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Intellectual Property Crime Case-Law of National Courts

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Criminal justice across borders

This document was prepared by the Intellectual Property Crime Project at the European Union Agency for Criminal Justice Cooperation (Eurojust). The Intellectual Property Crime Project is funded by the European Union Intellectual Property Office (EUIPO) and executed by Eurojust under the terms agreed in the service level agreement signed between the two organisations in March 2021. It aims to enhance cooperation and deliver an efficient and coherent response to intellectual property crimes at EU level.

The EU policy cycle European Multidisciplinary Platform Against Criminal Threats (EMPACT) is a security initiative driven by EU Member States to identify, prioritise and address threats posed by serious and organised international crime.

This summary of national judicial decisions was created for criminal law professionals who are fighting intellectual property crime in the EU. Intellectual property crime is one of the areas to be tackled within the EMPACT 2022–2025 priorities, and it and falls under the priority 'Fraud, economic and financial crimes', whose aim is 'to combat and disrupt criminal networks and criminal individual entrepreneurs involved in IP [intellectual property] crime and in the production, sale or distribution (physical and online) of counterfeit goods or currencies, with a specific focus on goods harmful to consumers' health and safety, to the environment and to the EU economy'.

DISCLAIMER

The information contained in this document is based on research into national judgments available in national public domains. The original source of each judgment is hyperlinked and annexed to this document. Neither Eurojust nor EUIPO can be held responsible for any inaccuracies in the text of the judgments.

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Executive summary

This document, which is updated on an annual basis, provides an overview of the case-law of national courts with regards to the application of national legislation regulating intellectual property crimes (IPCs).

IPC is an infringement of copyright by counterfeiting commodities or pirating content. Counterfeiting involves the manufacturing, sale or distribution of goods without the intellectual property right owner's authorisation. The criminal offence of counterfeiting goods infringes intellectual property rights such as trademarks, designs, patents, geographical indications and copyright.

This case-law overview contains summaries of national judgments, categorised according to the main legal issues they address. Each summary includes a set of keywords reflecting the main issues of the case and references to the relevant legal provisions. Each summary also includes a list of the relevant legislation. The full text of each article in the original language as well as English can be accessed by clicking the article.

This compilation of summaries of national judgments aims to highlight the most common issues dealt with by national courts in the area of IPC. In so doing, it helps to identify common practices and assist practitioners in applying relevant legal provisions during IPC investigations and prosecutions.

The summaries of the judgments are not exhaustive. They should be used only as a reference and as a supplementary tool for practitioners. Links to the full texts of the judgments are provided in the summaries, and are annexed to this document.

This document was prepared as part of the Intellectual Property Crime Project, which was launched in 2021 as a coordinated effort between the European Union Intellectual Property Office (EUIPO) and the European Union Agency for Criminal Justice Cooperation (Eurojust) to enhance cooperation and deliver efficient and coherent responses to IPCs at EU level. The project aims to provide comparative analyses of national jurisdictions, as well as promoting uniform practices and raising awareness of IPC across the EU.

This document was prepared as part of the European Multidisciplinary Platform Against Criminal Threats (EMPACT). Its main goal is to provide prosecutors and judges with a collection of IPC case summaries that identify the most relevant practices in this area. In so doing, it will enable practitioners in the field of IPC to make optimal use of existing resources and best practices deriving from intellectual property-related cases.

HAVE AN INTERESTING CASE ON INTELLECTUAL PROPERTY CRIME TO BE INCLUDED IN THIS DOCUMENT?

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I. Commercial purpose as an element of crime

Lithuania – Case No 1-683-899/2011

In this case, the court addressed the question of whether the mere storage of software can constitute a criminal offence as set out in Article 192(2) of the Lithuanian Criminal Code.

Country	Lithuania
Case No	1-683-899/2011
Keywords	Copyright, software, computer program, commercial purpose
Parties	Accused and a private company v prosecutor
Date	27.4.2010
Court name	Šiauliu miesto apylinkes teismas
Instance	First instance
EU norms	—
Other norms	Article 2(17) of the Law on Copyright and Related Rights (equivalent to Article 2(28) of the Law on Copyright and Related Rights valid in 2021); Article 192(2) of the Criminal Code
Fine/damages	The accused and his company were ordered to pay a fine of 35 times the minimum salary levels (MSL) – LTL 4 550 (about EUR 1 317) – and 120 MSLs – LTL 15 600 (about EUR 4 518) – respectively.
Reference	Byla 1-683-899/2011 – eTeismai

Facts of the case

The case concerns the illegal use of the software Autodesk AutoCAD 2004, Adobe Photoshop 7.0, CorelDRAW Graphics Suite 11, Autodesk AutoCAD 2010 and Windows 7 Enterprise without appropriate licences or authorisation from the copyright owner. The software was installed on two computers that were on the premises of a private company and was used to create drawings for furniture production between 2005 and 2010.

The court found the accused and his company guilty of the crime set out in Article 192(2) of the Criminal Code. Article 192(2) of the Criminal Code indicates that a person who illegally reproduces literary, scientific or artistic works (including software), or other related rights, for commercial purposes, or distributes, transports or keeps illegal copies for commercial purposes shall be held liable.

The companies Autodesk, Inc., Microsoft and Adobe Systems Incorporated filed a civil law claim to recoup their damages.

Substance

The court addressed the circumstances in which storing and using computer software is considered to be for commercial use. The court stressed that, pursuant to Article 192(2) of the Criminal Code, the use of software is a criminal offence only if the software is used for commercial purposes. Article 2(17) of the Law on Copyright and Related Rights (equivalent to Article 2(28) of the Law on Copyright and Related Rights valid in 2021) defines commercial purposes as activities that directly or indirectly bring economic benefit. **Therefore, mere storage of the software does not have any economic benefit – it is necessary to prove that the software is also used for commercial purposes.** In this case, the software was used in the company to create sketches for furniture production. The software was directly used to increase the performance and profit of the company; therefore, the court concluded that there was sufficient proof that the software was used to support the primary business activity of the company. For this reason, any use of software without the permission of its creator constitutes a violation of copyright, as described in Article 192(2) of the Criminal Code.

Comment

The court analysed the element of commercial purpose, which is an essential element of the criminal offence set out in Article 192(2) of the Criminal Code. **The court declared that storing software without using it for commercial purposes does not amount to a criminal offence. It is necessary to prove that the software is used for direct or indirect economic benefit.**

Lithuania – Case No 2K-173/2013

In this case, the court addressed the question of whether the mere storage of software can constitute a criminal offence as set out in Article 192(2) of the Lithuanian Criminal Code. The court further addressed the method of calculating damages in the case of illicit use of computer programs.

Country	Lithuania
Case No	2K-173/2013
Keywords	Copyright, software, computer program, commercial purpose, compensation for damages, retail price
Parties	Accused and a private company v Office of the General Prosecutor
Date	16.4.2013
Court name	Lietuvos Aukščiausias Teismas
Instance	Third instance
EU norms	—
Other norms	Article 192(2) of the Criminal Code; Article 83(4) of the Law on Copyright and Related Rights
Fine/damages	The accused was ordered to pay a fine of 30 times the minimum salary levels (MSL) – LTL 3 900 (about EUR 1 035) – and LTL 50 774 (about EUR 14 705) for civil damages.
Reference	Byla 2K-173/2013 – eTeismai

Facts of the case

The accused was found guilty of criminal infringement of copyright because he possessed and used a number of computer programs without a licence. The software was used for commercial purposes in his company. The first instance court ordered the accused to pay a fine of 30 times the MSLs – LTL 3 900 (about EUR 1 035) – and civil damages amounting to LTL 50 774 (about EUR 14 705). The second instance court upheld the decision of the first instance court.

The accused filed a complaint to the Supreme Court, claiming, among other, that the lower instance courts did not establish that the software was used for direct commercial purposes and that they erroneously calculated the value of the software.

Substance

In this case, the Supreme Court addressed how to calculate the value of computer software in order to determine whether the copyright violation incurred criminal liability, and the calculation of compensation.

The Supreme Court indicated that criminal liability arises only if the computer software is used for commercial purposes. In its previous cases, the Supreme Court indicated that, in the context of copyright infringements, commercial purpose is established when there is both a direct and an indirect gain from copyright infringement. Indirect gain was considered when the employees of the company used pirated

computer software to improve the performance of the company, which resulted in a higher quality of production and higher profit.

The court also concluded that the damages are defined as the loss of property, direct expenses incurred owing to copyright infringement or the loss of income that the copyright owner would have received if the unlawful acts had not occurred. Loss of potential income is indirect damage and therefore should be considered as a basis for determining compensation.

It is well established in court practice that compensation is determined based on the lawful retail price (including all taxes) of the copyright object that would be paid by the copyright user. The possession of unauthorised computer software is a continuous offence, and it is deemed to be committed when the offence is recorded by the law enforcement institutions. **The retailers may not be able to indicate the price of a previous software version. In this case, the price of the software version that is distributed at the time the offence is recorded should be used as a basis for calculating damages.**

Comment

The Supreme Court indicated that the loss of potential income (calculated based on the retail price of the software) is a basis for calculating the damages in copyright-related cases. It further indicated that the possession of computer software is considered a continuous offence, which is deemed to be committed at the time it is recorded by the law enforcement institutions.

II. Online piracy

Spain – Case No 856/2015

In this case, the court analysed whether the domain 'Zonaemule.com', which contained links to peer-to-peer (P2P) file-sharing programs, shared by users and uploaded by the accused, constitutes a violation of Article 270 of the Spanish Criminal Code.

Country	Spain
Case No	856/2015
Keywords	Advertising, author, communication to the public, copyright, making available to the public
Parties	Prosecutor v M.A.T.P
Date	22.12.2015
Court name	Audiencia Provincial de Valencia
Instance	Second instance
EU norms	—
Other norms	Article 270 of the Criminal Code; Article 17 of Law 34/2002 on services of the information society and electronic commerce
Fine/damages	No damages were mentioned in this case.
Reference	La Audiencia de Valencia confirma la absolución de Zonaemule, tras 10 años

Facts of the case

This case concerns an appeal made by the Entity for the Management of Rights of Audiovisual Producers and other parties against the decision of the first instance court to acquit the accused of a crime against intellectual property (IP) under Article 270 of the Spanish Criminal Code.

The accused was the owner and administrator of the domain 'Zonaemule.com', registered through a Spanish internet company. The page contained links shared by users, and uploaded by the accused, that led to P2P file-sharing programs such as eMule and eDonkey, where users could download copyright-protected works without the explicit consent of the authors or their assignees. Some of the downloadable content, especially that related to the most current or sought-after works, was provided by the accused, who published links that he obtained from other pages. Although it facilitated access to protected works, the accused's web page did not directly host the copyright-protected works, but only provided a directory of links.

The web page was a source of income for the accused, which he generated by placing advertisements and links to commercial services on the page. The accused also signed contracts with other legally operating companies whereby, in exchange for providing the companies with a database containing the data of the users registered on his page, the accused received a percentage (in one case 50 %) of the income generated by the companies from the advertisements.

Acquitting the accused, the first instance court argued that the Zonaemule web page did not host the works made available to the public, but only facilitated access to them. This was emphasised by a disclaimer added by the accused to his web page. The court also ruled that the conduct of the accused was governed by Article 17 of Law 34/2002 on services of the information society and electronic commerce, which exempts the providers of information services from criminal responsibility in instances where they are unaware of the illicit nature of their behaviour.

Unhappy with this outcome, the Entity for the Management of Rights of Audiovisual Producers and the other plaintiffs in this case submitted an appeal, requesting that the decision of the first instance court be overturned and a guilty verdict handed down.

Substance

The second instance court began by explaining that the appellants' claim was in contravention of the doctrine of the Spanish Constitutional Court (167/2002), which establishes that acquittals have an unassailable finality, recognised by the European Court of Human Rights.

The second instance court agreed with the first instance court that the activity of the accused was limited to facilitating access to the works by providing links, instead of directly hosting the protected content or enabling its direct download on the Zonaemule web page. This reasoning led to the court's view that the elements that constitute a crime against IP (reproduction, plagiarism, distribution and public communication) under Article 270 of the Criminal Code were not present.

When addressing the concept of public communication envisaged in Article 270 of the Criminal Code, the second instance court affirmed that the actions of the accused of organising and publicising the works were classified as mere acts of intermediation, not public communication, because they only facilitated the download of works shared by others.

On this point, the court also considered the more ample definition of public communication set by the Court of Justice of the European Union (CJEU) in its judgment of 13 February 2014 (Case C-466/12) – that 'the provision of clickable links to protected works must be considered to be "making available" and, therefore, an "act of communication"', and that 'a communication must be directed at a new public that was not taken into account by the copyright-holders when they authorised the initial communication to the public'. The court, however, argued that that definition was not applicable to the present case, because it concerned circumstances different from those in the case before it.

Citing an earlier judgment by a court in Madrid, the second instance court ruled in favour of exempting the accused from responsibility for the content of the works to which he facilitated access, as his knowledge that the works were illicit had not been proven. This decision rested on the provisions of Article 17 of Law 34/2002 on services of the information society and electronic commerce, which excludes responsibility for link-providers who are unaware of the illicit nature of the content to which they facilitate access.

Despite the modification of the Spanish Criminal Code in 2015, which led to the introduction of new criminal sanctions for providers of links to IP-protected content, the court recognised that the new provisions of the Criminal Code could not be applied retroactively, and therefore did not alter the ruling in this case.

Lastly, the court discussed the element of financial gain – necessary for the existence of the crime – and took the view that the indirect income made by the accused was linked to the advertisements on his web page, and not to the downloading of the protected works. The court adopted a broad definition of income,

which included the indirect revenue generated by the accused from a connected service he provided alongside his main activity of publishing and uploading links to protected works.

Owing to the doctrine of the Constitutional Court, referred to at the start of this section, the absence of the main elements of a crime against IP and the impossibility of applying the Criminal Code changes retroactively, the second instance court confirmed the decision of the first instance court and acquitted the accused of a crime against IP.

Comment

This judgment put an end to a decade-long case that started in 2006. By addressing the difference between cases related to direct downloads and those concerning links to P2P pages, this ruling helps to provide more clarity on the responsibility of providers of links that facilitate access to illicit or copyright-protected material. This issue had long been a contested subject in Spanish courts, leading to different interpretations of the law and opposing judgments. Moreover, this judgment is relevant because it demonstrates how national courts interpret EU jurisprudence in the area of copyright protection, in particular with regard to the public communication of protected works.

Spain – Case No 453/13

In this case, the court analysed whether providing links to IP-infringing online material constitutes an act of communication to the public and a crime against IP under Article 270 of the Spanish Criminal Code. The court further analysed the elements that proved the accused's intent to financially profit from his illicit conduct.

Country	Spain
Case No	453/13
Keywords	Advertising, communication to the public, copyright
Parties	Promotores de Música de España (Promomusicae), Asociación Española de Distribuidores y Editores de Software de Entretenimiento (ADESE) and others, and Sociedad General de Autores y Editores (SGAE) v Accused
Date	30.10.2013
Court name	Juzgado de lo Penal Número Cuatro de Castellón
Instance	Second instance
EU norms	—
Other norms	Article 270 of the Criminal Code; Article 17 of Law 34/2002 on services of the information society and electronic commerce
Fine/damages	The accused was ordered to pay EUR 21 116 to Promomusicae and EUR 7 892 to SGAE.
Reference	Sentencia España Bajatetodo.com (elderechoinformatico.com)

Facts of the case

Promomusicae, ADESE and others, and SGAE brought an action against the accused for his activity as the main creator and administrator of the web page www.bajatetodo.com (later known as www.bajatetodo.es) and associated web pages. The web pages managed by the accused provided clickable links to copyright-protected content – including audio works, movies, television (TV) series, computer programs and computer games – hosted in P2P networks without the consent of the rights-holders.

The first instance court found the accused guilty of a crime against IP under Article 270 of the Spanish Criminal Code and sentenced him to 18 months' imprisonment. The accused was, furthermore, ordered to pay a EUR 12 daily fine for 20 months and EUR 29 000 in damages to the injured parties. Lastly, the court barred the accused from exercising any activity related to the development and management of web pages for 3 years.

The accused appealed against the decision, arguing that he merely performed an intermediary role, as the protected content was not stored on his website server and the users downloaded the materials from other web pages.

Substance

The second instance court started by examining whether the conduct of the accused constituted an act of public communication. Echoing an earlier decision by a court in Valencia (313/2013), the second instance court argued that the examination should focus on whether providing links to infringing material was an act of public communication, instead of the illegality of the content provided on the web page. The court concluded that the technical work carried out by the accused, which encompassed classifying, commenting on and indexing the online resources, made the infringing materials directly accessible to users of his web pages. The accused therefore went beyond playing a mere intermediary role and did not benefit from the exclusion of responsibility afforded under Article 17 of the Law on services of the information society and electronic commerce.

As regards financial gain, the court held that the accused's intent to profit from his activity was proven by the income made through advertising and the posting of links to online shops, which were directly linked to the infringing activity. The accused also signed an agreement with another company, whereby he provided it with the email addresses of his web page's users, which were in turn used by the company for advertising purposes. This arrangement allowed the accused to further generate indirect economic benefit.

Rejecting the appeal, the second instance court found the accused liable for a crime against IP under Article 270 of the Spanish Criminal Code, thus upholding the decision of the first instance court.

The court ordered the accused to pay EUR 21 116 in compensation to Promomusicae, and EUR 7 892 in compensation to SGAE, in line with the amounts indicated by the two parties. The sum of the damages payable was based on a calculation of the income that the two parties would have accrued in the absence of the illicit use of the works. The compensation payable to ADESE was to be determined at the time the judgment was enforced.

Comment

With this judgment, the second instance court in Castelló made a departure from earlier Spanish court rulings, as it confirmed that the provision of links to IP-infringing online material constitutes an act of communication to the public, making the providers criminally liable for such actions.

Spanish courts had long ruled that those providing links to IP-infringing online content played a mere passive intermediary role, and were exempt from criminal liability under Article 17 of Law 34/2002 on services of the information society and electronic commerce. This approach changed in 2015, following the Spanish Criminal Code reform, which criminalised the act of facilitating access to, or supplying the internet location of, IP-protected works by providing links to the works. By taking a tougher stance against operators of file-sharing websites, this decision represents a significant change of approach in Spanish case-law, aligning it with what would later become the new position of the Spanish courts, following the introduction of the new IP provisions by the Organic Act 7/2015.

The judgment is also of relevance in light of the wide media attention it garnered, not least due to the substantial numbers of registered users (80 000) and visits (10 000 000) to the web pages, which were highlighted during the court hearings.

Spain – Case No 117/2016

In this case, the court analysed the role of the accused in making a large volume of IP-protected content available via www.youkioske.com without prior authorisation from the copyright-holders, and how their conduct brought about further criminal responsibility for the promotion and establishment of an organised criminal group.

Country	Spain
Case No	117/2016
Keywords	Advertising, communication to the public, copyright, damages, streaming
Parties	Editorial América Ibérica S.A., Asociación de Editores de Diarios Españoles (AEDE) and Centro Español de Derechos Reprográficos (CEDRO) v Accused
Date	5.2.2016
Court name	Audiencia Nacional
Instance	Second instance
EU norms	—
Other norms	Articles 270, 271 and 570 of the Criminal Code
Fine/damages	The amount of damages is to be determined at the time the judgment is enforced. The accused was also ordered to pay a daily fine of EUR 10 for 20 months.
Reference	Consejo General del Poder Judicial: Buscador de contenidos

Facts of the case

Between June 2009 and May 2012, the two main accused (Spanish nationals), aided by five unidentified individuals based in Ukraine, made a high volume of copyright-protected content available to the public without the authorisation of the rights-holders. To this end, the accused created the web page www.youkioske.com, which enabled users to access as many as 17 000 publications, including magazines, newspapers and books from countries such as France, Germany, Italy, the Netherlands, Portugal, Russia, Spain and the United Kingdom.

The publications were copied and uploaded to the web page by a group of Ukrainians acting on instructions from the Spanish accused. The publications were hosted on virtual servers, mostly in France and the United States. They were accessed through streaming at www.youkioske.com, which was registered under a company domiciled in Belize (of which the accused were directors) and was hosted on the server of a Canadian company.

While access to the content on www.youkioske.com was free of charge for the users, the accused indirectly collected revenue through advertisements placed on the web page in the form of banners and pre-roll videos. To manage the revenue generated from the advertisements, the accused established a company along with a third person (the third accused).

The prosecution, following a criminal complaint from Editorial América Ibérica S.A., AEDE and CEDRO, brought an action against the accused for a crime against IP and the promotion and establishment of a criminal organisation.

Substance

The court began by examining whether the accused were aware of the illegality of their actions: uploading and storing IP-protected material on their website. To make the page resemble a P2P portal and mask their involvement in uploading the protected content, the accused instructed the individuals in Ukraine to create fake user accounts. The court thus concluded that the available evidence made it clear that the accused were in full knowledge of the illicit nature of their activities and were aware that the exploited material was copyright-protected. However, the lack of awareness of one of the accused led to his acquittal in court.

Secondly, the court found that the actions of the accused – directly uploading the material, and selecting and indexing content that could be directly streamed by all users on the website – went beyond the mere intermediary role claimed by the defence, amounting to an act of public communication. This point followed the jurisprudence of the CJEU, and, in particular, the Svenson judgment (Case C-466/12), which confirmed that, in order for links to protected works to be considered acts of public communication, they must target a new public. In this case, the Spanish National High Court considered that, by allowing access to protected content that could otherwise only be viewed subsequent to payment for the printed copy or a subscription, the accused targeted a new public.

With respect to commercial gain – another important element in IP crime – the court was of the opinion that the required intent to obtain a financial benefit was clear from the income indirectly generated through advertising on the web page.

The Spanish National High Court thus ruled that all the elements constituting a crime against IP, laid out in Article 270 of the Spanish Criminal Code, were present in this case. Moreover, given the special gravity of the facts (resulting from the high amount of damages caused), the offence was deemed to be aggravated under Article 271 of the Criminal Code, under which the penalty of the basic offence category is doubled.

As the crime was committed by more than two people who distributed functions and tasks and acted in a concerted, coordinated and consistent manner, the court ruled that the accused were also criminally responsible for promoting and establishing a criminal organisation according to Article 570 of the Criminal Code.

The Spanish National High Court therefore sentenced the accused to 3 years' imprisonment each for an aggravated crime against IP and for the crime of promoting and establishing a criminal organisation. The accused were ordered to pay a daily fine of EUR 10 for 20 months and, more importantly, to pay the injured parties compensation to be determined at the time the judgment was enforced. On this point, the Public Prosecutor had requested the payment of EUR 3 695 004 to AEDE and EUR 24 004 to Editorial América Ibérica S.A.. Lastly, the court ordered the confiscation of the proceeds generated from the illicit activities up to the amount of EUR 196 280, and barred the accused from exercising activities related to the administration and management of web pages for 5 years.

Following an appeal by the accused, the decision of the National High Court was confirmed by the Spanish Supreme Court.

Comment

This judgment is relevant because it followed and reiterated earlier decisions by other Spanish courts and implemented EU jurisprudence (Svenson case) at national level. The judgment is also relevant from an enforcement perspective, as it showed that IP crime is a serious crime that can be committed by organised criminal groups, and delivered a heavy sentence in an area that had thus far caused doubts for national courts, resulting in extensive criminal exploitation. Indeed, the penalty applicable in this case made the Youkioske judgment in Spain a historic one, marking the first case in the country where the administrators of a file-sharing website were sentenced to a 3-year custodial sentence.

France – Case No 16-86.881

In this case, the court analysed the elements of crime related to the functioning of the website eMule Paradise, where pirated movies, TV shows, software and other IP-protected works were made available for downloading. The court analysed elements such as intent and the calculation of damages.

Country	France
Case No	16-86.881
Keywords	Copyright, damages, online piracy, criminal intent
Parties	Appeal filed by defendant, Mr Y, and civil party Société des auteurs compositeurs et éditeurs de musique
Date	27.2.2018
Court name	Cour de Cassation
Instance	Third instance
EU norms	—
Other norms	Articles L112-1, L112-2, L113-1, L215-1, L335-3, L335-4, and L122-5(1) and (2) of the Intellectual Property Code
Fine/damages	The Court of Appeals sentenced the accused to a 14-month suspended prison sentence, the confiscation of seized objects and the payment of damages to the civil parties: 20th Century Fox – EUR 35 000; Columbia Pictures Industries, Inc. – EUR 20 000; Disney Enterprises – EUR 45 000; Paramount Pictures Corporation – EUR 20 000; Universal Studios – EUR 30 000; Warner Bros, Inc. – EUR 20 000; Galatée Films and Pathé Renn Production – EUR 10 000; Société des auteurs compositeurs et éditeurs de musique – EUR 40 000. The decision in part on the compensation to the civil parties was annulled by the Court of Cassation.
Reference	Cour de cassation, criminelle, Chambre criminelle, 27 février 2018, 16-86.881, Publié au bulletin – Légifrance (legifrance.gouv.fr)

Facts of the case

The accused, Mr Y, was managing the website eMule Paradise, where intellectual works (films, TV shows and software) could be downloaded. The accused was also storing videograms (audiovisual recordings, as on a videotape or digital video disc) in violation of copyright and related rights. The website ran from 2005 to 2007. The investigation uncovered that the website stored 7 713 protected works (films, TV shows and software). The top 50 movies generated 6 130 526 downloads. In total, the website generated at least EUR 416 638 in illicit income over 2 years, cashed in on accounts of offshore companies.

The income was mainly generated indirectly, from advertising on the website. Payment for the advertising and the overall management of the advertising on eMule Paradise were done by an advertisement company. Therefore, the partner and commercial director of this advertisement company, Mr B, was charged with complicity in counterfeiting the intellectual works by paying Mr Y the advertising revenue necessary for the functioning of eMule Paradise.

The first instance court found Mr Y and Mr B guilty of copyright violations for making copyright-protected works available to download. The Court of Appeals confirmed the decision of the first instance court in relation to Mr Y. However, the Court of Appeals acquitted Mr B of complicity in counterfeiting intellectual works because he was neither the legal nor the de facto manager of the advertising activities of eMule Paradise. A third person, Mr C, and his wife were signing the cheques for payment and managing the relations with eMule Paradise.

Mr Y and the civil parties filed a claim against the decision of the Court of Appeals. The Court of Cassation rejected the appeals and affirmed the decision of the Court of Appeals.

Substance

The Court of Cassation analysed whether it was necessary to assess every item on the website and determine whether each work was protected by copyright. The accused, Mr Y, claimed that he was found guilty of the infringement of 7 713 protected works but that the names of the works were not specified and that it was not confirmed that each work included a link allowing its download. The Court of Cassation concluded that it did not matter that the names of specific works were unknown, as the very fact of appearing on eMule Paradise under the film category allowed the exact nature of the protected works to be deduced. The films appearing on the website reflected the personality of their authors and their copyrights.

Furthermore, the Court of Cassation addressed the proof of the intent of the accused to share the copyright-protected works. The accused, Mr Y, claimed that the website did not contain the IP-protected works – it included only a link to where the protected works could be downloaded. The court considered that the website included specific software allowing users to download the films or protected software. The website also provided movie descriptions, including images and posters, and made them available in the directory of movies that could be downloaded by eDonkey link. These elements showed a specific intent to facilitate access to copyright-protected works.

The court further addressed the issue of calculating damages. Société des auteurs compositeurs et éditeurs de musique claimed for damages of EUR 1 254 368, including value added tax, instead of EUR 40 000, as set by the Court of Appeals. The civil party requested the damages on the basis of a calculation of the total value of downloaded works – 5 695 686 illegal downloads – multiplied by the unit price of a legal download – EUR 9.99 – with value added tax for the lowest price found. The collection rate of Société des auteurs compositeurs et éditeurs de musique was 2.50 % of the total value of the works, which corresponded to EUR 1 254 368 in damages. In determining the damages, the court must consider the negative economic consequences, including loss of profit, moral prejudice caused to the rights owners, the profits made from the infringement or the profits made by the infringer. Alternatively, the court can set a fixed amount of damages; however, the damages need to be justified. In this case, the lower court did not justify the amount of the damage; therefore, the Court of Cassation annulled the lower court's decision on damages and sent it back for reconsideration.

Comment

In determining the damages, the court must consider the negative economic consequences, including loss of profit, moral prejudice caused to rights owners, the profits made from the infringement, or the profits made by the infringer. Alternatively, the court can set a fixed amount of damages; however, the damages need to be justified.

France – Case No 11-84.224

In this case, the court analysed whether the absence of a download function on the website www.radioblog.fr constitutes a violation of Articles L335-4 and L335-2-1 of the Intellectual Property Code.

Country	France
Case No	11-84.224
Keywords	Copyright, online piracy, damages, download function
Parties	Accused, Mr B and Mr J v prosecutor
Date	25.9.2012
Court name	Cour de Cassation
Instance	Third instance
EU norms	—
Other norms	Articles L132-29 to L132-34, L335-4 and L335-2-1 of the Intellectual Property Code
Fine/damages	The court found both the accused guilty and sentenced them to 9 months' suspended imprisonment and the payment of a fine of EUR 10 000 each. The accused are jointly liable to pay a sum of EUR 871 804 to Société civile des producteurs de phonogrammes and a sum of EUR 217 951 to Société des producteurs de phonogrammes en France.
Reference	Cour de cassation, criminelle, Chambre criminelle, 25 septembre 2012, 11-84.224, Publié au bulletin – Légifrance (legifrance.gouv.fr)

Facts of the case

The accused, Mr B and Mr J, ran the company Mubility, which administered the website www.radioblog.fr. The website operated from August 2005 until January 2008. It made available for any internet user to access and listen to audio works of their choice free of charge. The website also contained software that allowed the users to create playlists, listen to them and transfer them to personal sites or blogs. The audio works were from well-known French and international artists from which the accused had never obtained authorisation. It is estimated that the website had 800 000 visits per day. The revenue was mainly generated indirectly from advertisements. The turnover of Mubility in 2006 was EUR 403 286, and in 2007 it was EUR 686 469.

The first and second instance courts found the accused guilty and sentenced them to 9 months' suspended imprisonment, and to a fine of EUR 10 000 each.

The accused appealed the decisions indicating that the website did not allow to download of the audio works. It merely provided a search engine and a tool for internet users to build playlists. The website merely contained hyperlinks to music where the users could listen to it. It did not contain copyright-protected works or links allowing their download.

Substance

The court analysed whether the website violated copyrights, as it did not include any links to download the music. The website did not provide a download function; users could only listen to and share the copyright-protected audio works. However, the court concluded that the absence of the download function did not exempt the accused from liability. The website used a system of indexing through hyperlinks and a search engine, making it possible to search for audio works by artist name or title, and to listen to it online. It also made available to the public the software 'Radioblog', which allowed the users to create playlists of, listen to and share the copyright-protected works. Thus, creating these technical means for internet users to access music without the required authorisation from artists constitutes a violation of Article L335-2-1 of the Intellectual Property Code. The court further indicated that the accused making available specific software that allows the public to listen to music showed their intent to facilitate illicit access to protected works.

Further, the Court of Cassation addressed the issue of calculation of damages. Both the accused claimed that the lower instance court erroneously applied Article L331-1-3 of the Intellectual Property Code because this article came into force on 29 October 2007, but the alleged criminal activities took place from August 2005 to January 2008. The Court of Cassation indicated that the lower instance court correctly applied the principles set out in Article L331-1-3 of the Intellectual Property Code. The lower instance courts correctly considered the enormous popularity of the website (around 20 million visits per month), high number of musical works available (e.g. one report listed 359 by Madonna), that companies such as EMI indicated a price of EUR 0.10 per song, and the total income of Mubility during 2006 (EUR 406 286) and 2007 (EUR 686 469). The lower instance courts further correctly indicated that the compensation reflected the harm done to artistic creation, musical production and the negative consequences for employment in the record industry. Therefore, the accused were jointly liable to pay a sum of EUR 871 804 to Société civile des producteurs de phonogrammes and a sum of EUR 217 951 to Société des producteurs de phonogrammes en France.

Comment

The court affirmed the decisions of the first instance court and indicated that the mere fact that the accused made music available without appropriate authorisation constitutes a violation of Articles L335-4 and L335-2-1 of the Intellectual Property Code. The actual download of the copyright-protected works is not necessary for the criminal breach of copyright.

III. Calculation of damages

Lithuania – Case No 1A-94-851/2018

In this case, the court addressed the calculation of damages. The court referred to the Constitutional Court decision on the calculation of damages in IP-related crimes.

Country	Lithuania
Case No	1A-94-851/2018
Keywords	Copyright, damages, literary works
Parties	Accused and a private company v prosecutor
Date	22.2.2018
Court name	Vilniaus Apygardos Teismas
Instance	Second instance
EU norms	—
Other norms	Article 192(2) of the Criminal Code; Article 67(3) of the Law on Copyright and Related Rights (equivalent to Article 83 of the Law on Copyright and Related Rights valid in 2021)
Fine/damages	The first instance court imposed a fine of 40 times the minimum salary levels (MSL) (EUR 1 506) on the accused, S. B., and a fine of 50 times the MSL (EUR 1 883) on company L. A., and ordered the maximum possible compensation for damages to be paid to the author of the book: 1 000 times the MSLs (EUR 37 650). The second instance court reduced the compensation for damages to 300 times the MSLs (EUR 11 298).
Reference	BYLA 1A-94-851/2018 – eTeismai

Facts of the case

Between 2003 and 2011, the accused and his company published and sold a number of books without acquiring the consent of the author. The accused and his company had signed several contracts with the author of the books: four contracts signed between 1998 and 2000 and one contract signed in 2011. However, the books were published after these contracts had expired. In total, 22 249 copies were illegally published and distributed for sale without the consent of the author.

The first instance court found the accused and his company guilty of copyright violation, as defined in Article 192(2) of the Criminal Code, and sentenced him to pay a fine of 40 times the MSL (EUR 1 506) and his company to a fine of 50 times the MSL (EUR 1 883). The first instance court further ordered the maximum possible compensation for damages to be paid to the author of the book: 1 000 times the MSL (EUR 37 650).

The second instance court upheld the decision of the first instance court. The Supreme Court – as the third instance court – also upheld the conviction; however, the court decided that the compensation for damages had not been justified by the lower instance courts. Therefore, the case was sent back to the

second instance court regarding the compensation for damages. The second instance court reduced the damages to EUR 11 298.

Substance

The second instance court decision focused on the calculation of damages in copyright cases and referred to the Constitutional Court decision No. KT17-N8/2017 on the purpose of compensation, as set out in Article 67(3) of the Law on Copyright and Related Rights (equivalent to Article 83 of the Law on Copyright and Related Rights valid in 2021). The law foresees that, if it is not possible to determine the exact amount of damages, the court shall decide on the amount of damages up to 1 000 MSLs. The main purpose of the compensation is to cover the damages experienced by the copyright owner to the largest extent possible. In determining the amount of damages, the court should consider that (1) the material loss always has to be a basis for the compensation; (2) the court can order higher compensation than material loss to cover the moral damages, but the principle of proportionality should be followed; (3) the compensation cannot be disproportionally low, as this may encourage further copyright violations; and (4) even if the overall purpose of the compensation is to cover the financial loss of the copyright-holder, the court should consider the financial status of the accused – the compensation cannot bring the accused or the company to bankruptcy.

In this case, the second instance court investigated the compensation set by the first instance court: maximum possible damages of 1 000 MSLs (EUR 37 650). The court concluded that this amount of damages was not justified. In order to determine the damages, the court looked into payment for literary works set in the agreements between the publisher and the author. The agreements signed between 1998 and 2000 indicated that the author would receive USD 500 for 5 000 published books. The court concluded that it would be difficult to calculate the exact gains of the author because the exchange rate between the US dollar and the euro was never stable. The agreement signed in 2011 had a different compensation scheme. The author would receive 10 % of the total amount for which the books were sold. The calculation of the lost gains based on this contract would be more precise. In total, the accused had published 22 249 books, which produced EUR 85 355 in illicit income. Based on the contract, 10 % of the total income would be EUR 8 535.

The court further concluded that there was no way to know whether the same type of payment would have been set if the accused had concluded further contracts with the author. For this reason, the court was not able to determine conclusively the total amount of the lost gains. However, the court used the payment scheme set in the 2011 agreement, according to which the potential lost income is EUR 8 535, as a reference point and concluded that the compensation for damages set by the lower instance courts was disproportionally high. Therefore, the second instance court reduced the compensation for damages from 1 000 MSLs (EUR 37 650) to 300 MSLs (EUR 11 298).

Comment

In this case, the second instance court analysed the nature of the compensation for damages and means to calculate it. The court referred to the Constitutional Court decision No. KT17-N8/2017, indicating that the main goal is to compensate the actual loss of the copyright-holder. In deciding the amount of damages, the court must take a reasoned decision based on the calculation of potential damages, principles of proportionality and fairness, and the financial status of the accused.

IV. Elements of the crime of counterfeiting

Lithuania – Case No 2K-7-28-303/2017

In this case, the court analysed whether the criminal offence of counterfeiting a registered trademark set out in Article 204(1) of the Lithuanian Criminal Code is considered a material or formal criminal offence – that is, whether the mere possession of counterfeit goods can be considered a criminal offence or other consecutive actions are needed to establish a crime.

Country	Lithuania
Case No	2K-7-28-303/2017
Keywords	Trademark, counterfeit goods, rims, material crime, formal crime
Parties	Accused and a private company v Office of the Prosecutor General
Date	12.1.2017
Court name	Lietuvos Aukščiausias Teismas
Instance	Third instance
EU norms	—
Other norms	Article 204(1) of the Criminal Code
Fine/damages	The first instance court ordered the accused to pay a fine of 100 times the minimum salary levels (MSL) (EUR 3 766) and his company to pay 200 times the MSL (EUR 7 532). The Court of Appeals requalified the criminal offence and lowered the fines to 80 times the MSL (EUR 3 012) and 150 times the MSL (EUR 5 949) for the accused and his company, respectively.
Reference	Byla 2K-7-28-303/2017 – eTeismai

Facts of the case

The accused held a high number of fake rims, illegally marked with the registered trademarks of Audi, Ford, Mazda, Mercedes-Benz, Opel, BMW, Toyota and Lexus. The accused stored 940 counterfeit rims with a total value of EUR 13 268.

The first instance court found the accused guilty of counterfeiting a registered trademark and ordered him to pay a fine of 100 MSLs (EUR 3 766), and his company to pay a fine of 200 MSLs (EUR 7 532). The second instance court requalified the criminal offence as attempted counterfeiting because the counterfeit rims had not been sold at the time of the seizure. Therefore, the criminal act was not completed. The court reduced the fine of the accused to 80 MSLs (EUR 3 012) and that of his company to 150 MSLs (EUR 5 949).

The accused filed a claim to the Supreme Court indicating that the lower instance courts erroneously evaluated the requirement for significant damages because only 4 of the 940 counterfeit rims were sold.

Substance

The Supreme Court analysed the elements of the crime of counterfeiting a registered trademark and whether this criminal offence is considered a formal crime (completed at the moment it is committed without the need to prove the consequences) or a material crime (the consequences and the link between these and the action are an essential element of the crime). Using a logical and linguistic analysis of the Criminal Code, the Supreme Court concluded that Article 204(1) of the Criminal Code sets up two alternative criminal offences: (1) possessing a large amount of counterfeit goods without authorisation or making them available for sale; and (2) making use of a registered trademark without authorisation, causing significant damages.

Possessing a large amount of counterfeit goods is a formal criminal offence, which is considered consummated independently of whether the offender achieved the intentions – in this case, independently of whether the counterfeit goods were sold. Thus, the requirement for significant damages is not applicable to all alternative criminal offences listed in Article 204(1) of the Criminal Code. For this reason, the court concluded that, in this case, it was not relevant how many counterfeit rims were sold. The mere possession of a large amount of counterfeits was considered a completed criminal offence. For this reason, the court concluded that the second instance court was in error when it requalified the possession of counterfeit goods as an attempted criminal offence, instead of a completed one.

This qualification reflects the actions of the accused; however, this qualification would worsen the punishment given to the accused by the lower instance courts. Article 376(3) of the Criminal Procedure Code indicates that the higher punishment can be applied only if it is requested in the appeal to the Supreme Court. In this case, the prosecution did not request this appeal; therefore, the Supreme Court was legally not in a position to increase the fine given to the accused and his company.

Comment

The court concentrated on the analysis of the elements of the crime of counterfeiting a registered trademark. The court concluded that the possession of a large amount of counterfeit goods is considered a formal criminal offence, which does not require proof of the consequences.

Lithuania – Case No 1A-57/2010

In this case, the court analysed the following elements of the criminal offence of counterfeiting as it is set in Article 204 of the Lithuanian Criminal Code: 'high amount of counterfeited goods' or 'significant damages'.

Country	Lithuania
Case No	1A-57/2010
Keywords	Trademark, counterfeit goods, significant damages, non-material damages
Parties	Five accused. v Office of the Prosecutor in Siauliai
Date	26.2.2010
Court name	Lietuvos Apeliacinis Teismas
Instance	Second instance
EU norms	—
Other norms	Articles 204(1) and 212 of the Criminal Code
Fine/damages	The court ordered the five accused to pay fines for each crime of which they were found guilty. For counterfeiting a trademark, the accused were ordered to pay fines of 60, 55, 45, 40 and 20 times the minimum salary levels (MSL), respectively. The court further ordered the accused to pay jointly LTL 8 360 (EUR 2 505) in civil damages to the third party, Philip Morris Lithuania, for producing counterfeit goods.
Reference	Byla 1A-57/2010 – eTeismai

Facts of the case

The five accused, acting in an organised criminal group, bought equipment and materials required to produce cigarettes without obtaining the necessary permits. The cigarettes were marked with the Russian cigarette label 'Prima' without the authorisation of the trademark holder. In total, the accused produced 32 000 packets of cigarettes, which were valued at LTL 72 107 (EUR 20 883).

The first instance court found all the accused guilty of smuggling, illegal commercial activities, producing counterfeit goods and counterfeiting the cigarette labels. The court ordered the accused to pay fines and civil damages to the third party, Philip Morris Lithuania.

The accused filed an appeal, claiming that the first instance court erroneously evaluated the available evidence.

Substance

The Court of Appeals analysed the elements of the crime of counterfeiting a registered trademark: 'high amount of counterfeit goods' or 'significant damages'. The court concluded that the term 'high amount of goods' is not defined in the Criminal Code; therefore, it has to be assessed on a case-by-case basis, taking into account the specific circumstances of the case. In this case, the court concluded that 32 000 packets of cigarettes was correctly evaluated as a high amount of counterfeit goods, as this amount has a significant impact on the trademark.

The court further noted that Article 212 of the Criminal Code indicates that, in the case of economic crimes, significant damages are those exceeding 150 MSLs. In this case, the civil party requested LTL 8 360 (EUR 2 505) in damages, which does not reach the threshold of 150 MSLs. For this reason, taking into account only material damages would not meet the elements of the crime. The court, however, indicated that, in the case of counterfeiting a registered trademark, the significant damages could be both material and non-material. In this case, taking into account the widespread use of the counterfeit cigarette trademark and the scope of the committed crime, it was concluded that the company's reputation had been brought into disrepute. This caused significant non-material damage. For this reason, the first instance court correctly qualified the activities of the accused as a criminal offence of counterfeiting a registered trademark.

Comment

The Court of Appeals indicated that the element of significant damages of the crime of counterfeiting a registered trademark is essential. The significant damages could be both material and non-material. Even if the material aspect of the damages does not meet the threshold of significant damages, the court has an obligation to look into whether there were significant non-material damages.

V. Public transmission of radio and television broadcasts

Portugal – Case No 147/04.4SXLSB.L1-5

In this case, the court addressed the extent of responsibility of commercial establishment managers when disseminating radio and TV broadcasts of copyright-protected content. Amplifying a legally obtained broadcast in a commercial establishment does not constitute copyright infringement, as it does not alter the original work.

Country	Portugal
Case No	147/04.4SXLSB.L1-5
Keywords	Author, broadcasting, communication to the public, remuneration
Parties	Portuguese Society of Authors v Accused
Date	22.3.2011
Court name	Tribunal da Relação de Lisboa
Instance	Second instance
EU norms	—
Other norms	Articles 68(2)(e), 149, 155 and 197 of the Code of Copyright and Related Rights
Fine/damages	There were no damages, as the accused was acquitted.
Reference	Acórdão do Tribunal da Relação de Lisboa (mj.pt)

Facts of the case

The Portuguese Society of Authors appealed against the decision of the first instance court to acquit the accused of a crime of usurpation (copyright piracy) and release him from the payment of damages.

The accused was the owner of a commercial establishment where he disseminated copyright-protected works that were broadcast by a TV channel, Sol Música. For this purpose, the accused used a screen, a projector, two speakers, a subwoofer and a mixer.

The Portuguese Society of Authors argued that, by using the two speakers, the subwoofer and the mixer, the accused used technical means different from those integrated in the TV receiving the broadcasts, and therefore made new use of the protected works in a public space. This new use requires authorisation from the authors of the works or their representative in Portugal (the appellant), and their remuneration, in line with Articles 149(2) and 155 of the Code of Copyright and Related Rights, which the accused knowingly failed to request.

In the appeal, the Portuguese Society of Authors argued that the decision of the first instance court violated the provisions of Articles 68(2)(e), 149, 155 and 197 of the Code of Copyright and Related Rights. The appellant therefore sought to reverse the decision of the court and replace it with a decision finding

the accused guilty of using the broadcast copyright-protected works illegally (crime of usurpation), in line with Articles 195 and 197 of the Code of Copyright and Related Rights.

Substance

The second instance court agreed with the first instance court's decision that the images and sound transmitted from the accused's commercial establishment were the same as those directly broadcast by the TV channel Sol Música, and therefore their transmission was not carried out by any entity other than the source entity. Hence, in the view of the court, there was no violation of Article 68(2)(e) of the Code of Copyright and Related Rights, which stipulates that the author has the exclusive right to make or authorise the broadcasting, by himself or through his representatives, when communication is carried out by an entity other than the source entity.

The court further explained that the public transmission of radio or TV broadcasts does not require specific authorisation from the authors of the works or their representatives, as the broadcasting entities pay the copyrights themselves. In this case, this was done by the TV operator TV Cabo.

A key issue under consideration by the second instance court was whether the dissemination of broadcast copyright-protected works in a public space, such as the commercial establishment of the accused, constitutes a mere act of reception, or whether it amounts to a new use (reception and transmission) of the broadcast works – deemed autonomous broadcasting and requiring the remuneration of the authors.

On this point, the court ruled that the mechanisms external to the TV reception device (speakers, subwoofer and mixer) used by the accused were not of a different nature from those contained in the TV, and did not add to or alter the broadcast. Their function was limited to disseminating the exact content of the works concerned at the same time as it was being received by the TV, only increasing the sound and image quality.

The court was thus of the view that there was no new use of the broadcast works, and the actions of the accused constituted mere reception and amplification of the sound and visuals broadcast by cable TV (Sol Música channel). The conduct of the accused therefore did not fall under the provisions of Articles 149 and 155 of the Code of Copyright and Related Rights, governing the communication of broadcast works in public spaces and their remuneration, and did not constitute copyright infringement.

The elements constituting a crime of usurpation envisaged in Articles 195 and 197 of the Code of Copyright and Related Rights were thus not present, leading the second instance court to uphold the decision of the first instance court.

Comment

This judgment analyses the extent of responsibility of commercial establishment managers when disseminating radio and TV broadcasts of copyright-protected content, and confirms that amplifying a legally obtained broadcast in a commercial establishment does not constitute copyright infringement, as it does not alter the original work. The judgment helps to clarify the distinction between the reception and transmission of broadcast IP content, and provides some examples of instances where people may become liable for copyright infringement. In this way, the judgment adds to the body of existing jurisprudence on this matter in Portugal.

The judgment is also relevant because it provides an interpretation of the law contrary to that provided in similar cases, adding to an area that, at the time of the judgment, had achieved little consensus in Portuguese courts.

This judgment concerns a rights-holder versus rights-user case. The issue addressed therein (amplification of broadcast sounds in a public space) has been the subject of a number of often contradictory rulings by the Portuguese courts. Following this judgment, the issue was escalated to the Supreme Court of Portugal, which was requested to set jurisprudence (124/11.9GAPVL.G1-A.S1) after the Court of Appeal of Guimarães delivered opposing judicial decisions in two identical cases concerning the amplification of broadcast works in commercial establishments.

Portugal – Case No 124/11.9GAPVL.G1-A.S1

The Supreme Court addressed the issue of whether amplifying the sound broadcast through a TV constitutes a crime of usurpation (copyright piracy), setting new jurisprudence for this area.

Country	Portugal
Case No	124/11.9GAPVL.G1-A.S1
Keywords	Author, broadcasting, communication to the public, remuneration
Parties	Portuguese Society of Authors v Accused
Date	13.11.2013
Court name	Supremo Tribunal de Justiça
Instance	Third instance
EU norms	—
Other norms	Article 155 of the Code of Copyright and Related Rights; Opinion 4/92 of the Advisory Board of the Public Prosecution Service
Fine/damages	No damages were mentioned in this case.
Reference	Acórdão do Supremo Tribunal de Justiça (mj.pt)

Facts of the case

This case concerns an extraordinary appeal brought before the Supreme Court of Portugal by the Public Prosecutor at the Court of Appeal of Guimarães in relation to a judgment rendered by the Court of Appeal of Guimarães, which was in direct opposition to an earlier judgment delivered by the same court on the same question of law in a case with identical facts.

In both cases brought before the Supreme Court, the accused were owners of commercial establishments where music broadcast by a TV channel was played on a TV and the sound was disseminated through speakers distributed across the establishment. None of the accused in the two cases requested authorisation from the Portuguese Society of Authors to broadcast the music in their establishments (considered public spaces).

In the appealed case (124/11.9GAPVL.G1), the Court of Appeal of Guimarães ruled that the mere reception of the broadcast does not require the authorisation of the authors, nor does it grant them the right to remuneration provided for in Article 155 of the Code of Copyright and Related Rights. As a result, the court ruled that the accused had not committed a crime of usurpation (copyright piracy).

On the other hand, in the earlier case (974/07-2), the same court found the accused guilty of a crime of usurpation, on the basis that, by connecting the speakers to the TV, the accused was disseminating signals and sounds, therefore going beyond the mere reception of the TV programme in public.

The Supreme Court was therefore requested by the Public Prosecutor to set the jurisprudence for the judgment appealed against.

Substance

The main question for the Supreme Court in this case was whether the conduct of the two accused in amplifying the sound broadcast through the TV with external speakers, and without the authorisation of the authors of the protected works or their representatives, constituted a crime of usurpation (copyright piracy).

The focus of the Supreme Court's decision was, therefore, on whether the use of speakers (external to the TV set) to distribute the sound exceeded the action of reception of the broadcast and resulted in a new transmission that required the authorisation and remuneration of the authors.

In its reasoning, the Supreme Court referred to the doctrine in the relevant jurisprudence, in particular Opinion 4/92 of the Advisory Board of the Public Prosecution Service. According to the opinion, the Code of Copyright and Related Rights governs only the concept of public communication, which encompasses the reception of broadcast literary or artistic works.

The court therefore ruled that the authors' authorisation to broadcast their work covered the entire communication process, which culminated in the public's reception of the TV or radio broadcast. As a result, the reception of the broadcast in a public space, such as the commercial establishment of the accused, did not depend on the authorisation of the authors, nor did it grant them the right to remuneration under Article 155 of the Code of Copyright and Related Rights.

When assessing the function of the speakers, the court took the view that these did not change or add anything to the broadcast, as they only amplified and distributed the sound disseminated by the TV. The activity of the accused was thus described by the court as an act of reception amplification, and not one of communication or transmission to the public involving a new use of the works. This conduct did not require the authorisation and remuneration of the author, and therefore did not constitute a crime of usurpation under Article 195 of the Code of Copyright and Related Rights.

Comment

In this ruling, the Supreme Court sought to clarify the distinction between reception and communication, which implies a new use of the works. The court added that the latter requires the modification (i.e. adding, adapting or innovating), through technical means, of the broadcast, in order to produce a work different from the original. Under such conditions, the obligation to pay the author a new remuneration applies.

In this way, the Supreme Court confirmed the appealed judgment and set the jurisprudence in favour of the decision taken by the Court of Appeal (according to which such activity did not constitute a crime).

This judgment concerns a case of conflicting judicial decisions. Its importance lies in its role of setting new jurisprudence on a matter that, prior to the ruling, lacked legal consensus, and where different interpretations of the law led to confusion and opposing court rulings in identical cases. The issue addressed in this judgment was further escalated in a subsequent case (211/15.4GATND.C1), where the appellants argued that this ruling by the Supreme Court was in contravention of EU law regarding public communication of copyright-protected works.

Portugal – Case No 211/15.4GATND.C1

In this case, the court considered whether listening to or viewing TV stations in public spaces, such as cafes, restaurants, bars and other establishments, requires the owners to obtain authorisation from the authors of the broadcast works. The court analysed the case-law of the CJEU and how it is applicable to national court cases.

Country	Portugal
Case No	211/15.4GATND.C1
Keywords	Author, broadcasting, communication to the public
Parties	Portuguese Society of Authors v Accused
Date	22.2.2017
Court name	Tribunal da Relação de Coimbra
Instance	Second instance
EU norms	Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society
Other norms	Articles 149, 195 and 197 of the Code of Copyright and Related Rights
Fine/damages	No damages were mentioned in this case.
Reference	Acórdão do Tribunal da Relação de Coimbra (mj.pt)

Facts of the case

In this case, the Portuguese Society of Authors filed an appeal against the decision rendered by the examining magistrate not to indict the accused for a crime of usurpation (copyright piracy) in accordance with Articles 149, 195 and 197 of the Code of Copyright and Related Rights.

The accused was the owner of a restaurant/cafe where music and literary-musical works protected by copyright were broadcast through a TV channel (RTP1) without the authorisation of the Portuguese Society of Authors (the appellant), the authors' representative in Portugal.

The appellant argued that the decision of the court – based on a ruling by the Supreme Court on the matter – was contrary to the CJEU's interpretation of public communication laid down in Article 3(1) of Directive 2001/29/EC. According to the appellant, the first instance court was bound by the CJEU's interpretation of public communication, and it violated the principles of EU primacy when it interpreted the concept differently.

The appellant requested to have the appealed decision revoked and replaced by a new decision indicting the accused for a crime of usurpation, in line with Articles 195 and 197 of the Code of Copyright and Related Rights.

Substance

The main question in this case was whether listening to or viewing TV stations in public spaces, including cafes, restaurants, bars and other establishments, requires the owners to obtain authorisation from the

authors of the broadcast works in accordance with Article 149(2) of the Code of Copyright and Related Rights.

To answer this question, the second instance court referred to the Supreme Court ruling of 13 November 2013 (124/11.9GAPVL.G1-A.S1), which sets the jurisprudence on this matter, as did the first instance court. In line with the ruling of the Supreme Court, the mere reception of broadcast works does not require the authorisation of the authors laid down in Article 149(2) of the Code of Copyright and Related Rights, unlike the act of communication, which implies a new use of the works resulting from the modification of the broadcast through technical means.

The second instance court took the view that the act of reception falls under the act of broadcasting, which is authorised by the authors. Thus, the authorisation given by the authors for the broadcasting of their works extends to the act of reception of the same works. In this case, the copyrights were paid for by the broadcasting entity that provided the TV service to the accused. Therefore, the accused did not require the authorisation of the Portuguese Society of Authors because his activity was the mere reception of the broadcast service.

On the issue of lack of conformity with EU jurisprudence, the court took the view that a business establishment equipped with TV receivers that are connected to the signal broadcast by a cable distributor who has paid for the service falls under the cases set out in Directive 2001/29/CE. In line with the Directive, 'the mere provision of material means to enable a communication does not by itself constitute an act of communication within the meaning of this Directive'. As the conduct of the accused constituted an activity, the reception of broadcast works, which is different from that contemplated in Directive 2001/29/CE, public communication, the court ruled that the jurisprudence of the CJEU was inapplicable to this case.

In the end, the second instance court upheld the decision of the first instance court, confirming that the accused had not committed a crime of usurpation under Articles 195 and 197 of the Code of Copyright and Related Rights, and ruled that EU legal provisions were not violated.

Comment

This judgment deals with the interpretation of EU law in national courts and it concerns a case of Supreme Court precedent ruling in relation to EU law. The judgment provides some clarity on how the jurisprudence of the CJEU is applied at national level, particularly in light of a Supreme Court decision on the same matter (the reception and public communication of broadcast works), which has been a subject of dispute in several cases brought before the Portuguese courts. This case follows a number of previous connected judicial decisions (147/04.4SXLSB.L1-5) addressing the reception and communication of broadcast copyright-protected works, and a ruling by the Supreme Court of Portugal, which was challenged by the appellant in this case for contravening EU jurisprudence set by the CJEU.

Relevant legislation

FRANCE

French Intellectual Property Code (*Code de la propriété intellectuelle*)

Access the full text

French:
https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006069414/

English (last updated 09.15.2003):
https://www.wipo.int/edocs/lexdocs/laws/en/fr/fr467en.pdf

	Original language	English
Article L112-1	Les dispositions du présent code protègent les droits des auteurs sur toutes les oeuvres de l'esprit, quels qu'en soient le genre, la forme d'expression, le mérite ou la destination.	The provisions of this Code shall protect the rights of authors in all works of the mind, whatever their kind, form of expression, merit or purpose.
Article L112-2	Sont considérés notamment comme oeuvres de l'esprit au sens du présent code: 1° Les livres, brochures et autres écrits littéraires, artistiques et scientifiques; 2° Les conférences, allocutions, sermons, plaidoiries et autres oeuvres de même nature; 3° Les oeuvres dramatiques ou dramatico-musicales; 4° Les oeuvres chorégraphiques, les numéros et tours de cirque, les pantomimes, dont la mise en oeuvre est fixée par écrit ou autrement; 5° Les compositions musicales avec ou sans paroles; 6° Les oeuvres cinématographiques et autres oeuvres consistant dans des séquences animées d'images, sonorisées ou non, dénommées ensemble oeuvres audiovisuelles; 7° Les oeuvres de dessin, de peinture, d'architecture, de sculpture, de gravure, de lithographie;	The following, in particular, shall be considered works of the mind within the meaning of this Code: 1°. books, pamphlets and other literary, artistic and scientific writings; 2°. lectures, addresses, sermons, pleadings and other works of such nature; 3°. dramatic or dramatico-musical works; 4°. choreographic works, circus acts and feats and dumb-show works, the acting form of which is set down in writing or in other manner; 5°. musical compositions with or without words; 6°. cinematographic works and other works consisting of sequences of moving images, with or without sound, together referred to as audiovisual works; 7°. works of drawing, painting, architecture, sculpture, engraving and lithography;

	8° Les oeuvres graphiques et typographiques; 9° Les oeuvres photographiques et celles réalisées à l'aide de techniques analogues à la photographie; 10° Les oeuvres des arts appliqués; 11° Les illustrations, les cartes géographiques; 12° Les plans, croquis et ouvrages plastiques relatifs à la géographie, à la topographie, à l'architecture et aux sciences; 13° Les logiciels, y compris le matériel de conception préparatoire; 14° Les créations des industries saisonnières de l'habillement et de la parure. Sont réputées industries saisonnières de l'habillement et de la parure les industries qui, en raison des exigences de la mode, renouvellent fréquemment la forme de leurs produits, et notamment la couture, la fourrure, la lingerie, la broderie, la mode, la chaussure, la ganterie, la maroquinerie, la fabrique de tissus de haute nouveauté ou spéciaux à la haute couture, les productions des paruriers et des bottiers et les fabriques de tissus d'ameublement.	8°. graphical and typographical works; 9°. photographic works and works produced by techniques analogous to photography; 10°. works of applied art; 11°. illustrations, geographical maps; 12°. plans, sketches and three-dimensional works relative to geography, topography, architecture and science; 13°. software, including the preparatory design material; 14°. creations of the seasonal industries of dress and articles of fashion. Industries which, by reason of the demands of fashion, frequently renew the form of their products, particularly the making of dresses, furs, underwear, embroidery, fashion, shoes, gloves, leather goods, the manufacture of fabrics of striking novelty or of special use in high fashion dressmaking, the products of manufacturers of articles of fashion and of footwear and the manufacture of fabrics for upholstery shall be deemed to be seasonal industries.
Article L113-1	La qualité d'auteur appartient, sauf preuve contraire, à celui ou à ceux sous le nom de qui l'oeuvre est divulguée.	Authorship shall belong, unless proved otherwise, to the person or persons under whose name the work has been disclosed.
Article L122-5	Lorsque l'oeuvre a été divulguée, l'auteur ne peut interdire: 1° Les représentations privées et gratuites effectuées exclusivement dans un cercle de famille; 2° Les copies ou reproductions réalisées à partir d'une source licite et strictement réservées à l'usage privé du copiste et non destinées à une utilisation collective, à l'exception des copies des oeuvres d'art destinées à être utilisées pour des fins identiques à celles pour lesquelles l'oeuvre originale a été créée et des copies d'un logiciel autres que la copie de sauvegarde établie dans les conditions prévues au II de l'article L. 122-6-1 ainsi que des copies ou des reproductions d'une base de données électronique; 3° Sous réserve que soient indiqués clairement le nom de l'auteur et la source:	Once a work has been disclosed, the author may not prohibit: 1°. private and gratuitous performances carried out exclusively within the family circle; 2°. copies or reproductions reserved strictly for the private use of the copier and not intended for collective use, with the exception of copies of works of art to be used for purposes identical with those for which the original work was created and copies of software other than backup copies made in accordance with paragraph II of Article L. 122-6-1, as well as copies or reproductions of an electronic database; 3°. on condition that the name of the author and the source are clearly stated:

	a) Les analyses et courtes citations justifiées par le caractère critique, polémique, pédagogique, scientifique ou d'information de l'oeuvre à laquelle elles sont incorporées;	a) analyses and short quotations justified by the critical, polemic, educational, scientific or informatory nature of the work in which they are incorporated;
	b) Les revues de presse;	b) press reviews;
	c) La diffusion, même intégrale, par la voie de presse ou de télédiffusion, à titre d'information d'actualité, des discours destinés au public prononcés dans les assemblées politiques, administratives, judiciaires ou académiques, ainsi que dans les réunions publiques d'ordre politique et les cérémonies officielles;	c) dissemination, even in their entirety, through the press or by broadcasting, as current news, of speeches intended for the public made in political, administrative, judicial or academic gatherings, as well as in public meetings of a political nature and at official ceremonies;
	d) Les reproductions, intégrales ou partielles d'oeuvres d'art graphiques ou plastiques destinées à figurer dans le catalogue d'une vente judiciaire effectuée en France pour les exemplaires mis à la disposition du public avant la vente dans le seul but de décrire les oeuvres d'art mises en vente;	d) complete or partial reproductions of works of graphic or three-dimensional art intended to appear in the catalogue of a judicial sale held in France, in the form of the copies of the said catalogue made available to the public prior to the sale for the sole purpose of describing the works of art offered for sale.
	e) La représentation ou la reproduction d'extraits d'oeuvres, sous réserve des oeuvres conçues à des fins pédagogiques et des partitions de musique, à des fins exclusives d'illustration dans le cadre de la recherche, dès lors que cette représentation ou cette reproduction est destinée, notamment au moyen d'un espace numérique de travail, à un public composé majoritairement de chercheurs directement concernés par l'activité de recherche nécessitant cette représentation ou cette reproduction, qu'elle ne fait l'objet d'aucune publication ou diffusion à un tiers au public ainsi constitué, que l'utilisation de cette représentation ou cette reproduction ne donne lieu à aucune exploitation commerciale et qu'elle est compensée par une rémunération négociée sur une base forfaitaire sans préjudice de la cession du droit de reproduction par reprographie mentionnée à l'article L. 122-10;	e) The representation or reproduction of extracts of works, except for works conceived for educational purposes and musical scores, for the exclusive purpose of illustration in the context of research, provided that this representation or reproduction is intended, in particular by means of a digital workspace, for a public composed mainly of researchers directly concerned by the research activity requiring this representation or reproduction, that it is not published or distributed to a third party to the public thus constituted, that the use of this representation or reproduction does not give rise to any commercial exploitation and that it is compensated by a remuneration negotiated on a flat-rate basis without prejudice to the transfer of the right of reproduction by reprography mentioned in article L. 122-10;
	4° La parodie, le pastiche et la caricature, compte tenu des lois du genre;	4°. parody, pastiche and caricature, observing the rules of the genre.
	5° Les actes nécessaires à l'accès au contenu d'une base de données électronique pour les besoins et dans les limites de l'utilisation prévue par contrat;	5°. acts necessary to access the contents of an electronic database for the purposes of and within the limits of the use provided by contract.
	6° La reproduction provisoire présentant un caractère transitoire ou accessoire, lorsqu'elle est une partie intégrante et essentielle d'un procédé technique et qu'elle a pour unique objet de permettre l'utilisation licite de l'oeuvre	6° Temporary reproduction of a transitory or accessory nature, when it is an integral and essential part of a technical process and its sole purpose is to allow the lawful use of the work or its transmission between third parties by way of

	ou sa transmission entre tiers par la voie d'un réseau faisant appel à un intermédiaire; toutefois, cette reproduction provisoire qui ne peut porter que sur des oeuvres autres que les logiciels et les bases de données ne doit pas avoir de valeur économique propre;	a network using an intermediary; however, this temporary reproduction, which can only concern works other than software and databases, must not have any economic value of its own;
	7° Dans les conditions prévues aux articles L. 122-5-1 et L. 122-5-2, la reproduction et la représentation par des personnes morales et par les établissements ouverts au public, tels que les bibliothèques, les archives, les centres de documentation et les espaces culturels multimédia, en vue d'une consultation strictement personnelle de l'œuvre par des personnes atteintes d'une ou de plusieurs déficiences des fonctions motrices, physiques, sensorielles, mentales, cognitives ou psychiques et empêchées, du fait de ces déficiences, d'accéder à l'œuvre dans la forme sous laquelle l'auteur la rend disponible au public;	7° Under the conditions provided for in articles L. 122-5-1 and L. 122-5-2, the reproduction and representation by legal entities and by establishments open to the public, such as libraries, archives, documentation centres and multimedia cultural spaces, with a view to strictly personal consultation of the work by persons suffering from one or more impairments of motor, physical, sensory, mental, cognitive or psychic functions and prevented, by reason of these impairments, from accessing the work in the form in which the author makes it available to the public;
	Ces personnes empêchées peuvent également, en vue d'une consultation strictement personnelle de l'œuvre, réaliser, par elles-mêmes ou par l'intermédiaire d'une personne physique agissant en leur nom, des actes de reproduction et de représentation;	These prevented persons can also, with a view to a strictly personal consultation of the work, carry out, by themselves or through a physical person acting in their name, acts of reproduction and representation;
	8° La reproduction d'une œuvre et sa représentation effectuées à des fins de conservation ou destinées à préserver les conditions de sa consultation à des fins de recherche ou d'études privées par des particuliers, dans les locaux de l'établissement et sur des terminaux dédiés par des bibliothèques accessibles au public, par des musées ou par des services d'archives, sous réserve que ceux-ci ne recherchent aucun avantage économique ou commercial;	8° The reproduction of a work and its representation carried out at ends of conservation or intended to preserve the conditions of its consultation at ends of research or private studies by private individuals, in the buildings of the establishment and on terminals dedicated by libraries accessible to the public, by museums or by services of archives, provided that they do not seek any economic or commercial advantage;
	9° La reproduction ou la représentation, intégrale ou partielle, d'une oeuvre d'art graphique, plastique ou architecturale, par voie de presse écrite, audiovisuelle ou en ligne, dans un but exclusif d'information immédiate et en relation directe avec cette dernière, sous réserve d'indiquer clairement le nom de l'auteur.	9° The reproduction or representation, in whole or in part, of a graphic, plastic or architectural work of art, by means of the written press, audiovisual or online, for the exclusive purpose of immediate information and in direct relation to the latter, provided that the name of the author is clearly indicated.
	Le premier alinéa du présent 9° ne s'applique pas aux oeuvres, notamment photographiques ou d'illustration, qui visent elles-mêmes à rendre compte de l'information;	The first paragraph of this 9° does not apply to the works, in particular photographic or of illustration, which aim themselves at reporting the information;

	10° Les copies ou reproductions numériques d'une œuvre en vue de la fouille de textes et de données réalisée dans les conditions prévues à l'article L. 122-5-3; 11° Les reproductions et représentations d'œuvres architecturales et de sculptures, placées en permanence sur la voie publique, réalisées par des personnes physiques, à l'exclusion de tout usage à caractère commercial; 12° La représentation ou la reproduction d'extraits d'œuvres à des fins exclusives d'illustration dans le cadre de l'enseignement et de la formation professionnelle, dans les conditions prévues à l'article L. 122-5-4; 13° La représentation et la reproduction d'une œuvre indisponible au sens de l'article L. 138–1, dans les conditions prévues à l'article L. 122-5-5. Les reproductions ou représentations qui, notamment par leur nombre ou leur format, ne seraient pas en stricte proportion avec le but exclusif d'information immédiate poursuivi ou qui ne seraient pas en relation directe avec cette dernière donnent lieu à rémunération des auteurs sur la base des accords ou tarifs en vigueur dans les secteurs professionnels concernés. Les exceptions énumérées par le présent article ne peuvent porter atteinte à l'exploitation normale de l'oeuvre ni causer un préjudice injustifié aux intérêts légitimes de l'auteur. Les modalités d'application du présent article, notamment les caractéristiques et les conditions de distribution des documents mentionnés au d du 3°, sont précisées par décret en Conseil d'Etat.	10° The copies or numerical reproductions of a work with a view to the search of texts and data carried out under the conditions envisaged in article L. 122-5-3; 11° The reproductions and representations of architectural works and sculptures, placed permanently on the public way, carried out by natural persons, with the exception of any use with commercial character; 12° The representation or the reproduction of extracts of works for exclusive purposes of illustration within the framework of teaching and vocational training, under the conditions envisaged in article L. 122-5-4; 13° The representation and the reproduction of an unavailable work within the meaning of the article L. 138-1, under the conditions envisaged with the article L. 122-5-5. The reproductions or representations which, in particular by their number or their format, would not be in strict proportion with the exclusive goal of immediate information pursued or which would not be in direct relation with this last one give place to remuneration of the authors on the basis of the agreements or tariffs in force in the concerned professional sectors. The exceptions listed in this Article may not conflict with the normal exploitation of the work or cause unjustified prejudice to the legitimate interests of the author. The methods of application of this article, in particular the characteristics and the conditions of distribution of the documents mentioned in the d of the 3°, are specified by decree in Council of State.
Article L132-29	Sauf convention contraire, chacun des auteurs de l'oeuvre audiovisuelle peut disposer librement de la partie de l'oeuvre qui constitue sa contribution personnelle en vue de son exploitation dans un genre différent et dans les limites fixées par l'article L. 113-3.	Unless agreed otherwise, each of the authors of an audiovisual work may freely dispose of the part of the work that constitutes his personal contribution, for the purpose of exploiting it in a different field, within the limits laid down in Article L113-3.
Article L132-34	Sans préjudice des dispositions de la loi du 17 mars 1909 relative à la vente et au nantissement des fonds de commerce, le droit d'exploitation de l'auteur d'un logiciel défini à l'article L. 122-6 peut faire l'objet d'un nantissement dans les conditions suivantes:	Notwithstanding the provisions of the Act of March 17, 1909, on the Sale and Mortgaging of Businesses, the right of exploitation of an author of software, as defined in Article L122-6, may be pledged subject to the following conditions:

	Le contrat de nantissement est, à peine de nullité, constaté par un écrit. Le nantissement est inscrit, à peine d'inopposabilité, sur un registre spécial tenu par l'Institut national de la propriété industrielle. L'inscription indique précisément l'assiette de la sûreté et notamment les codes source et les documents de fonctionnement. Le rang des inscriptions est déterminé par l'ordre dans lequel elles sont requises. Les inscriptions de nantissement sont, sauf renouvellement préalable, périmées à l'expiration d'une durée de cinq ans. Un décret en Conseil d'Etat fixera les conditions d'application du présent article.	The pledge shall be set out in writing on pain of nullity. The pledge shall be entered, failing which it shall not be invocable, in a special register kept by the National Institute of Industrial Property. The entry shall state precisely the basis for the security and, particularly, the source codes and operating documents. The ranking of entries shall be determined by the order in which they are requested. The entries of pledges shall lapse, unless renewed beforehand, on expiry of a period of five years. A Conseil d'Etat decree shall lay down the implementing conditions for this Article.
Article L215-1	Le producteur de vidéogrammes est la personne, physique ou morale, qui a l'initiative et la responsabilité de la première fixation d'une séquence d'images sonorisée ou non. L'autorisation du producteur de vidéogrammes est requise avant toute reproduction, mise à la disposition du public par la vente, l'échange ou le louage, ou communication au public de son vidéogramme. Les droits reconnus au producteur d'un vidéogramme en vertu de l'alinéa précédent, les droits d'auteur et les droits des artistes-interprètes dont il disposerait sur l'oeuvre fixée sur ce vidéogramme ne peuvent faire l'objet de cessions séparées.	The natural or legal person who takes the initiative and the responsibility for the initial fixation of a sequence of images, whether accompanied by sounds or not, shall be deemed the videogram producer. The authorization of the videogram producer shall be required prior to any reproduction, any making available to the public by means of sale, exchange or rental, or any communication to the public of his videogram. The rights afforded to a videogram producer under the preceding paragraph, the authors' rights and the performers' rights of which he disposes in respect of the work fixed on the videogram may not be separately assigned.
Article L331-1-3	Pour fixer les dommages et intérêts, la juridiction prend en considération distinctement: 1° Les conséquences économiques négatives de l'atteinte aux droits, dont le manque à gagner et la perte subis par la partie lésée; 2° Le préjudice moral causé à cette dernière; 3° Et les bénéfices réalisés par l'auteur de l'atteinte aux droits, y compris les économies d'investissements intellectuels, matériels et promotionnels que celui-ci a retirées de l'atteinte aux droits.	In fixing damages, the court shall take into account separately: 1° The negative economic consequences of the infringement, including the loss of profit and loss suffered by the injured party; 2° The moral prejudice caused to the injured party; 3° And the profits made by the infringer, including the savings in intellectual, material and promotional investments that the infringer has derived from the infringement.

	Toutefois, la juridiction peut, à titre d'alternative et sur demande de la partie lésée, allouer à titre de dommages et intérêts une somme forfaitaire. Cette somme est supérieure au montant des redevances ou droits qui auraient été dus si l'auteur de l'atteinte avait demandé l'autorisation d'utiliser le droit auquel il a porté atteinte. Cette somme n'est pas exclusive de l'indemnisation du préjudice moral causé à la partie lésée.	However, the court may, as an alternative and at the request of the injured party, award a lump sum as damages. This sum shall be greater than the amount of the royalties or fees that would have been due if the infringer had requested authorization to use the right infringed. This sum is not exclusive of the compensation of the moral prejudice caused to the injured party.
Article L335-2-1	Est puni de trois ans d'emprisonnement et de 300 000 euros d'amende le fait: 1° D'éditer, de mettre à la disposition du public ou de communiquer au public, sciemment et sous quelque forme que ce soit, un logiciel manifestement destiné à la mise à disposition du public non autorisée d'oeuvres ou d'objets protégés; 2° D'inciter sciemment, y compris à travers une annonce publicitaire, à l'usage d'un logiciel mentionné au 1°.	Is punishable by three years imprisonment and a fine of 300 000 euros the fact: 1° To publish, to place at the disposal of the public or to communicate to the public, knowingly and under some form that it is, a software obviously intended for the provision of the public not authorized of works or protected objects; 2° To incite knowingly, including through an advertisement, to the use of a software mentioned in 1°.
Article L335-3	Est également un délit de contrefaçon toute reproduction, représentation ou diffusion, par quelque moyen que ce soit, d'une oeuvre de l'esprit en violation des droits de l'auteur, tels qu'ils sont définis et réglementés par la loi. Est également un délit de contrefaçon la violation de l'un des droits de l'auteur d'un logiciel définis à l'article L. 122-6. Est également un délit de contrefaçon toute captation totale ou partielle d'une œuvre cinématographique ou audiovisuelle en salle de spectacle cinématographique.	Any reproduction, performance or dissemination of a work of the mind, by any means whatsoever, in violation of the author's rights as defined and regulated by law shall also constitute an infringement. The violation of any of the rights of an author of software as defined in Article L122-6 shall also constitute an infringement. Any total or partial capture of a cinematographic or audiovisual work in a cinematographic theatre is also an offense of counterfeiting.
Article L335-4	Est punie de trois ans d'emprisonnement et de 300 000 euros d'amende toute fixation, reproduction, communication ou mise à disposition du public, à titre onéreux ou gratuit, ou toute télédiffusion d'une prestation, d'un phonogramme, d'un vidéogramme, d'un programme ou d'une publication de presse, réalisée sans l'autorisation, lorsqu'elle est exigée, de l'artiste-interprète, du producteur de phonogrammes ou de vidéogrammes, de l'entreprise de communication audiovisuelle, de l'éditeur de presse ou de l'agence de presse. Sont punis des mêmes peines l'importation, l'exportation, le transbordement ou la	Any fixation, reproduction, communication or making available to the public, whether in return for payment or free of charge, or any broadcasting of a performance, a phonogram, a videogram, a program or a press publication, carried out without the authorization, when required, of the performer, the producer of phonograms or videograms, the producer of a program or a press publication, is punishable by three years' imprisonment and a fine of 300,000 euros, of a program or a press publication, carried out without the authorization, when it is required, of the performer, the producer of phonograms or videograms, the audiovisual communication company, the press publisher or the press agency. Are punished with the same penalties the import, export, transhipment or the detention for the

	détention aux fins précitées de phonogrammes ou de vidéogrammes réalisée sans l'autorisation du producteur ou de l'artiste-interprète, lorsqu'elle est exigée. Est puni de la peine d'amende prévue au premier alinéa le défaut de versement de la rémunération due à l'auteur, à l'artiste-interprète ou au producteur de phonogrammes ou de vidéogrammes au titre de la copie privée ou de la communication publique ainsi que de la télédiffusion des phonogrammes. Est puni de la peine d'amende prévue au premier alinéa le défaut de versement du prélèvement mentionné au troisième alinéa de l'article L. 133-3. Lorsque les délits prévus au présent article ont été commis en bande organisée, les peines sont portées à sept ans d'emprisonnement et à 750 000 euros d'amende.	aforementioned purposes of phonograms or videograms carried out without the authorization of the producer or the interpreter, when it is required. Is punishable by the fine provided for in the first paragraph the failure to pay the remuneration due to the author, performer or producer of phonograms or videograms for private copying or public communication and broadcasting of phonograms. Failure to pay the levy mentioned in the third paragraph of article L. 133-3 is punishable by the fine provided for in the first paragraph. When the offences provided for in the present article were committed in organized band, the penalties are increased to seven years of imprisonment and 750 000 euros of fine.

LITHUANIA

Lithuanian Criminal Code (*Lietuvos baudžiamasis kodeksas*)

Access the full text

Lithuanian:
https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555/asr

English:
https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=rivwzvpvg&documentId=a84fa232877611e5bca4ce385a9b7048&category=TAD

	Original language	English
Article 192	**192 straipsnis. Literatūros, mokslo, meno kūrinio ar gretutinių teisių objekto neteisėtas atgaminimas, neteisėtų kopijų platinimas, gabenimas ar laikymas**	**Article 192. Unlawful Reproduction of a Literary, Scientific or Artistic Work or an Object of Related Rights, Distribution, Transportation or Storage of Illegal Copies Thereof**
	1. Tas, kas neteisėtai atgamino literatūros, mokslo ar meno kūrinį (įskaitant kompiuterių programas ir duomenų bazes) ar gretutinių teisių objektą arba jų dalį komercijos tikslais arba platino, gabeno ar laikė komercijos tikslais neteisėtas jų kopijas, jeigu kopijų bendra vertė pagal teisėtų kopijų, o kai jų nėra, pagal atgamintų kūrinių originalų kainas viršijo 100 MGL dydžio sumą,	1. A person who unlawfully reproduces a literary, scientific or artistic work (including computer software and databases) or an object of related rights or a part thereof for commercial purposes or distributes, transports or stores for commercial purposes illegal copies thereof, where the total value of the copies exceeds, according to the prices of legal copies or, in the absence thereof, according to the prices of originals of the reproduced works, the amount of 100 MSLs,
	baudžiamas viešaisiais darbais arba bauda, arba laisvės apribojimu, arba areštu, arba laisvės atėmimu iki dvejų metų.	shall be punished by community service or by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to two year.
	2. Tas, kas padarė šio straipsnio 1 dalyje numatytą veiką, jeigu neteisėtų kopijų bendra vertė pagal teisėtų kopijų, o kai jų nėra, pagal atgamintų kūrinių originalų kainas viršijo 250 MGL dydžio sumą,	2. A person who commits the act indicated in paragraph 1 of this Article, where the total value of the illegal copies exceeds, according to the prices of legal copies or, in the absence thereof, according to the prices of originals of the reproduced works, the amount of 250 MSLs,

	baudžiamas bauda arba laisvės apribojimu, arba areštu, arba laisvės atėmimu iki trejų metų. 3. Už šiame straipsnyje numatytas veikas atsako ir juridinis asmuo.	shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to three years. 3. A legal entity shall also be held liable for the acts provided for in this Article.
Article 204	**204 straipsnis. Svetimo prekių ar paslaugų ženklo naudojimas** 1. Tas, kas neturėdamas leidimo svetimu prekių ženklu pažymėjo didelį prekių kiekį ar pateikė jas realizuoti arba pasinaudojo svetimu paslaugų ženklu ir dėl to padarė didelės žalos, baudžiamas bauda arba laisvės apribojimu, arba laisvės atėmimu iki dvejų metų. 2. Tas, kas neturėdamas leidimo svetimu prekių ženklu pažymėjo nedidelį prekių kiekį ar pateikė jas realizuoti arba pasinaudojo svetimu paslaugų ženklu ir dėl to padarė žalos, padarė baudžiamąjį nusižengimą ir baudžiamas viešaisiais darbais arba bauda, arba laisvės apribojimu. 3. Už šiame straipsnyje numatytas veikas atsako ir juridinis asmuo.	**Article 204. Use of Another's Trademark or Service Mark** 1. A person who, without holding an authorisation, identifies a large quantity of goods with another's trademark or presents them for handling or makes use of another's service mark and thereby incurs major damage shall be punished by a fine or by restriction of liberty or by a custodial sentence for a term of up to two years. 2. A person who, without holding an authorisation, identifies a small quantity of goods with another's trademark or presents them for handling or makes use of another's service mark and thereby incurs damage shall be considered to have committed a misdemeanour and shall be punished by community service or by a fine or by restriction of liberty. 3. A legal entity shall also be held liable for the acts provided for in this Article.
Article 212	**212 straipsnis. Sąvokų išaiškinimas** 1. Šiame skyriuje nurodyta didelė turtinė žala yra 150 MGL dydžio sumą viršijanti žala. 2. Šio skyriaus 199, 1991, 1992 ir 200 straipsniuose nurodytų daiktų (prekių) vertė apskaičiuojama pagal jų muitinę vertę, įskaitant privalomus sumokėti mokesčius. 3. Šio skyriaus 201 straipsnyje nurodyti naminiai stiprūs alkoholiniai gėrimai yra alkoholiniai gėrimai, kurių tūrinė etilo alkoholio koncentracija viršija 18 procentų. 4. Šiame skyriuje nurodyti juridiniai asmenys yra bet kokie juridiniai asmenys, išskyrus valstybę, savivaldybę, valstybės ir savivaldybės instituciją ir įstaigą bei tarptautinę viešąją organizaciją.	**Article 212. Interpretation of Concepts** 1. In this Chapter, the indicated major property damage shall be a damage exceeding the amount of 150 MSLs. 2. The value of the items/goods indicated in Articles 199, 1991, 1992 and 200 of this Chapter shall be calculated according to their customs value, including the taxes to be paid. 3. The strong home-made alcoholic beverages indicated in Article 201 of this Chapter shall be the alcoholic beverages whose ethyl alcohol strength by volume exceeds 18%. 4. The legal entities indicated in this Chapter shall be any legal entities, with the exception of the State, a municipality, a state and municipal institution and agency as well as an international public organisation.

Lithuanian Criminal Procedure Code (*Lietuvos Respublikos baudžiamojo proceso kodeksas*)

Access the full text

Lithuanian:
https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163482/asr

	Original language	English
Article 376	**376 straipsis. Teismo įgaliojimų nagrinėjant kasacinę bylą ribos** 1. Nagrinėdamas kasacinę bylą, teismas teisės taikymo aspektu patikrina priimtus nuosprendžius ir nutartis, dėl kurių paduotas skundas. 2. Jeigu byloje nuteisti keli asmenys, teismas išnagrinėja bylą dėl to nuteistojo, su kuriuo susijęs paduotas skundas. Tačiau jeigu netinkamas baudžiamojo įstatymo pritaikymas ir esminiai šio Kodekso pažeidimai galėjo turėti įtakos ir kitiems nuteistiesiems, teismas patikrina, ar teisėtas nuosprendis ir kitiems nuteistiesiems, kurie nepadavė skundų. 3. Nagrinėdamas kasacinę bylą, teismas gali pritaikyti lengvesnę nusikalstamą veiką numatantį įstatymą arba nutraukti baudžiamąją bylą. Teismas turi teisę pritaikyti sunkesnę nusikalstamą veiką numatantį įstatymą tik tuo atveju, kai to prašoma paduotame skunde. Teismas gali sušvelninti arba sugriežtinti bausmę, jeigu neteisinga bausmė susijusi su netinkamu baudžiamojo įstatymo pritaikymu. Sugriežtinti bausmę teismas gali tuo atveju, kai dėl to paduotas skundas, tačiau jis neturi teisės sugriežtinti bausmę paskirdamas laisvės atėmimą iki gyvos galvos. 4. Pritaikydamas kitą baudžiamąjį įstatymą arba paskirdamas naują bausmę, teismas remiasi pirmosios instancijos ir apeliacinės instancijos teismų posėdžiuose išnagrinėtais įrodymais.	**Article 376. Limits on the court's powers in cassation proceedings** 1. In cassation proceedings, the court shall examine, from the point of view of the application of law, the judgments and orders against which an appeal has been lodged. 2. Where several persons have been convicted in a case, the court shall examine the case against the convicted person in respect of whom the appeal has been lodged. However, if the misapplication of the criminal law and the material breaches of this code may have affected other convicted persons, the court shall examine the validity of the sentence for other convicted persons who have not lodged an appeal. 3. In cassation proceedings, the court may apply a less severe offence or discontinue the criminal proceedings. The court shall have the power to apply a more serious criminal law only if so requested in the appeal. The court may reduce or increase the sentence if the unjust sentence is due to an incorrect application of the criminal law. The court may increase the sentence where a complaint has been lodged, but it may not increase the sentence by imposing life imprisonment. 4. When applying a different criminal law or imposing a new sentence, the court shall base it on the evidence adduced at first instance and on the evidence adduced at the appeal hearings.

Lithuania Law on Copyright and Related Rights (Lietuvos Respublikos autorių teisių ir gretutinių teisių įstatymas)

Access the full text

Lithuanian:

https://e-seimas.lrs.lt/portal/legalActEditions/lt/TAD/TAIS.81676?faces-redirect=true

English:

https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/5f13b560b2b511e59010bea026bdb259?jfwid=9tq147ogj

	Original language	English
Article 2	**2 straipsnis. Pagrindinės šio Įstatymo sąvokos** 28. Komerciniai tikslai – tikslai, kuriais siekiama tiesioginės ar netiesioginės ekonominės ar komercinės naudos; su jais paprastai nesiejama veikla, kurią gera valia vykdo galutiniai vartotojai.	**Article 2. Main Definitions of this Law** 28. 'Commercial purposes' means purposes with which direct or indirect economic or commercial advantage is being sought; this would normally exclude acts carried out by end-consumers acting in good faith.
Article 83	**83 straipsnis. Turtinės žalos atlyginimas. Kompensacija** 1. Turtinės žalos atlyginimo tvarką reglamentuoja Civilinis kodeksas ir šis Įstatymas. 2. Nustatydamas dėl šio Įstatymo saugomų teisių pažeidimo faktiškai atsiradusios žalos (nuostolių) dydį, teismas atsižvelgia į pažeidimo esmę, padarytos žalos dydį, autoriaus teisių, gretutinių teisių ar sui generis teisių subjekto negautas pajamas, turėtas išlaidas, kitas svarbias aplinkybes. Pažeidėjo gauta nauda šio Įstatymo 77 straipsnio 1 dalyje nurodytų asmenų reikalavimu gali būti pripažinta nuostoliais. Neteisėtos kūrinių ar kitų šio Įstatymo saugomų teisių objektų kopijos gali būti perduotos atitinkamai autoriaus teisių, gretutinių teisių ar sui generis teisių subjektams šių prašymu. 3. Šio Įstatymo 77 straipsnio 1 dalyje nurodytų asmenų negautų pajamų dydis nustatomas atsižvelgiant į tai, kokios pajamos būtų gautos teisėtai naudojant kūrinius ar kitus objektus (į atlyginimą, kuris paprastai mokamas už teisėtą	**Article 83. Recovery of Material Damage. Compensation** 1. The procedure for recovery of material damage shall be regulated by the Civil Code and this Law. 2. When appraising the amount of damage (losses) actually caused by the infringement of the rights protected under this Law, the court shall take into account the substance of the infringement, the amount of the inflicted damage, lost profits and other expenses suffered by the owner of copyright, related rights or *sui generis* rights, and other important circumstances. The profits made by the infringer may, at the request of the persons referred to in Article 77(1) of this Law, be recognised as losses. Infringing copies of works or other objects of the rights protected under this Law may be handed over to the respective owners of copyright, related rights or *sui generis* rights, if so requested. 3. The amount of lost profits of the persons indicated in Article 77(1) of this Law shall be set taking into account the profits that would have been received when legally using works or other objects (taking into consideration royalties and

	tokių kūrinių ar kitų objektų naudojimą, arba atlyginimą, mokamą už panašių kūrinių ar kitų objektų teisėtą naudojimą, arba kūrinio ar kito teisių objekto naudojimo būdui labiausiai tinkamus atlyginimus), taip pat į konkrečias aplinkybes, kurios galėjo sudaryti sąlygas pajamoms gauti (teisių subjektų atlikti darbai, panaudotos priemonės, derybos dėl kūrinio naudojimo sutarčių sudarymo ir kita).	fees that are normally paid for lawful use of such works or other objects, or royalties and fees that are paid for lawful use of similar works or other objects, or royalties and fees most suitable for the modes of use of a work or any other object), as well as taking into account concrete circumstances that might have created conditions to receive profits (works performed by owners of rights, materials and implements used, negotiations on conclusion of agreements pertaining to the use of a work, etc.).
	4. Vietoj dėl šio Įstatymo saugomų teisių pažeidimo faktiškai atsiradusios žalos (nuostolių) atlyginimo šio Įstatymo 77 straipsnio 1 dalyje nurodyti asmenys gali reikalauti: 1) kompensacijos, kurios dydį iki 1 000 minimalių gyvenimo lygių (MGL) nustato teismas, atsižvelgdamas į pažeidėjo kaltę, jo turtinę padėtį, neteisėtų veiksmų priežastis ir kitas turinčias reikšmės bylai aplinkybes, taip pat sąžiningumo, teisingumo ir protingumo kriterijus; arba 2) atlyginimo, kuris turėjo būti sumokėtas, jeigu pažeidėjas būtų teisėtai naudojęsis kūriniais ar kitais šio Įstatymo saugomų teisių objektais (tai yra gavęs leidimą), o kai yra pažeidėjo tyčia ar didelis neatsargumas, – iki dviejų kartų didesnio šio atlyginimo. 5. Kai pažeidėjas atlieka veiksmus nežinodamas ir neturėdamas žinoti, kad jis pažeidžia šio Įstatymo saugomas teises (tai yra jo veiksmuose nėra kaltės), teismas autorių teisių, gretutinių teisių ar sui generis teisių subjekto reikalavimu gali išreikalauti pažeidėjo gautą naudą. Pažeidėjo gauta nauda laikoma visa tai, ką pažeidėjas sutaupė ir (ar) gavo pažeisdamas šio Įstatymo saugomas teises. Pažeidėjo gauta nauda nustatoma ir išieškoma neatsižvelgiant į tai, ar pats teisių subjektas tokią naudą, kokią gavo pažeidėjas, būtų gavęs, ar ne. Nustatant pažeidėjo gautą naudą, teisių subjektas turi pateikti tik tuos įrodymus, kurie patvirtintų pažeidėjo gautas bendras pajamas; kokia yra pažeidėjo grynoji nauda (nauda, atskaičius išlaidas), turi įrodyti pats pažeidėjas.	4. Instead of requesting compensation of damage (losses) caused by the infringement of the rights protected under this Law, the persons specified in Article 77(1) of this Law may claim: 1) compensation in the amount of up to 1 000 minimum living standards (MLS), which is set by the court, taking into account the culpability of the infringer, his property status, causes of unlawful actions and other circumstances relevant to the case, as well as the criteria of good faith, reasonableness and justice; or 2) royalties or fees which would have been due if the infringer had requested authorisation to use the works or other objects of the rights protected under this Law, and where the infringer acted intentionally or with negligence – up to twice the amount of such royalties and fees. 5. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the court may, at the request of the owner of copyright, related rights or *sui generis* rights, order the recovery of profits. The profits of the infringer shall be considered to be a total that the infringer has saved and (or) received by infringing the rights protected under this Law. The profits of the infringer shall be determined and recovered regardless of the fact whether or not the owner of the rights himself would have gained the similar profits. When determining the profits of the infringer, the owner of the rights must present only the evidence, which would confirm the gross earnings received by the infringer; the amount of the net earnings (earning after the deduction of expenses) must be proved by the infringer himself.

PORTUGAL

Portuguese Code of Copyright and Related Rights (*Código do Direito de Autor e dos Direitos Conexos*)

Access the full text

Portuguese:
https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=484&tabela=leis&so_miolo

	Original language	English
Article 68	**Formas de utilização** 2. Assiste ao autor, entre outros, o direito exclusivo de fazer ou autorizar, por si ou pelos seus representantes: [...] e) A difusão pela fotografia, telefotografia, televisão, radiofonia ou por qualquer outro processo de reprodução de sinais, sons ou imagens e a comunicação pública por altifalantes ou instrumentos análogos, por fios ou sem fios, nomeadamente por ondas hertzianas, fibras ópticas, cabo ou satélite, quando essa comunicação for feita por outro organismo que não o de origem;	**Forms of use** 2. The author has, among others, the exclusive right to make or authorise, by himself or through his representatives: [...] e) Broadcasting by photography, telephotography, television, radiophony or any other process of reproducing signals, sounds or images and public communication through loudspeakers or similar instruments, by wires or wireless, in particular by radio waves, optical fibres, cable or satellite, when this communication is made by a body other than the one of origin;
Article 149	**Autorização** 1 – Depende de autorização do autor a radiodifusão sonora ou visual da obra, tanto directa como por retransmissão, por qualquer modo obtida. 2 – Depende igualmente de autorização a comunicação da obra em qualquer lugar público, por qualquer meio que sirva para difundir sinais, sons ou imagens. 3 – Entende-se por lugar público todo aquele a que seja oferecido o acesso, implícita ou explicitamente, mediante remuneração ou sem ela, ainda que com reserva declarada do direito de admissão.	**Authorisation** 1 – The sound or visual broadcasting of the work, either directly or by retransmission, by any means obtained, depends on the author's authorisation. 2 – Communication of the work in any public place, by any means that serves to spread signs, sounds or images, also depends on authorisation. 3 – A public place is understood to be any place to which access is offered, implicitly or explicitly, with or without remuneration, even with a declared reservation of the right of admission.
Article 155	**Comunicação pública da obra radiodifundida**	**Public communication of the broadcast work**

	É devida igualmente remuneração ao autor pela comunicação pública da obra radiodifundida, por altifalante ou por qualquer outro instrumento análogo transmissor de sinais, de sons ou de imagens.	Remuneration is also due to the author for the public communication of the broadcast work, through loudspeaker or by any other analogous instrument transmitting signals, sounds or images.
Article 195	**Usurpação** 1 – Comete o crime de usurpação quem, sem autorização do autor ou do artista, do produtor de fonograma e videograma ou do organismo de radiodifusão, utilizar uma obra ou prestação por qualquer das formas previstas neste Código. 2 – Comete também o crime de usurpação: a) Quem divulgar ou publicar abusivamente uma obra ainda não divulgada nem publicada pelo seu autor ou não destinada a divulgação ou publicação, mesmo que a apresente como sendo do respectivo autor, quer se proponha ou não obter qualquer vantagem económica; b) Quem coligir ou compilar obras publicadas ou inéditas sem autorização do autor; c) Quem, estando autorizado a utilizar uma obra, prestação de artista, fonograma, videograma ou emissão radiodifundida, exceder os limites da autorização concedida, salvo nos casos expressamente previstos neste Código. 3 – Será punido com as penas previstas no artigo 197.º o autor que, tendo transmitido, total ou parcialmente, os respectivos direitos ou tendo autorizado a utilização da sua obra por qualquer dos modos previstos neste Código, a utilizar directa ou indirectamente com ofensa dos direitos atribuídos a outrem. 4 – O disposto nos números anteriores não se aplica às situações de comunicação pública de fonogramas e videogramas editados comercialmente, puníveis como ilícito contraordenacional, nos termos dos n.os 3, 4 e 6 a 12 do artigo 205.º	**Usurpation** 1 – The crime of usurpation is committed by anyone who, without authorisation from the author or artist, the phonogram and videogram producer or the broadcasting organisation, uses a work or performance in any of the ways provided for in this code. 2 – The crime of usurpation is also committed by those who: a) Abusively disclose or publish a work not yet disclosed or published by its author, or not intended for dissemination or publication, even if presenting the work as belonging to the respective author, and with or without the aim of obtaining any economic advantage; b) Collect or compile published or unpublished works without the author's authorisation; c) Having the authorisation to use a work, performance by an artist, phonogram, videogram or broadcast emission, exceed the limits of the authorisation granted, except in the cases expressly provided for in this code. 3 – Authors who have transmitted, in whole or in part, their respective rights, or who have authorised the use of their work in any of the ways provided for in this code, shall be punished with the penalties provided for in Article 197, where they directly or indirectly use their works to the detriment of the rights granted to another. 4 – The provisions of the previous articles are not applicable to situations of public communication of commercially edited phonograms and videograms, which are punishable as an administrative offence under the terms of paragraphs 3, 4 and 6 to 12 of Article 205.
Article 197	**Penalidades** 1 – Os crimes previstos nos artigos anteriores são punidos com pena de prisão até três anos e multa de 150 a 250 dias, de acordo com a gravidade da infracção, agravadas uma e outra para o dobro em caso de reincidência, se o facto	**Penalties** 1 – The crimes set out in the previous articles are punished with imprisonment of up to three years and a fine of 150 to 250 days' pay, according to the seriousness of the offence, both doubled in the event of recidivism, if the constitutive fact of

	constitutivo da infracção não tipificar crime punível com pena mais grave. 2 – Nos crimes previstos neste título a negligência é punível com multa de 50 a 150 dias. 3 – Em caso de reincidência não há suspensão da pena.	the offence does not constitute a crime punishable by a more serious penalty. 2 – In the crimes provided for under this title negligence is punishable by a fine of 50 to 150 days' pay. 3 – In the event of recidivism no suspension of the sentence applies.

SPAIN

Spanish Criminal Code (*Código Penal*)

Access the full text

Spanish:
https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444

English:
https://www.mjusticia.gob.es/es/areas-tematicas/documentacion-publicaciones/publicaciones/traducciones-derecho-espanol

	Original language	English
Article 270	1. Será castigado con la pena de prisión de seis meses a cuatro años y multa de doce a veinticuatro meses el que, con ánimo de obtener un beneficio económico directo o indirecto y en perjuicio de tercero, reproduzca, plagie, distribuya, comunique públicamente o de cualquier otro modo explote económicamente, en todo o en parte, una obra o prestación literaria, artística o científica, o su transformación, interpretación o ejecución artística fijada en cualquier tipo de soporte o comunicada a través de cualquier medio, sin la autorización de los titulares de los correspondientes derechos de propiedad intelectual o de sus cesionarios.	1. Whoever, in order to obtain direct or indirect economic gain and to the detriment of a third party, reproduces, plagiarises, distributes, publicly discloses or in any other manner financially exploits all or part of a literary, artistic or scientific work or performance, or transforms, interprets or performs it in any kind of medium, or broadcasts it by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, shall be punished with a prison sentence of six months to four years and a fine of twelve to twenty-four months.
	2. La misma pena se impondrá a quien, en la prestación de servicios de la sociedad de la información, con ánimo de obtener un beneficio económico directo o indirecto, y en perjuicio de tercero, facilite de modo activo y no neutral y sin limitarse a un tratamiento meramente técnico, el acceso o la localización en internet de obras o prestaciones objeto de propiedad intelectual sin la autorización de los titulares de los correspondientes derechos o de sus cesionarios, en particular ofreciendo listados ordenados y clasificados de enlaces a las obras y contenidos referidos anteriormente, aunque dichos enlaces hubieran sido facilitados inicialmente por los destinatarios de sus servicios.	2. The same punishment shall be incurred by those who, while providing media services, in order to obtain direct or indirect economic gain and to the detriment of a third party, actively and in a non-neutral manner, not limited to merely technical processing, provide access or enable the identification on the Internet of works or performances subject to intellectual property without authorisation of the holders of the corresponding rights or their assignees, in particular by providing ordered and classified lists of links to the aforementioned works and content, even in the event that said links were originally provided by the service recipients.
	3. En estos casos, el juez o tribunal ordenará la retirada de las obras o prestaciones objeto de la	3. In these cases, the Judge or Court of Law shall order the withdrawal of the works or

	infracción. Cuando a través de un portal de acceso a internet o servicio de la sociedad de la información, se difundan exclusiva o preponderantemente los contenidos objeto de la propiedad intelectual a que se refieren los apartados anteriores, se ordenará la interrupción de la prestación del mismo, y el juez podrá acordar cualquier medida cautelar que tenga por objeto la protección de los derechos de propiedad intelectual.	performances the object of the criminal offence. When, through an Internet access portal or media service, the content subject to intellectual property outlined in the preceding Sections is distributed exclusively or predominantly, the interruption of such distribution shall be ordered and the Judge may adopt any precautionary measure established for the purpose of protecting intellectual property rights.
	Excepcionalmente, cuando exista reiteración de las conductas y cuando resulte una medida proporcionada, eficiente y eficaz, se podrá ordenar el bloqueo del acceso correspondiente.	Exceptionally, when such conduct is reiterated and when it is considered as a proportionate, efficient and effective measure, the corresponding access may be blocked.
	4. En los supuestos a que se refiere el apartado 1, la distribución o comercialización ambulante o meramente ocasional se castigará con una pena de prisión de seis meses a dos años. No obstante, atendidas las características del culpable y la reducida cuantía del beneficio económico obtenido o que se hubiera podido obtener, siempre que no concurra ninguna de las circunstancias del artículo 271, el Juez podrá imponer la pena de multa de uno a seis meses o trabajos en beneficio de la comunidad de treinta y uno a sesenta días.	4. In the cases outlined in Section 1, the itinerant or merely occasional distribution or commercialisation shall be punished with a prison sentence of six months to two years. However, in view of the circumstances of the offender and the small amount of financial profit obtained or that could have been obtained, as long as none of the circumstances of Article 271 concurs, the Judge may hand down a fine of one to six months, or community service of thirty-one to sixty days.
	5. Serán castigados con las penas previstas en los apartados anteriores, en sus respectivos casos, quienes:	5. The penalties foreseen in the preceding Sections, in the respective cases, shall be imposed on those who:
	a) Exporten o almacenen intencionadamente ejemplares de las obras, producciones o ejecuciones a que se refieren los dos primeros apartados de este artículo, incluyendo copias digitales de las mismas, sin la referida autorización, cuando estuvieran destinadas a ser reproducidas, distribuidas o comunicadas públicamente.	a) Intentionally export or store copies of the works, productions or performances outlined in the first two Sections of this Article, including digital copies thereof, without due authorisation, with the intention of reproducing, distributing or publically disclosing them;
	b) Importen intencionadamente estos productos sin dicha autorización, cuando estuvieran destinados a ser reproducidos, distribuidos o comunicados públicamente, tanto si éstos tienen un origen lícito como ilícito en su país de procedencia; no obstante, la importación de los referidos productos de un Estado perteneciente a la Unión Europea no será punible cuando aquellos se hayan adquirido directamente del titular de los derechos en dicho Estado, o con su consentimiento.	b) Intentionally import these products without said authorisation, with the intention of reproducing, distributing or publically disclosing them, regardless of whether these have a lawful or unlawful origin in their country of origin. However, importing those products from a State pertaining to the European Union shall not be punishable when these have been acquired directly from the holder of the rights in that State, or with his consent;
	c) Favorezcan o faciliten la realización de las conductas a que se refieren los apartados 1 y 2	c) Promote or facilitate the conducts outlined in Sections 1 and 2 of this Article by eliminating or

	de este artículo eliminando o modificando, sin autorización de los titulares de los derechos de propiedad intelectual o de sus cesionarios, las medidas tecnológicas eficaces incorporadas por éstos con la finalidad de impedir o restringir su realización. d) Con ánimo de obtener un beneficio económico directo o indirecto, con la finalidad de facilitar a terceros el acceso a un ejemplar de una obra literaria, artística o científica, o a su transformación, interpretación o ejecución artística, fijada en cualquier tipo de soporte o comunicado a través de cualquier medio, y sin autorización de los titulares de los derechos de propiedad intelectual o de sus cesionarios, eluda o facilite la elusión de las medidas tecnológicas eficaces dispuestas para evitarlo. 6. Será castigado también con una pena de prisión de seis meses a tres años quien fabrique, importe, ponga en circulación o posea con una finalidad comercial cualquier medio principalmente concebido, producido, adaptado o realizado para facilitar la supresión no autorizada o la neutralización de cualquier dispositivo técnico que se haya utilizado para proteger programas de ordenador o cualquiera de las otras obras, interpretaciones o ejecuciones en los términos previstos en los dos primeros apartados de este artículo.	modifying, without authorisation by the holders of the intellectual property rights or their assignees, the effective technological measures put in place in order to prevent or restrict such conduct; d) In order to obtain direct or indirect economic gain, with the purpose of providing third parties with access to a copy of a literary, artistic or scientific work, or to transform, interpret or perform it in any kind of medium, or broadcast by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, evade or facilitate evasion of the effective technological measures in place to prevent this from happening. 6. Whoever manufactures, imports, puts into circulation or possesses for commercial purposes any means specifically designed, produced, adapted or intended to facilitate unauthorised suppression or neutralisation of any technical device that has been used to protect computer programs or any of the other works, interpretations or performances under the terms foreseen in the first two Sections of this Article, shall be punished with a prison sentence of six months to three years.
Article 271	Se impondrá la pena de prisión de dos a seis años, multa de dieciocho a treinta y seis meses e inhabilitación especial para el ejercicio de la profesión relacionada con el delito cometido, por un período de dos a cinco años, cuando se cometa el delito del artículo anterior concurriendo alguna de las siguientes circunstancias: a) Que el beneficio obtenido o que se hubiera podido obtener posea especial trascendencia económica. b) Que los hechos revistan especial gravedad, atendiendo el valor de los objetos producidos ilícitamente, el número de obras, o de la transformación, ejecución o interpretación de las mismas, ilícitamente reproducidas, distribuidas, comunicadas al público o puestas a su disposición, o a la especial importancia de los perjuicios ocasionados. c) Que el culpable perteneciere a una organización o asociación, incluso de carácter transitorio, que tuviese como finalidad la	A prison sentence of two to six years, a fine of eighteen to thirty-six months and special barring from practice of the profession related with the criminal offence committed, for a term of two to five years shall be imposed if any of the following circumstances concurs upon committing the criminal offence foreseen in the preceding Article: a) If the profit obtained, or that could have been obtained, is of special economic importance; b) If the deeds are especially serious, in view of the value of the objects produced unlawfully, the number of works, or of their transformation, performance or interpretation, unlawfully reproduced, distributed, publicly disclosed or made available, or the special importance of the damage caused; c) If the offender belongs to an organisation or association, even if transitory in nature, whose

	realización de actividades infractoras de derechos de propiedad intelectual. d) Que se utilice a menores de 18 años para cometer estos delitos.	purpose is to perpetrate activities that infringe intellectual property rights; d) If persons under eighteen years of age are used to commit those criminal offences.
Article 570	1. Quienes promovieren, constituyeren, organizaren, coordinaren o dirigieren una organización criminal serán castigados con la pena de prisión de cuatro a ocho años si aquélla tuviere por finalidad u objeto la comisión de delitos graves, y con la pena de prisión de tres a seis años en los demás casos; y quienes participaren activamente en la organización, formaren parte de ella o cooperaren económicamente o de cualquier otro modo con la misma serán castigados con las penas de prisión de dos a cinco años si tuviere como fin la comisión de delitos graves, y con la pena de prisión de uno a tres años en los demás casos. A los efectos de este Código se entiende por organización criminal la agrupación formada por más de dos personas con carácter estable o por tiempo indefinido, que de manera concertada y coordinada se repartan diversas tareas o funciones con el fin de cometer delitos. 2. Las penas previstas en el número anterior se impondrán en su mitad superior cuando la organización: a) esté formada por un elevado número de personas. b) disponga de armas o instrumentos peligrosos. c) disponga de medios tecnológicos avanzados de comunicación o transporte que por sus características resulten especialmente aptos para facilitar la ejecución de los delitos o la impunidad de los culpables. Si concurrieran dos o más de dichas circunstancias se impondrán las penas superiores en grado. 3. Se impondrán en su mitad superior las penas respectivamente previstas en este artículo si los delitos fueren contra la vida o la integridad de las personas, la libertad, la libertad e indemnidad sexuales o la trata de seres humanos.	1. Whoever promotes, constitutes, organises, coordinates or directs a criminal organisation shall be punished with a prison sentence of four to eight years, if it has the purpose or object of committing serious criminal offences, and with a prison sentence of three to six years in other cases; and whoever actively participates in the organisation, forms part thereof or cooperates financially or in any other way therein, shall be punished with a prison sentence of two to five years if its purpose is to commit serious criminal offences, and with a prison sentence of one to three years in other cases. For the purposes of this Code, a criminal organisation is construed to be a group formed by more than two persons, on a stable basis or for an indefinite term, in collusion and coordination to distribute diverse tasks or duties in order to commit criminal offences. 2. The penalties foreseen in the preceding Section shall be imposed in the upper half if the organisation: a) is formed by a large number of persons; b) possesses weapons or dangerous instruments; c) has advanced technological resources for communication or transport that, due to the characteristics thereof, are especially fit to facilitate commission of the criminal offences or the impunity of the offenders. Should two or more of those circumstances concur, the higher degree penalties shall be imposed. 3. The upper half of the penalties respectively foreseen in this Article shall be imposed if the criminal offences are against the life or integrity of persons, liberty, sexual freedom and indemnity, or involve trafficking in human beings.

Law 34/2002 on Services of the information society and electronic commerce (*Ley de Servicios de la Sociedad de la Información y del Comercio Electrónico*)

Access the full text

Spanish:
https://www.boe.es/buscar/act.php?id=BOE-A-2002-13758

English:
https://www.global-regulation.com/translation/spain/1450967/law-34-2002%252c-of-11-july%252c-services-of-the-society-of-information-and-electronic-commerce.html

	Original language	English
Article 17	**Responsabilidad de los prestadores de servicios que faciliten enlaces a contenidos o instrumentos de búsqueda.**	**Responsibility of service providers providing links to content or search tools.**
	1. Los prestadores de servicios de la sociedad de la información que faciliten enlaces a otros contenidos o incluyan en los suyos directorios o instrumentos de búsqueda de contenidos no serán responsables por la información a la que dirijan a los destinatarios de sus servicios, siempre que:	1. Providers of information society services that provide links to other content or include in their own directories or content search tools will not be responsible for the information they address to the recipients of their services, provided that:
	a) No tengan conocimiento efectivo de que la actividad o la información a la que remiten o recomiendan es ilícita o de que lesiona bienes o derechos de un tercero susceptibles de indemnización, o b) Si lo tienen, actúen con diligencia para suprimir o inutilizar el enlace correspondiente.	(a) Have no effective knowledge that the activity or information to which they refer or recommend is unlawful or that it injures goods or rights of a third party liable for compensation, or (b) If they have, act with due diligence to delete or disable the corresponding link.
	Se entenderá que el prestador de servicios tiene el conocimiento efectivo a que se refiere el párrafo a) cuando un órgano competente haya declarado la ilicitud de los datos, ordenado su retirada o que se imposibilite el acceso a los mismos, o se hubiera declarado la existencia de la lesión, y el prestador conociera la correspondiente resolución, sin perjuicio de los procedimientos de detección y retirada de contenidos que los prestadores apliquen en virtud de acuerdos voluntarios y de otros medios de conocimiento efectivo que pudieran establecerse.	The service provider shall be understood to have the effective knowledge referred to in subparagraph (a) where a competent body has declared the ilicitude of the data, ordered its withdrawal or that access to the data is impossible. (i) the existence of the injury was declared and the service provider knew the relevant decision, without prejudice to the procedures for the detection and removal of the content which the providers apply under voluntary agreements and of other means of effective knowledge that could be established.
	2. La exención de responsabilidad establecida en el apartado 1 no operará en el supuesto de que el destinatario del servicio actúe bajo la dirección, autoridad o control del prestador que facilite la localización de esos contenidos.	2. The exemption from liability provided for in paragraph 1 shall not operate in the event that the recipient of the service acts under the direction, authority or control of the provider that facilitates the location of such content.

EU Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

Access the full text

English:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029

Article 3 – 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:

(a) for performers, of fixations of their performances;

(b) for phonogram producers, of their phonograms;

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

(d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

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