

Supreme Court rules on international jurisdiction in copyright infringement cases

May 30 2017 | Contributed by **Oblin Melichar**

Any payment made pursuant to Section 42b(1) of the Act on Copyright and Related Rights is a considered a debt that must be discharged at the seat of the creditor. Therefore, the courts at the seat of the collecting society have jurisdiction over copyright infringement by satellite transmission and for any failures to pay therein.

In a recent case, the Supreme Court held that jurisdiction for tort cases under Article 7(2) of the Brussels I Regulation must be interpreted only under the regulation. According to the regulation, torts are illegal acts that ultimately require the defendant to pay damages and are not connected to a contract within the meaning of Article 7(1) of the regulation. According to the court, this jurisdiction includes both the place of the original act and the place where the loss occurred or is about to occur. Where acts are committed over a distance, a party can sue either at the place of the tort action or the place of the loss; however, only the place where the illegal act first occurred can be named as the place of effect.

According to Section 17b(1) of the Act on Copyrights and Related Rights, in the case of a satellite broadcast, the creator's right to exploitation includes entering the programme-supporting signals, under the control and responsibility of the broadcast company, into a uninterrupted chain of communication from the satellite back to earth. Therefore, according to Paragraph 2, radio broadcasts via satellite take place only in the country which sends the signal. While Section 17b(1) of the Act on Copyrights and Related Rights must be interpreted within the meaning of the EU Satellite Directive (93/83/EEC), the directive includes no procedural clauses, let alone any regarding international jurisdiction.

According to Section 42b(1) of the Act on Copyrights and Related Rights, the non-payment of compensation establishes a claim due to "a tort action or a tort-like action": the tort lies in the breach of the obligation to pay. Thus, the court held that the place of the tort action is where the obligation to pay must be fulfilled. Because monetary debts must be discharged at the seat of the creditor (**Section 907a(1) of the Civil Code**), the domestic courts at the Austrian seat of the collecting society have jurisdiction. This also applies to actions for injunctions and information, while the court at the place of effect has jurisdiction only over the losses incurred in the country of that court.

*For further information on this topic please contact **Klaus Oblin** at Oblin Melichar by telephone (+43 1 505 37 05) or email (klaus.oblin@oblin.at). The Oblin Melichar website can be accessed at www.oblin.at.*

AUTHOR

Klaus Oblin

