

2. Orders the Portuguese Republic to pay the costs;
3. Orders the Kingdom of Spain to bear its own costs.

(<sup>1</sup>) OJ C 63, 13.3.2010.

**Judgment of the Court (Third Chamber) of 15 March 2012  
(reference for a preliminary ruling from the Corte  
d'appello di Torino — Italy) — Società Consortile  
Fonografici (SCF) v Marco Del Corso**

(Case C-135/10) (<sup>1</sup>)

*(Copyright and related rights in the information society — Direct applicability of the Rome Convention, the TRIPS Agreement and the WPPT in the European Union legal order — Directive 92/100/EC — Article 8(2) — Directive 2001/29/EC — Concept of ‘communication to the public’ — Communication to the public of phonograms broadcast by radio in a dental practice)*

(2012/C 133/04)

Language of the case: Italian

**Referring court**

Corte d'appello di Torino

**Parties to the main proceedings**

Applicant: Società Consortile Fonografici (SCF)

Defendant: Marco Del Corso

Intervening party: Procuratore generale della Repubblica

**Re:**

Reference for a preliminary ruling — Corte di Appello di Torino — Direct applicability within the Community legal order of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the World Intellectual Property Organisation (WIPO) Treaty on Performances and Phonograms (WPPT) — Interpretation of Article 3(2) 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) — Concept of ‘communication to the public’ — Broadcasting and communication to the public of radio phonograms in a dental practice

**Operative part of the judgment**

1. The provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO) signed at Marrakesh on 15 April 1994 and approved by

Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) and of the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty of 20 December 1996 are applicable in the legal order of the European Union.

As the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted at Rome on 26 October 1961, does not form part of the legal order of the European Union it is not applicable there; however, it has indirect effects within the European Union.

Individuals may not rely directly either on that convention or on the agreement or the treaty mentioned above.

The concept of ‘communication to the public’ which appears in Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property and 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 must be interpreted in the light of the equivalent concepts contained in the convention, the agreement and the treaty mentioned above and in such a way that it is compatible with those agreements, taking account of the context in which those concepts are found and the purpose of the relevant provisions of the agreements as regards intellectual property.

2. The concept of ‘communication to the public’ for the purposes of Article 8(2) of Directive 92/100 must be interpreted as meaning that it does not cover the broadcasting, free of charge, of phonograms within private dental practices engaged in professional economic activity, such as the one at issue in the main proceedings, for the benefit of patients of those practices and enjoyed by them without any active choice on their part. Therefore such an act of transmission does not entitle the phonogram producers to the payment of remuneration.

(<sup>1</sup>) OJ C 134, 22.5.2010.

**Judgment of the Court (Third Chamber) of 15 March 2012  
(reference for a preliminary ruling from the High Court of  
Ireland — Ireland) — Phonographic Performance (Ireland)  
Ltd v Ireland, Attorney General**

(Case C-162/10) (<sup>1</sup>)

*(Copyright and related rights — Directive 2006/115/EC — Articles 8 and 10 — Concepts of ‘user’ and ‘communication to the public’ — Installation in hotel bedrooms of televisions and/or radios to which the hotelier distributes a broadcast signal)*

(2012/C 133/05)

Language of the case: English

**Referring court**

High Court of Ireland

**Parties to the main proceedings**

Applicant: Phonographic Performance (Ireland) Ltd

Defendants: Ireland, Attorney General

**Re:**

Reference for a preliminary ruling — High Court of Ireland — Interpretation of Articles 8(2) and 10(1)(a) of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28) — Broadcasting and communication to the public of phonograms — Right to a single equitable remuneration for artists and producers — Concept of ‘user’ and of ‘communication to the public’ — Installation in hotel rooms of televisions and/or radios to which the hotel company distributes a broadcast signal

**Operative part of the judgment**

1. A hotel operator which provides in guest bedrooms televisions and/or radios to which it distributes a broadcast signal is a ‘user’ making a ‘communication to the public’ of a phonogram which may be played in a broadcast for the purposes of Article 8(2) of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
2. A hotel operator which provides in guest bedrooms televisions and/or radios to which it distributes a broadcast signal is obliged to pay equitable remuneration under Article 8(2) of Directive 2006/115 for the broadcast of a phonogram, in addition to that paid by the broadcaster;
3. A hotel operator which provides in guest bedrooms, not televisions and/or radios to which it distributes a broadcast signal, but other apparatus and phonograms in physical or digital form which may be played on or heard from such apparatus, is a ‘user’ making a ‘communication to the public’ of a phonogram within the meaning of Article 8(2) of Directive 2006/115/EC. It is therefore obliged to pay ‘equitable remuneration’ under that provision for the transmission of those phonograms;
4. Article 10(1)(a) of Directive 2006/115, which provides for a limitation to the right to equitable remuneration provided for by Article 8(2) of that directive in the case of ‘private use’, does not allow Member States to exempt a hotel operator which makes a ‘communication to the public’ of a phonogram, within the meaning of Article 8(2) of that directive, from the obligation to pay such remuneration.

(<sup>1</sup>) OJ C 161, 19.6.2010.

**Judgment of the Court (First Chamber) of 22 March 2012 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Génesis Seguros Generales Sociedad Anónima de Seguros y Reaseguros (GENESIS) v Boys Toys SA, Administración del Estado**

(Case C-190/10) (<sup>1</sup>)

**(Community trade mark — Definition and acquisition — Earlier trade mark — Procedure for filing — Filing by electronic means — Method enabling precise identification of the day, hour and minute when the application was filed)**

(2012/C 133/06)

Language of the case: Spanish

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

Applicant: Génesis Seguros Generales Sociedad Anónima de Seguros y Reaseguros (GENESIS)

Defendants: Boys Toys SA, Administración del Estado

**Re:**

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 27 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Definition and acquisition of the Community trade mark — Priority — Procedure for filing — Method (e-mail) enabling precise identification of the day, hour and minute when the application was filed

**Operative part of the judgment**

Article 27 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 1992/2003 of 27 October 2003 must be interpreted as precluding account being taken not only of the day but also of the hour and minute of filing of an application for a Community trade mark with the Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM) for the purposes of establishing that trade mark's priority over a national trade mark filed on the same day, where, according to the national legislation governing the registration of national trade marks, the hour and minute of filing are relevant in that regard.

(<sup>1</sup>) OJ C 195, 17.7.2010.