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Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 3 September 2024 – Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft mbH and AKM eingetragene Genossenschaft mit beschränkter Haftung v Supervisory authority for collecting societies

(Case C-579/24, Austro-Mechana and AKM)

(C/2024/7021)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellants: Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft mbH, AKM eingetragene Genossenschaft mit beschränkter Haftung

Respondent: Supervisory authority for collecting societies

Questions referred

1. Is EU law, in particular Article 2 of Directive 2001/29/EC, ([1]) Article 17(1) of Directive (EU) 2019/790 ([2]) and Article 9 of the Berne Convention for the Protection of Literary and Artistic Works (Revised Berne Convention (RBC)), to be interpreted as meaning that an online content-sharing service provider pursuant to Article 2, point 6, of Directive (EU) 2019/790 which stores works and other subject matter uploaded by users, in addition to performing an act of communication to the public (or an act of making available to the public) within the meaning of Article 3 of Directive 2001/29/EC, also performs, or is to be regarded as also performing, an act of reproduction within the meaning of Article 2 of Directive 2001/29/EC, and must obtain separate authorisation to do so from the rightholders referred to in Article 2 of Directive 2001/29/EC?

2. If the first question is answered in the affirmative:

   Is EU law, in particular Article 17(1) and (2) and Article 1(2) and Article 2, point 6, of Directive (EU) 2019/790, to be interpreted as meaning that an authorisation to reproduce obtained by online content-sharing service providers within the meaning of Article 2, point 6, of Directive (EU) 2019/790 also covers acts of reproduction performed by, or to be regarded as being performed by, the users of such platforms, provided that those users are not acting on a commercial basis or their activity does not generate significant revenues?

3. If the first question is answered in the negative:

   Is EU law, in particular Article 2 of Directive 2001/29/EC and Article 17(2) of Directive (EU) 2019/790, to be interpreted as meaning that users of services offered by online content-sharing service providers within the meaning of Article 6, point 2, of Directive (EU) 2019/790, in uploading copyright-protected works and subject matter for the purposes of storing and sharing them, perform acts of reproduction within the meaning of Article 2 of Directive 2001/29/EC and require authorisation to do so from the rightholders referred to in Article 2 of Directive 2001/29/EC?

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

([2]) Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ 2019 L 130, p. 92).

4. If the first question is answered in the affirmative:

   Is EU law, in particular Article 4, Article 5 and Article 16(1) and (2) of Directive 2014/26/EU, ([3]) to be interpreted as meaning that rightholders may grant the reproduction right under Article 2 of Directive 2001/29/EC, on the one hand, and the right of communication to the public under Article 3 of the same directive, on the other hand, for the purposes of licensing under Article 17(1) and (2) of Directive (EU) 2019/790, individually and separately, too, to a collective management organisation (or an independent management entity), either in order to have those rights managed by different collective management organisations (or independent management entities) or in order to manage those rights individually in part?

([3]) Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ 2014 L 84, p. 72).