[AT] Vienna Commercial Court Wien refers question to the ECJ for a preliminary ruling on the concept of “communication to the public”

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On 2 December 2015, the Vienna Commercial Court referred a question to the ECJ on the concept of “communication to the public” in copyright law, in proceedings for a preliminary ruling under Article 267 TFEU.

The reason for the referral was an action brought by the Austrian collecting society Verwertungsgesellschaft Rundfunk (VGR) against a hotel operator for a breach of broadcasting rights. The hotel management provides TV sets in the hotel rooms by means of which the signals of several television and radio programmes can be seen and heard (so-called “hotel room TV”). The room price per night covers the use of the TV sets and the provision of the TV and radio programmes. VGR claims that this constitutes communication of the programmes to the public and is thus a breach of broadcasting rights. The Commercial Court stayed the proceedings and referred a question to the ECJ for a preliminary ruling. The Court asks whether the condition of the “payment of an entrance fee” within the meaning of Article 8(3) of Directive 2006/115/EC (Rental and Lending Directive) is satisfied if: TV sets are provided in separate rooms of a hotel and the signals of TV and radio programmes are capable of being seen or heard as a result of that provision by the hotel management; the management makes a charge per night for using the room with “hotel room TV” (“room price”); and the charge covers the use of the TV sets and the possibility of seeing or hearing the TV and radio programmes provided.

This case is somewhat different from earlier referrals asking the ECJ to rule on the right of communication to the public in hotel rooms. The most recent referrals were from Ireland in 2012 and the Czech Republic in 2014, where the subject of the proceedings was either Article 3(1) of the Copyright Directive, which grants the exclusive right of communication to the public, or Article 8(2) of the Rental and Lending Directive, which concerns the use of phonograms communicated to the public. In the present case, however, the provision at issue is Article 8(3) of the Rental and Lending Directive, which concerns the broadcasting right itself and according to which the broadcasters have the exclusive right to communicate programmes to the public in places accessible to the public against payment of an entrance fee. The question now is whether the hotel rooms equipped with “hotel room TV” are places only accessible to the public against payment of an entrance fee. If so, the “entrance fee” would be the price the guest pays for a room.

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Vorabentscheidungsersuchen des Handelsgerichts Wien (Österreich) eingereicht am 2. Dezember 2015 - Verwertungsgesellschaft Rundfunk GmbH gegen Hettegger Hotel Edelweiss GmbH (Rechtssache C-641/15)

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Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 2 December 2015 — Verwertungsgesellschaft Rundfunk GmbH v Hettegger Hotel Edelweiss GmbH (Case C-641/15)

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