



A hotel operator which broadcasts phonograms in its rooms must pay equitable remuneration to producers

Member States may not exempt such an operator from the obligation to pay such remuneration

EU law¹ requires the Member States to provide, in their legislation, a right to a single equitable remuneration for producers of phonograms published for commercial purposes, to be paid by the user of such phonograms for broadcasting or for any communication to the public. However, such equitable remuneration need not be paid in the case of 'private use'.

Phonographic Performance (Ireland) Limited ('PPL') is a collecting society which represents the rights which phonogram producers hold over sound recordings or phonograms in Ireland.

PPL brought an action before the High Court (Commercial Division, Ireland) against Ireland seeking a declaration that Ireland had acted in breach of Union law in exempting hotel operators from the obligation to pay equitable remuneration for the use of phonograms in hotel bedrooms in Ireland. PPL also sought damages to make good that breach. Against that background, the Irish court referred several questions to the Court of Justice.

In today's judgment, the Court first considers whether a hotel operator which provides in guest bedrooms televisions and/or radios to which it distributes a broadcast signal is a 'user' making a 'communication to the public' of a phonogram which may be played in a broadcast for the purposes of Union law.

In that connection, the Court recalls that it has held that the concept of 'communication to the public' requires an individual assessment and that, for the purposes of such an assessment account has to be taken of several complementary criteria, which are not autonomous and are interdependent².

Those criteria include, first and foremost, according to the case-law of the Court, the indispensable role of **the user**. The user makes a communication to the public when it intervenes, in full knowledge of the consequences of its action, to give access to a broadcast containing the protected work to its customers. Second, the Court has identified certain aspects of the **concept of public**. The term 'public' refers to an **indeterminate number** of potential listeners and a **fairly large number of persons**. Third, the Court has held that the **profit-making nature of 'communication to the public'** is also a relevant criterion. It is thus understood that the public which is the subject of the communication is both targeted by the user and receptive, in one way or another, to that communication, and not merely 'caught' by chance.

In the present case, those criteria are fulfilled. Thus, **the role of a hotel operator** who provides televisions and/or radios in guest bedrooms **is indispensable**, since the guests of such a hotel are

¹ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28), which entered into force on 16 January 2007. That directive codified and repealed Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61).

² Case [C-135/10](#) *Società Consortile Fonografici (SCF) v Marco Del Corso*. See also Press Release No 25/12

able to listen to those phonograms only as a result of the deliberate intervention of that operator. As regards, next, the guests of that establishment, they constitute an **indeterminate number of potential listeners**, insofar as the access of those guests to the services of that establishment is the result of their own choice and is limited only by the capacity of the establishment in question. As regards the number of potential listeners, the Court has held that the guests of a hotel constitute a **fairly large number of persons**, such that they must be considered to be a “public”³. Finally, the broadcasting of phonograms by a hotel operator **is of a profit-making nature**. Indeed, the action of the hotel by which it gives access to the broadcast work to its customers constitutes an additional service which has an influence on the hotel’s standing and, therefore, on the price of rooms. Moreover, it is likely to attract additional guests who are interested in that additional service.

Consequently, such an operator is a ‘user’ making a ‘communication to the public’ of a phonogram which may be played in a broadcast for the purposes of EU law.

On that basis, that operator is obliged to pay equitable remuneration for the broadcast of a phonogram, **in addition to that paid by the broadcaster**. When a hotel operator communicates a broadcast phonogram in its guest bedrooms, it is using that phonogram in an autonomous way and transmitting it to a public which is distinct from and additional to the one targeted by the original act of communication. Moreover, the hotel operator derives economic benefits from that transmission which are independent of those obtained by the broadcaster or the producer of the phonograms.

The Court also holds that a hotel operator which provides in guest bedrooms, not televisions and/or radios, but other apparatus and phonograms in physical or digital form which may be played on or heard from such apparatus, is a ‘user’ making a ‘communication to the public’ of a phonogram within the meaning of Union law. It is therefore obliged to pay ‘equitable remuneration’ under that provision for the transmission of those phonograms.

Moreover, according to the Court, although EU law provides for a limitation to the right to equitable remuneration in the case of ‘private use’, it **does not allow Member States to exempt a hotel operator which makes a ‘communication to the public’ of a phonogram from the obligation to pay such remuneration**.

In that connection, the Court makes clear that it is not the private nature or otherwise of the use of the work by guests of a hotel which is relevant in order to determine whether a hotel operator may rely on the limitation based on ‘private use’ but whether the use made of the work by the operator itself is private or not. The ‘private use’ of a protected work communicated to the public by its user constitutes a contradiction in terms, since ‘public’ is, by definition, ‘not private’.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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³ Judgment in Case C-306/05 *SGAE*. See also Press Release No 95/06.