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Collective Copyright and Related Rights Territorial Restrictions Administrative Perspectives in the European Union

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ABSTRACT: Annotation. The existing international system of collective management of copyright and related rights is based on mutual representation agreements concluded by collecting societies, which impose territorial restrictions on the activities of these entities. The article examines the possibleconflict of these territorial restrictions with the law of the European Union, applying scientific theoretical and empirical methods. The article identifies the position of the Court of Justice ofthe European Communities, the European Parliament and the European Commission on this issue, and draws conclusions on the possible consequences, based on the models proposed by these institutions.

KEYWORDS: Copyright; copyright; related rights; collective administration.

I. INTRODUCTION

Since the beginning of the twentieth century, national tax collectors' associations began to enter into mutual representation agreements with associations operating in other countries for licensing and monitoring the rights of the persons they represent in other countries. Based on this agreement, an effective global system of collective management of copyright and related rights has been established, which benefits rights users, rights holders and society as a whole. Traditionally, mutual representation agreements set territorial limits on activity: an association for the collective administration of copyright or related rights may grant a license to use the repertoire of another collective administrative association only in the territory of the country of its activity; and only he has the exclusive right to manage this repertoire in its operating state. The potential inconsistency of these restrictions with EU law and the differing positions of the Court of the European Community, the European Parliament and the European Commission on the subject matter of this article determine the relevance of the subject matter of this article. When changing legal regulations set in a certain direction, it is necessary to examine the possible consequences of such changes in Lithuania and the European Union as a whole. Only after assessing the potential consequences can a preferred regulatory model be selected. For this reason, the topic of the article is relevant and significant.

The position of the European Parliament and the European Commission on this issue determines the relevance of this article's topic. When changing legal regulations set in a certain direction, it is necessary to examine the possible consequences of such changes in Lithuania and the European Union as a whole. Only after assessing the potential consequences can a preferred regulatory model be selected. For this reason, the topic of the article is relevant and significant. The position of the European Parliament and the European Commission on this issue determines the relevance of this article's topic. When changing legal regulations set in a certain direction, it is necessary to examine the possible consequences of such changes in Lithuania and the European Union as a whole. Only after assessing the potential consequences can a preferred regulatory model be selected. For this reason, the topic of the article is relevant and significant. Certain aspects of this topic have been the focus of attention in their work by foreign authors P. Gyertyanfy, J. De Werra, V. Dehin, Dietz, R. Heine, C. Wunschmann. The Lithuanian scientist V. Mizaras discloses the existing practice of EU institutions and the prevailing trends on the topic of this article, but does not thoroughly assess and study the expected consequences based on the relevant legal regulatory model. This allows us to conclude that detailed research articles on the topic of Lithuanian law have not been carried out. In view of the foregoing, it must be concluded that the subject matter of the article is new and has not been researched.

The purpose of this article is to examine the positions of the Courts of the European Community, the European Parliament and the European Commission on mutual representation agreements between collecting societies and related rights and to identify possible consequences based on the model proposed by these bodies. The objects of research are decisions, legal actions, scientific works adopted by European Union institutions related to the territorial restrictions established by the collective representation agreement made by the association of copyright and related rights collectors. Theoretical methods of analysis, generalization, comparison and empirical methods of document analysis are used to achieve the purpose of the article.

II. DISCUSSION

The first stage in the formation of gathering societies began in the nineteenth and early twentieth centuries (Sterling, 2018). A national gathering society has been formed. The second phase in the development of collective management systems marks the time when national tax collection associations begin to respond to the ongoing process of globalization and enter into reciprocal representation agreements with national associations in various countries for the licensing and control of the copyrights they represent. The year 1926 was crucial to this process. The International Confederation of Writers and Composers Associations (French Confédération Internationale des Sociétés d´Auteurs et Compositeurs), abbreviated as CISAC. This has helped to promote mutual representation agreements between its members.

1. The Territorial Nature of Collective Rights Management

An effective global system for the collective management of copyright and related rights is essential for copyright and related rights users, copyright and related rights holders, and society as a whole. This benefits authors, artists, and holders of copyright and other related rights in practice, economically and legally. Practically beneficial because rights holders cannot be in thousands of locations simultaneously and individually enforce their rights, considering that the object of rights can be used worldwide. This is economically advantageous as it is much cheaper to share the costs of negotiating, maintaining and calculating remuneration with other similar rights holders located around the world. In addition, it will be difficult for individual rights holders to negotiate on an equal basis with large and commercially powerful commercial users, such as broadcasters or telecommunications companies (Florian, 2017).

Legally profitable, because it is clear that certain types of business are based on the massive use of original creative results. Thus, in the absence of institutions for collective administration, it is likely that there will be more violations (both intentional and unintentional). The global system of collective rights management benefits users of rights objects. By applying to a national collecting society ('gathering society'), they can obtain a license for a substantially worldwide repertoire of the desired type of site. A well-functioning collective administrative system benefits society as a whole. Effective civil circulation of copyright and related rights around the world helps people to develop and enjoy the fruits of their creative activities without compromising the interests of rights holders. Collective management of copyrights and related rights in the European Union is also based on mutual representation agreements between tax collection agencies, in which each tax collection agency has one hundred rights and is obliged to grant licenses only in certain regions (Member States in which it operates). Questions arise about how the territorial distribution of these activities complies with EU competition law and single market principles.

2. Practice of European Union Institutions

European Community Court case law One of the first cases before the European Community Court of Justice (ECJ) regarding compatibility with European Community law on intellectual property protection in certain territories was Parke, Davis and Co. v. Probel, Reese, Beintema- Interpharm and Centrafarm. Although this case relates to industrial property issues, the Court's decision is important because it has been determined that the fact that certain intellectual property rights confer exclusive rights to certain entities to carry out certain activities in the national territory is not contrary to community law. Only improper use of exclusive rights may violate competition laws. In other words, the ECJ has distinguished between the ownership of intellectual property rights and the enforcement of those rights. This rule is called “the oldest principle established by the courts, based on the dichotomy of intellectual property rights and their enforcement (Keeling, 2013). Another case that has dealt with copyright is Deutsche Grammophon Gesellschaft mbH v Metro- SB-Großmärkte GmbH & Co. KG. KG7.

In this case, the court continued to follow established practice to adapt it to copyright. The Court noted, first, that the exercise of exclusive copyright does not in itself violate Community law because of its exclusivity; second, ownership of certain exclusive copyrights does not necessarily dominate the relevant market. However, it is not clear from this case how the act (agreement) of a collective management organization granting another collective management body the right to license the use of a particular repertoire of works only in certain areas should be assessed. The act of community gathering has also been assessed in a subsequent ECJ case, but the legality of the mutual representation agreement was not raised. The first case in which the ECJ directly assessed a mutual representation agreement was François Lucazeau and others v. Société des Auteurs, Compositeurs ET Editeurs de Musique (SACEM) and others.

The ECJ states that “it is clear that mutual representation agreements between collecting associations serve a dual purpose: first, to ensure that all protected musical works, regardless of origin, enjoy the same conditions of use for all users in the same Member State, in accordance with the principles of principles enshrined in international treaties; second, they allow collecting associations to entrust the protection of their repertoires in other countries under the system established by collecting associations in that country and are under no obligation to integrate their network of user agreements and local monitoring agreements into existing systems. The Court concluded that the "mutual representation agreement in question is a service agreement which does not in itself limit competition to such an extent that it falls within the scope of Article 85(1) of the Agreement".

The Court also ruled that 'Article 85 of the EEC Treaty should be construed as prohibiting the common practice between the national tax collection associations of the Member States whose object or effect is to deny any association access to its repertoire directly to

users established in the Member State. Other.

Thus, in this case, the ECJ assessed for the first time the mutual representation agreements made by the collecting bodies and found that they themselves did not conflict with EU law. The Court recognized that zoning was justified in terms of efficient administration of rights, as the exercise and monitoring of rights in each state was subject to its own particularities and costs. The court made a decision essentially identical to that in the case of the Ministry of Public Affairs v. Jean-Louis Tournier. In a ruling delivered on the same day, the court reaffirmed the same arguments and case law. It can be concluded that the ECJ has in principle recognized the territoriality of collective management of copyrights and related rights made by mutual representation agreements as justified and in line with EU law. Authors discussing this topic describe the court's position as "sympathetic to the essential elements of existing collective management of copyright and related rights".

Position of the European Parliament. The European Parliament adopted its position on the collective management of copyright and related rights in 2004. 15 January Resolution on Community thresholds for bringing together the public in the area of copyright and related rights ('resolution'). In the introductory part of its resolution, the European Parliament clearly emphasized the importance of collective management of copyright and related rights, noting that collective management of copyrights and related rights, together with the rights and provisions governing their enforcement, is a third and inseparable part. Elements in the field of copyright and related rights. Part of the resolution dealing with the internal market states that the exercise and administration of rights is based on territorial principles and international treaties17. The European Parliament also focuses on the issue of competition, stating that "note that the de jure and de facto monopolies enjoyed in principle by tax-collecting associations do not, in principle, pose a competition problem, provided they do not impose unjustified restrictions on their members or on the availability of rights to potential customers; recognizes that tax collection agencies carry out their duties in the public interest, in the interests of rights holders and users of resus, and therefore require a level of regulation; Emphasizes the importance of competition law in assessing possible individual cases of monopoly abuse by gathering the public, thereby ensuring the successful administration of rights in the future. The Recommendation recognizes that mutual representation agreements, as explicitly recognized in case law, do not conflict with competition law. Summarizing the text of the Resolution, it can be concluded that the European Parliament also consistently supports the position set out in the case law of the ECJ. The European Parliament recognizes that, by its very nature, mutual representation agreements that determine the territorial nature of the activities of collective management organizations are not a negative phenomenon.

EUROPEAN COMMISSION PRACTICE

The European Commission has put into practice in the field of legal regulation of the collective management of copyright and related rights in two main areas: first, with the adoption of Communication COM/2004/0261 on the management of copyright and related rights in the single market (Council, 2013). (Hereinafter referred to as the Communication) and Recommendation 2005/737/EC on the collective cross-border management of copyright and related rights for legitimate online music services (hereinafter referred to as Recommendation); second, in the case of competition law.

The European Commission since 1990 has begun to state its position in various ways that the collective management mechanism of copyright and related rights is ineffective. The Commission presented its views on the existing Law on Communications. It is described in the literature as "a legal and technically oriented document whose main concern is the functioning of the single market, especially in the new digital environment". Communication, apart from the legal and factual status quo. The Commission's approach to the preferred legal framework is set out in the situation analysis, but the legality of agreements between collective management entities is, in principle, unquestioned.

Following a study highlighting the less developed online content services sector in the EU compared to the US, Recommendations. It should be noted that such an optional form of soft law), the EU secondary law has been heavily criticized. Criticism has been leveled at the European Parliament and authors on the matter, stating that "the Commission has adopted, although legally non-binding, soft law" measures instead of democratically drafted directives." (Gyertyanfy, 2010).

The essence of this Recommendation is to remove territorial barriers to the "online rights" of musical works within the European Union. The Recommendation states that rights holders should be free to entrust the administration of rights to any collective management entity of their choice, regardless of the Member State in which they reside and the country of which they are nationals.26. Rights holders also have the right to determine which rights they entrust to manage and in which territory and at any time to change the collective management entity to another. Thus, the main objective of the European Commission is to establish an administrative system for online rights in musical works that will allow all collecting associations to compete with each other in the EU and allow certain collecting associations to license the use of musical works online throughout Europe. European Union. The European Commission has reaffirmed its position on promoting the licensing of musical works throughout the European Union (Turner, 2012).

The European Commission has also developed its approach to collective management mechanisms for copyright and related rights by assessing certain agreements notified to it under the Competition Law. In the so-called IFPI Simulcasting decision (hereinafter live broadcast the European Commission has assessed a mutual representation agreement between record producers, which will

allow them to grant a multi-territorial license to a sound recording repertoire consisting of a sound recording repertoire of all record producers. Contents of the license consists of the right to simultaneously broadcast via the Internet. live broadcasting), i.e. when radio or television broadcasters simultaneously broadcast their programs on the Internet together with the sound recordings included in it, in addition to normal broadcasting (for example on terrestrial radio frequencies). In the latest version of the agreement, broadcasters whose original signals originate in the European Economic Area can apply for a license to the Collective Management Entity operating in the European Economic Area. To the Commission the final draft agreement was amended following comments on the principles for calculating license fees. Under the agreement, tax collection agencies can only compete on administrative fees for users with a more financially attractive license offer.

The European Commission has decided that such an agreement is in accordance with Article 81(3) of the EU Treaty. In addition, the Commission has expressed its support for cross-border licensing (as opposed to the previous one), which promotes technical and economic losses.30, increases service mobility, benefits consumers in both the short and long term. In the so-called Santiago Agreement decision (hereinafter the Santiago Agreement the European Commission has assessed a standard agreement between collecting societies, called the Santiago Agreement, regarding copyright in musical works on the Internet. The agreement allows each party to grant a non-exclusive license to individually the public performs a work online in both its own repertoire and the repertoires of other parties to the contract.34 The purpose of the Santiago agreement (i.e. a bilateral mutual representation agreement signed between tax-collecting agencies) is to create a new type of license covering the repertoire managed by all tax-collecting agencies (“multi-repertoire”).

The Commission has identified a number of problems with this agreement. First, “the agreement stipulates that collective management associations entitled to license multi-repertoires are associations located in a country where the content provider has a real and economic establishment. Given the fact that there is one monopolistic tax collection agency in each region of the European Economic Area and that all tax collection agencies will enter into the bilateral agreement, this means that each national tax collection agency has the absolute exclusive right to license multi-region online music. In its territory. Rights."36 Second, the Commission stated that the transposition of the above restrictions through the relevant network of bilateral agreements would lead to standardization of licensing conditions across the European Economic Area, "preventing markets from developing in different directions and creating exclusivity for each participating association.

III. CONCLUSION

Existing international collecting societies for copyright and related rights this system is based on mutual representation agreements between collecting societies, which imposes territorial restrictions on activities. The case law of the European Community Courts recognizing the territoriality of collective management of copyright and related rights established by the European Parliament consistently supports the European Community Courts and recognizes that mutual representation agreements that determine the territorial nature of collective management activities are not a negative phenomenon. The European Commission shall, through its actions and decisions, the laws of the European Union, which have hitherto been the basis of international collective management mechanisms. The European Commission seeks to establish a licensing model in which any individual collective management entity can license the use of its repertoire throughout the European Union. The European Commission also seeks to ensure that such licensing models operate without territorial distribution between collecting communities and are based on competition between collecting bodies.

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