



Reports of Cases

Case C-314/12

UPC Telekabel Wien GmbH
v
Constantin Film Verleih GmbH
and
Wega Filmproduktionsgesellschaft mbH

(Request for a preliminary ruling from the Oberster Gerichtshof)

(Reference for a preliminary ruling — Approximation of laws — Copyright and related rights — Information society — Directive 2001/29/EC — Website making cinematographic works available to the public without the consent of the holders of a right related to copyright — Article 8(3) — Concept of ‘intermediaries whose services are used by a third party to infringe a copyright or related right’ — Internet service provider — Order addressed to an internet service provider prohibiting it from giving its customers access to a website — Balancing of fundamental rights)

Summary — Judgment of the Court (Fourth Chamber), 27 March 2014

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Questions bearing no relation to the subject matter of the case in the main proceedings — Lack of jurisdiction of the Court*

(Art. 267 TFEU)

2. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Intermediary within the meaning of Article 8(3) of Directive 2001/29 — Internet service provider making protected subject-matter available to the public without the agreement of the holder of a right related to copyright — Included*

(European Parliament and Council Directive 2001/29, Art. 8(3))

3. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Website making protected subject-matter available to the public without the agreement of the holder of a right related to copyright — Order addressed to an internet service provider prohibiting it from giving its customers access to such a website — Conditions and procedures — Balancing of fundamental rights — Assessment by the national court*

(Charter of Fundamental Rights of the European Union, Arts 11, 16, 17(2) and 51; European Parliament and Council Directive 2001/29, Art. 8(3))

1. See the text of the decision.

(see paras 19-21)

2. Article 8(3) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that a person who makes protected subject-matter available to the public on a website without the agreement of the rightholder, for the purpose of Article 3(2) of that directive, is using the services of the internet service provider of the persons accessing that subject-matter, which must be regarded as an intermediary within the meaning of Article 8(3) of that directive.

An internet service provider which allows its customers to access protected subject-matter made available to the public on the internet by a third party is an intermediary whose services are used to infringe a copyright or related right within the meaning of Article 8(3) of Directive 2001/29. Such a conclusion is borne out by the objective pursued by Directive 2001/29. To exclude internet service providers from the scope of Article 8(3) of Directive 2001/29 would substantially diminish the protection of rightholders sought by that directive.

(see paras 32, 33, 40, operative part 1)

3. The fundamental rights recognised by EU law must be interpreted as not precluding a court injunction prohibiting an internet service provider from allowing its customers access to a website placing protected subject-matter online without the agreement of the rightholders when that injunction does not specify the measures which that access provider must take and when that access provider can avoid incurring coercive penalties for breach of that injunction by showing that it has taken all reasonable measures, provided that (i) the measures taken do not unnecessarily deprive internet users of the possibility of lawfully accessing the information available and (ii) that those measures have the effect of preventing unauthorised access to the protected subject-matter or, at least, of making it difficult to achieve and of seriously discouraging internet users who are using the services of the addressee of that injunction from accessing the subject-matter that has been made available to them in breach of the intellectual property right, that being a matter for the national authorities and courts to establish.

(see para. 64, operative part 2)