



Press and Information

Court of Justice of the European Union

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Luxembourg, 27 February 2014

Judgment in Case C-351/12

Ochranný svaz autorský pro práva k dílům hudebním o.s. (OSA) v  
Léčebné lázně Mariánské Lázně a.s

## **A spa which transmits protected musical works to its guests by means of devices located in their bedrooms must pay copyright fees**

*The territorial monopoly granted to copyright collecting societies is not contrary to the freedom to provide services*

OSA, a copyright collecting society, holds the exclusive right in the Czech Republic to collect fees, on behalf of authors, for the use of their musical works. The company Léčebné lázně Mariánské Lázně, which manages a spa, installed radio and television sets in the bedrooms of that establishment in order to make works managed by OSA available to its guests. However, Léčebné lázně Mariánské Lázně did not enter into a licence agreement with OSA and refused to pay fees to it on the ground that, under the Czech legislation, health establishments may freely transmit protected works. OSA, being of the view that the national legislation is contrary to the EU Copyright Directive<sup>1</sup>, brought an action before the Czech courts claiming that Léčebné lázně Mariánské Lázně should be ordered to pay fees for having made protected works available to its guests.

The Krajský soud v Plzni (Plzeň Regional Court, Czech Republic) asked the Court of Justice whether the Czech legislation under which health establishments are exempt from the payment of copyright fees is in accordance with the directive, inasmuch as that directive does not provide for an exemption of that kind. The Czech court also wishes to know whether OSA's monopoly over the collection of fees in the Czech Republic is compatible with the freedom to provide services and with competition law.

By its judgment delivered today, the Court points out, first, that by transmitting protected works by means of television and radio sets located in the bedrooms of its guests, a spa carries out a communication to the public of those works. Such a communication must be authorised by the authors, who must, in principle, receive adequate compensation.

In that respect, the Court notes that the directive does not exempt a spa from the payment of fees where it transmits protected works to its guests. Consequently, **the exemption laid down by the Czech legislation does not comply with the directive.**

Secondly, the Court notes that the territorial monopoly granted to OSA constitutes a restriction on the freedom to provide services inasmuch as it does not allow users of protected works to choose the services of a collecting society established in another Member State. The Court emphasises however that **the restriction in question is justified**, since that system is appropriate and necessary for attaining the objective of the effective management of intellectual property rights. As EU law stands at present, there is no other method allowing the same level of copyright protection. The Court therefore concludes that **the monopoly** granted by the Czech legislation to OSA **is compatible with the freedom to provide services.**

The Court notes, however, that the imposition by a national copyright collecting society of fees which are appreciably higher than those charged in other Member States or the imposition of prices which are excessive in relation to the economic value of the service provided **is indicative**

<sup>1</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

**of an abuse of a dominant position.** Nevertheless, it is for the Czech court to examine whether such a situation exists in the present case.

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**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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