

In connection with the answer to Question 3, answers are sought in particular to the following questions:

(a) Should the concept of 'own facilities' in Article 5(2)(d) of Directive 2001/29/EC be understood to mean that a recording made by the Producer for use in a broadcasting organisation's transmissions is covered by the exception laid down in Article 5(2)(d) only if the broadcasting organisation is liable towards third parties for the Producer's acts and omissions in relation to the recording, as if the broadcasting organisation had itself carried out those acts and omissions?

(b) Is the condition that the recording must be made 'on behalf of [and/or] under the responsibility of the broadcasting organisation' satisfied where a broadcasting organisation has commissioned the Producer to make the recording in order that that broadcasting organisation can transmit the recording in question, and on the assumption that the broadcasting organisation concerned has the right to transmit the recording in question?

Clarification is sought as to whether the following situations may or must be taken into consideration for the purpose of answering Question 3(b), and if so, what weight should be given to them:

(i) Whether it is the broadcasting organisation or the Producer which has the final and conclusive artistic/editorial decision on the content of the commissioned programme under agreements between those parties.

(ii) Whether the broadcasting organisation is liable towards third parties in respect of the Producer's obligations in relation to the recording, as if the broadcasting organisation itself had carried out those acts and omissions.

(iii) Whether the Producer is contractually obliged by the agreement with the broadcasting organisation to deliver the programme in question to the broadcasting organisation for a specified price and has to meet, out of this price, all expenses that may be associated with the recording.

(iv) Whether it is the broadcasting organisation or the Producer which assumes liability for the recording in question vis-à-vis third parties.

(c) Is the condition that the recording must be made 'on behalf of [and/or] under the responsibility of the broadcasting organisation' satisfied in the case where a broadcasting organisation has commissioned the Producer to make the recording in order for the broadcasting organisation to be able to transmit the recording in question, and on the assumption that the broadcasting organisation in question has the right to transmit the recording, where the Producer, in the agreement with the broadcasting organisation relating to the recording, has assumed the financial and legal responsibility for (i) meeting all the expenses associated with the recording in return for payment of an amount fixed in advance; (ii)

the purchase of rights; and (iii) unforeseen circumstances, including any delay in the recording and breach of contract, but without the broadcasting organisation being liable towards third parties in respect of the Producer's obligations in relation to the recording as if the broadcasting organisation had itself carried out those acts and omissions?

(¹) OJ 2001 L 167, p. 10.

Order of the President of the Court of 8 October 2010 (reference for a preliminary ruling from the Landesgericht Ried im Innkreis (Austria)) — Criminal proceedings against Roland Langer

(Case C-235/08) (¹)

(2010/C 346/64)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

(¹) OJ C 223, 30.8.2008.

Order of the President of the Court of 1 July 2010 — European Commission v Ireland

(Case C-95/09) (¹)

(2010/C 346/65)

Language of the case: English

The President of the Court has ordered that the case be removed from the register.

(¹) OJ C 113, 16.5.2009.

Order of the President of the First Chamber of the Court of 3 June 2010 (reference for a preliminary ruling from the High Court of Justice in Northern Ireland, Queen's Bench Division — United Kingdom) — Seaport (NI) Ltd v Department of the Environment for Northern Ireland

(Case C-182/09) (¹)

(2010/C 346/66)

Language of the case: English

The President of the First Chamber has ordered that the case be removed from the register.

(¹) OJ C 193, 15.8.2009.