

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