

Case C-182/24

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

5 March 2024

Referring court:

Tribunal judiciaire de Paris (France)

Date of the decision to refer:

8 February 2024

Applicants:

RB and Others, as successors in title to Claude Chabrol

RZ and Others, as successors in title to Paul Gégauff

Defendants:

Brinter Company Ltd.

Artedis

BS

MW

Société des auteurs et compositeurs dramatiques (SACD)

Société des auteurs, compositeurs et éditeurs de musique (SACEM)

and Others

1. Subject matter of the main proceedings:

- 1 Between 1967 and 1974, Claude Chabrol produced around ten films, five of which he made in collaboration with Paul Gégauff, who wrote the dialogue, screenplay or adaptation.

- 2 By agreements of 8 June 1990, the exploitation rights for those films were assigned to Brinter Company Ltd., represented by BS, which in turn assigned the exploitation rights for some of the films to third parties.
- 3 Initially concluded ‘for a term of 30 years’, those agreements are still in force for 11 films.
- 4 On 11 July 2019, the heirs of Claude Chabrol and Paul Gégauff sued, inter alia, Brinter Company Ltd for copyright infringement in respect of 14 films made by Claude Chabrol, 5 of which had Paul Gégauff as co-author.
- 5 The applicants complain, in essence, of the absence or mediocrity of the exploitation of the films in the past, claim that particular contracts have expired, that the others have been terminated for non-performance or improper performance, and seek damages for breach of contract, copyright infringement and infringement of their moral right to the integrity of the works by reason of the poor conservation and restoration conditions of the negatives and film media.
- 6 The defendants raised a plea of inadmissibility on the ground that 19 co-authors of the films at issue had not been joined to the proceedings.
- 7 By separate acts of 5 May and 12 June 2020, the applicants sought to have joined to the proceedings natural persons in their capacity as successors in title to predeceased co-authors as well as the ‘Charlotte Armstrong Estate’, the ‘Daniel Boulanger Estate’, the ‘Nicholas Blake Estate’, the ‘Edward Atiyah Estate’, the ‘Ellery Queen Estate’, the ‘Richard Neely Estate’, the ‘Patricia Highsmith Estate’ and the ‘Claude Brulé Estate’.
- 8 They also sued the Société des auteurs et compositeurs dramatiques (Society of Dramatic Authors and Composers, abbreviated to ‘the SACD’) as the representative of various co-authors and the Société des auteurs, compositeurs et éditeurs de musique (Society of Authors, Composers and Publishers of Music, abbreviated to ‘the SACEM’).

2. Legal framework:

Provisions of European Union law relied on

Charter of Fundamental Rights of the European Union

- 9 Article 17 provides:

‘Right to property

1. ...

2. Intellectual property shall be protected.’

10 Article 47 provides:

‘Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.’

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

11 Recital 9 reads as follows:

‘Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. Intellectual property has therefore been recognised as an integral part of property.’

12 Article 2 provides:

‘Reproduction right

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

...

(d) for the producers of the first fixations of films, in respect of the original and copies of their films; ...’

13 Article 3 provides:

‘Right of communication to the public of works and right of making available to the public other subject matter

1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

...

(c) for the producers of the first fixations of films, of the original and copies of their films; ...’

14 Article 4 provides:

‘Distribution right

1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.’

15 Article 8 provides:

‘Sanctions and remedies

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.

2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material as well as of devices, products or components referred to in Article 6(2).

3. Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.’

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

16 Article 2 provides:

‘Scope

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.

...’

17 Article 3 provides:

‘General obligation

1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.’

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

Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights

18 Article 1 provides:

‘Duration of authors’ rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public. ...’

19 Article 2 provides:

‘Cinematographic or audiovisual works

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.

2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.’

20 Article 9 provides:

‘Moral rights

This Directive shall be without prejudice to the provisions of the Member States regulating moral rights.’

Provisions of national law relied on

Code de la propriété intellectuelle (Intellectual Property Code)

21 Article L. 111-1 provides:

‘The author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an exclusive incorporeal property right which is enforceable against all persons. That right shall include attributes of an intellectual and moral nature as well as attributes of an economic nature ...’

22 Article L. 113-2 provides:

‘“Work of collaboration” shall mean a work in the creation of which more than one natural person has participated ...’

23 Article L. 113-3 provides:

‘A work of collaboration shall be the joint property of its co-authors. Co-authors must exercise their rights by mutual agreement. In the event of disagreement, it is for the civil courts to give a ruling. ...’

24 Article L. 113-7 provides:

‘Authorship of an audiovisual work shall belong to the natural person or persons who have carried out the intellectual creation of the work. Unless proved otherwise, the following shall be presumed to be co-authors of an audiovisual work made in collaboration: 1° the author of the script; 2° the author of the adaptation; 3° the author of the dialogue; 4° the author of the musical compositions, with or without words, specially composed for the work; 5° the director. ...’

3. The essential arguments of the parties in the main proceedings:

The defendants

- 25 The defendants claim that the action is inadmissible on the ground that the applicants failed to have joined to the proceedings all the co-authors of the films or the successors in title to those co-authors. In their view, an ‘estate’ cannot properly be summoned to the proceedings as it does not have legal personality and cannot prove its name, domicile or address. They claim that the fact that collective management organisations have been joined to the proceedings does not allow that state of affairs to be regularised, since they are not representatives of the co-authors. In support of the plea of inadmissibility, they list 13 co-authors who, on the day of their last written pleadings on 8 June 2023, had not been summoned to the proceedings.
- 26 As to the substance, the defendants claim that the action is unfounded in so far as the acts of exploitation did not take place and have not been proven. They state that particular contracts have come to an end but have not given rise to subsequent acts of exploitation. By contrast, nine contracts are still being exploited because the applicants have not given the assignee formal notice to comply with the terms of the termination clause, the conditions of which have not been fulfilled. They also dispute the lack of exploitation of the films and the other contractual breaches. As regards moral rights, they consider that the restoration of the films in question is of good quality, with the exception of one which has since been corrected. They maintain that the films are correctly exploited but that the applicants or some of them often oppose the planned acts of exploitation. They exclude the personal liability of the executives and strongly object to the return of the film material of which they claim ownership.

The SADC

- 27 The SADC, a forced intervener, declares that it does not represent, in the present proceedings, the following actors or the successors in title to those actors: Charlotte Armstrong, Daniel Boulanger, Nicolas Blake, Edward Atiyah, Ellery Queen, Richard Neely, Patricia Highsmith, Eugène Archer, Paul Gardner, and requests to be exonerated on that basis.
- 28 It states that it communicated the details of the estates of Charlotte Armstrong, Daniel Boulanger and Patricia Highsmith and undertakes to provide, if requested, those of Claude Brulé.
- 29 The SADC claims that, in order for the action of a co-author of a work of collaboration to be admissible, the case-law requires the other co-authors to be joined to the proceedings so that they may take a position individually, in respect of both their economic rights and their moral rights, on the action brought before a court in relation to their joint work. It considers that, in that context, it cannot

validly represent the authors, a fortiori since the authors concerned are not members of the SACD.

- 30 It recalls its commitment to the rule of unanimity between co-authors and its procedural corollary, which is that all the co-authors must be joined to the proceedings. It considers that this court has the means to deal with the question of the admissibility of the action in compliance with the European standards of high copyright protection recognised by the directives concerned. In its view, this court could override the unanimity rule in the light of the exceptional constraints specific to the present case, particularly through Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights arising from *Golder* (judgment of 21 February 1975, *Golder v. United Kingdom*, 4451/70, ECLI:CE:ECHR:1975:0221JUD000445170).

The other parties to the proceedings

- 31 Having been summoned by separate documents, the other parties did not appear and were not represented by a lawyer.

The applicants

- 32 AD claims, with regard to the plea of inadmissibility, that his status as heir establishes his interest in bringing proceedings. He adds that the applicants made every effort, including with three copyright collecting societies, * to identify the successors in title and on occasion sought to have ‘estates’ joined to the proceedings for lack of further information, in particular because the defendants have provided only the contact details of publishers. In the alternative, the plea of inadmissibility cannot in any event be upheld in respect of the contractual claims.
- 33 The applicants ultimately rely on a fundamental right to bring any legal action in order to preserve their rights, which must lead this court to give a broad interpretation of the case-law of the Cour de cassation (Court of Cassation, France), which requires that all co-authors be joined to the proceedings.
- 34 RB considers that, in any event, applicants should not be deprived of the possibility of protecting their rights as a result of the absence of some of the parties or inertia caused by an inextricable situation. He adds that the director has a predominant status as the principal author and that, moreover, appropriate sanctions and remedies are provided for in Directive 2001/29/EC.

* According to the order of the pre-trial judge of 16 February 2023, in order to obtain the contact details of other co-authors or the successors in title to those co-authors, the applicants also ‘initiated contact’ with SACD, SACEM and SIAE (Società Italiana degli Autori ed Editori [Italian Society of Authors and Publishers, abbreviated to ‘SIAE’]). See <https://www.legifrance.gouv.fr/juri/id/JURITEXT000047910860>

4. Succinct presentation of the reasoning in the request for a preliminary ruling:

- 35 The applicants essentially complain of the lack of exploitation of the films. The defendants dispute that and submit that it is the applicants and, in particular, AD who oppose the exploitation.
- 36 The applicants have brought an action for infringement of the economic and the moral rights of the author, those infringements being tortious in nature, and, on that basis, submit their various claims for damages. They have also brought an action for contractual liability and submit that the contracts have been terminated by the effect of either their term or the termination clause or seek their judicial termination for breach of contractual obligations.
- 37 Since 27 January 2020, the date on which the defendants lodged their claims raising a plea of inadmissibility based on the failure to join the co-authors of the films to the proceedings, the dispute has been paralysed by the fact that it is impossible to identify their multiple successive heirs.
- 38 In order to regularise their claims, the applicants sought to have joined to the proceedings seven persons thought to be co-authors or successors in title and eight ‘estates’ of co-authors. In response to the claim that an estate does not have legal personality, they state that they were unable to identify the natural persons who are heirs. They also sought to have joined to the proceedings the SACD, a collecting society, describing it as the representative of the successors in title to the eight ‘estates’, which the SACD disputes.
- 39 The preparation of the case is thus prolonged by the search for co-authors or the successors in title to those co-authors, whom, in many cases, it is still impossible to summon to the proceedings.
- 40 The parties accuse each other of unjustified refusals to disseminate the works and of thus making it impossible to bring them to the attention of the public, fearing, in the absence of a decision on the merits, that they will be forgotten.

(a) National law and case-law

- 41 The applicable national law consists of the combined provisions of the Intellectual Property Code (see paragraphs 21 to 24 of this summary) defining the category of audiovisual works, into which classification the films in question fall, as ‘works of collaboration’ which are co-owned by their co-authors, and the Code de procédure civile (Code of Civil Procedure), which provides for a plea of inadmissibility in accordance with the rules of ordinary law where not all of the co-authors have been joined to the proceedings.
- 42 In its judgment of 10 May 1995 (First Civil Chamber, 10 May 1995, appeal No 93-10.945), the Court of Cassation clarified that ‘the co-author of a work of collaboration who brings an action to defend his economic rights is obliged, on

pain of the inadmissibility of his action, to seek to have joined to the proceedings the other authors of the work, since his contribution cannot be separated from that of the co-authors’.

- 43 It is required that the co-authors in question only be joined to the proceedings, without their actually having to appear before this court or comply with the request (First Civil Chamber, 11 January 2000, appeal No 98-20.446).
- 44 Under national law, the system arising from Article L. 113-3 of the Intellectual Property Code is one of indivisible ownership. The indivisibly owned property is that of the co-authors referred to in Article L. 113-7 of that code, which establishes a presumption in order to attribute that status to them.
- 45 Article L. 113-3 creates a special system based on the rule of the unanimity of the indivisible co-authors.
- 46 There are few exceptions to the unanimity rule at this stage and it entails the obligation, once again, to seek to have joined to the proceedings the other co-authors in an action based on indivisible rights. That is true for an action for infringement of both the economic rights of the author and the moral rights of the author.
- 47 It is therefore for the applicant seeking to protect his or her intellectual property rights to seek to have joined to the proceedings all the co-authors of a work of collaboration. Where, as in the present dispute, there are co-authors, it is for him to seek to have them joined to the proceedings or prove that the presumption conferring that status on them, laid down in Article L. 113-7 of the Code of Civil Procedure, is unfounded.
- 48 The national law and the relevant case-law therefore engender a wide-ranging preliminary debate on the admissibility of the action. It requires the applicant to establish facts which necessitate, on his part, a significant effort to legally classify the respective contributions to the collective work and provide evidence. The intensity of that effort is proportional to the number of co-authors and, depending on the circumstances, the successors in title to those co-authors.
- 49 Is that system consistent with EU legislation and, in particular, with the Charter and the directives on copyright and the enforcement of intellectual property rights?

(b) EU law

The Charter of Fundamental Rights of the European Union

- 50 The Court of Justice has recalled that ‘the fundamental right to property, which includes intellectual property rights such as copyright (see, to that effect, Case C-479/04 *Laserdisken* [2006] ECR I- 8089, paragraph 65), and the

fundamental right to effective judicial protection constitute general principles of Community law (see respectively, to that effect, Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I- 6451, paragraph 126 and the case-law cited, and Case C-432/05 *Unibet* [2007] ECR I- 2271, paragraph 37 and the case-law cited)’ (judgment of 29 January 2008, *Promusicae*, C-275/06, EU:C:2008:54, paragraph 62) and that ‘under Article 17(1) of the Charter of Fundamental Rights of the European Union, everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. Article 17(2) provides that intellectual property is to be protected’ (judgment of 9 February 2012, *Luksan*, C-277/10, EU:C:2012:65, paragraph 68).

- 51 Furthermore, the fundamental right to an effective remedy guaranteed by Article 47 of the Charter seeks to ensure ‘the effective exercise of the fundamental right to property, which includes the intellectual property right protected in Article 17(2) of the Charter. As noted by the Advocate General in point 31 of his Opinion, the first of those fundamental rights is a necessary instrument for the purpose of protecting the second’ (judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 29).

The directives on copyright and the protection of intellectual property rights

- 52 The Court of Justice has held that, ‘subject to the exceptions and limitations laid down exhaustively in Article 5 of Directive 2001/29, any use of a work carried out by a third party without such prior consent must be regarded as infringing the copyright in that work (see, to that effect, judgment of 27 March 2014, *UPC Telekabel Wien*, C-314/12, EU:C:2014:192, paragraphs 24 and 25). Nevertheless, Article 2(a) and Article 3(1) of Directive 2001/29 do not specify the way in which the prior consent of the author must be expressed, so that those provisions cannot be interpreted as requiring that such consent must necessarily be expressed explicitly. It must be held, on the contrary, that those provisions also allow that consent to be expressed implicitly. ... However, the objective of increased protection of authors to which recital 9 of Directive 2001/29 refers implies that the circumstances in which implicit consent can be admitted must be strictly defined in order not to deprive of effect the very principle of the author’s prior consent’ (judgment of 16 November 2016, *Soulier and Doke*, C-301/15, EU:C:2016:878, paragraphs 34, 35 and 37).
- 53 As regards Directive 2004/48, any infringement of copyright requires the necessary, effective, proportionate and dissuasive measures, procedures and remedies, as provided for in Articles 2 and 3 thereof.
- 54 The Court of Justice has held that ‘if, in situations such as those at issue in the main proceedings, national legislation, as interpreted by the relevant national

courts, has the effect of creating an obstacle to a national court before which a tortious action has been brought from being able to compel, on application of the claimant, the providing and obtaining of evidence relating to the opposing party's family members, proving the alleged infringement of copyright and who was responsible for that infringement are rendered impossible, and, consequently, the fundamental rights to an effective remedy and to intellectual property, enjoyed by the holder of the copyright, are seriously infringed, and thereby the requirement to ensure a fair balance between the various fundamental rights in question is not respected (see, by analogy, judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485, paragraph 41)' (judgment of 18 October 2018, *Bastei Lübbe*, C-149/17, EU:C:2018:841, paragraph 51).

55 In that context, the referring court wishes to clarify the scope of the applicants' right to an effective judicial remedy and the fair balance to be struck between that right and the high level of protection of the intellectual property rights of all co-authors.

(c) *Clarifications sought*

1. *Protection of the right to an effective judicial remedy*

56 Having been brought on 11 July 2019, the state of the proceedings still does not permit final judgment to be given. The parties have taken great pains to identify the co-authors or the successors in title to those co-authors without it being possible for those persons to be duly summoned to the proceedings as required by the national case-law based on Article L. 113-3 of the Intellectual Property Code. In particular, actions have been brought against 'estates', which do not have legal personality.

57 In its case-law, the Court of Justice has been able to reason on the basis of the principle of procedural autonomy of the Member States.

58 However, Directive 2001/29/EC requires Member States to provide for appropriate sanctions and remedies and effective proportionate and dissuasive sanctions.

59 Meanwhile, Directive 2004/48/EC provides for measures, procedures and remedies without prejudice to the means of national legislation but 'in so far as those means may be more favourable for rightholders' and provided that they are not 'unnecessarily complicated or costly' and do not include 'unreasonable time limits' or 'unwarranted delays'.

60 The Charter also guarantees applicants an effective judicial remedy. Those persons are, in fact, denied access to the court ruling on the substance of their civil claim if they cannot have joined to the proceedings all the successors in title to the co-authors of the works at issue given that several estates are being administered, including abroad.

- 61 In seeking to maintain the balance of the rights of co-authors, those limitations restrict the rights of applicants and impose on them a high risk of the inadmissibility of their application by requiring them to carry out significant tasks, whatever the circumstances, to verify the identity of the successors in title to the co-authors.
- 62 This court, bound by the principle that national law must be interpreted in conformity with EU law, is therefore uncertain as to the interpretation to be given to those provisions of EU law as allowing or, on the contrary, excluding the limitation of the author's right to bring an action for infringement. It raises the first question referred for a preliminary ruling on that point.
2. *The high level of protection of intellectual property rights and the fair balance to be struck between intellectual property rights and the right to an effective remedy*
- 63 The system arising from Articles L. 113-3 and L. 113-7 of the Intellectual Property Code and the domestic case-law also strike a balance between the rights of indivisible co-authors in order to preserve them. Those provisions transpose the directives referred to above.
- 64 The Court of Justice carries out a comparable analysis by requiring, on the basis of Directive 2001/29/EC, the 'prior consent' of the rightholder (judgment of 27 March 2014, *UPC Telekabel Wien*, C-314/12, EU:C:2014:192). However, that judgment concerns use of the work by a third party and not specifically by another co-author.
- 65 Above all, the judgment of 16 November 2016, *Soulier and Doke*, C-301/15, EU:C:2016:878, delivered on the basis of that same Directive 2001/29/EC, accepts the existence of consent on the part of the author assessed 'implicitly'. In the present case, that criterion would allow for a distinction to be made according to the situation of the various co-authors or successors in title. Some of them, as a result of several inheritances, probably have residual property rights and have never come forward to exercise them. However, the case-law of the Court of Justice requires such implicit consent to be defined 'strictly' because of the objective of a high level of protection of authors referred to in recital 9 of the directive. That is a fortiori the case for the moral rights of the author relied on in the present case.
- 66 This court would point out that copyright has not been fully harmonised and questions whether those solutions are actually implemented in the case-law.
- 67 On the basis of Directive 2004/48/EC, the case-law of the Court of Justice refers to a balance between several fundamental rights (judgment of 18 October 2018, *Bastei Lübbe*, C-149/17, EU:C:2018:841), which were nevertheless different in nature, in particular by comparing the right to intellectual property with the right to respect for private life.

- 68 In the case at issue in the main proceedings, the rights being weighed are either of the same nature or of a comparable nature between indivisible co-authors; the plea of inadmissibility makes it possible to guarantee absent co-authors that a court will not limit those rights without allowing them to defend themselves.
- 69 The effect of that procedural rule is to place the burden of informing co-authors who may wish to control the exploitation of the joint work on applicants who hold their own intellectual property rights rather than on the person responsible for exploiting it.
- 70 The Court of Justice was able to hold that the rights of the owner of an intellectual property right were infringed if he could not, on application, request evidence relating to the family of his opposing party (judgment of 16 July 2015, *Coty Germany*, C-580/13, EU:C:2015:485). The Court refers directly to the concepts of ‘serious infringements’ of intellectual property rights and of an effective remedy, but also to the concept of a ‘fair balance’ between the various fundamental rights at issue.
- 71 In the situation at issue in the main proceedings, the infringement is likely to affect both the applicants, who are the successors in title to the co-authors, and unidentified successors in title, who could have their intellectual property rights affected by the outcome of the proceedings without having knowledge of it.
- 72 In view, in particular, of the extended term of protection provided for by EU law and the Berne Convention, this court is therefore uncertain whether or not it is necessary to give precedence to the rights of the applicants.
- 73 This court refers the second question referred for a preliminary ruling on that point.

5. Questions referred for a preliminary ruling:

- 74 This court asks the Court of Justice to give a preliminary ruling on the following questions:

Question 1: Can Articles 2, 3, 4 and 8 of Directive 2001/29/EC of 22 May 2001, Articles 1 to 3 of Directive 2004/48/EC of 29 April 2004 and Articles 1, 2 and 9 of Directive 2006/116/EC of 12 December 2006, in so far as they guarantee to the author and co-author of a cinematographic or audiovisual work both the exclusive right to authorise or prohibit the reproduction of their works and the right of their communication to the public and a term of protection ending 70 years after the death of the last survivor amongst the collaborators of the work, at the same time as they require the Member States to provide for effective, proportionate and dissuasive sanctions and remedies which are appropriate in respect of copyright infringements, as well as for measures, procedures and remedies which are not unnecessarily complicated or costly, or which do not entail unreasonable time limits or give rise to unwarranted delays, be interpreted as meaning that an action

for infringement of the copyright of a work of joint authorship, by its holder, requires, in order for it to be admissible, that all of the co-authors be joined to the proceedings?

Question 2: Must the copyright holder's right to an effective judicial remedy and access to a court, a component of the right to a fair trial, as guaranteed, together, by Articles 2, 3, 4 and 8 of Directive 2001/29/EC of 22 May 2001, Articles 1 to 3 of Directive 2004/48/EC of 29 April 2004, Articles 1, 2 and 9 of Directive 2006/116/EC of 12 December 2006, Directive 2006/115 of 12 December 2006 and Articles 17 and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the admissibility of an action for infringement of copyright is, or is not, conditional on all of the co-authors of the work being joined to the proceedings?

WORKING DOCUMENT