

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