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# **Jurisdiction in civil and commercial matters**



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**REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)**

**Chapter II      Jurisdiction**

Section 1      **General Provisions**

Section 2      **Special jurisdiction**

Section 3      Jurisdiction in matters relating to insurance

Section 4      Jurisdiction over consumer contracts

Section 5      Jurisdiction over individual contracts of employment

Section 6      Exclusive jurisdiction

Section 7      Prorogation of jurisdiction

(...)

# Judicial competence and procedural justice – parties' interest

**Claimant** – initiative, race to the court, forum shopping

**Defendant** – protected by the rule: *actor sequitur forum rei*

This rule serves as the underlying principle of local as well as international competence. In both cases it ensures that the justified interest of a defendant is safeguarded.

However, in some cases this interest does not need to be as much protected, namely when a defendant should have expected that he can be sued in particular court, which is not the court of his domicile. This is usually either the court of **the place of performance** (whilst a contract is at stake), or the court of **the place of damage** (whilst a tort is at stake).

# ***What is special jurisdiction?***

<b>General jurisdiction</b>	↔	<b>Special jurisdiction</b>
<b>The court of the defendant's domicile</b>	↔	<b>Other court / point of attachment</b>
<b>General principle</b>	↔	<b>Exception</b>

Special jurisdiction offers to the plaintiff the possibility to sue the defendant in the court other than the court of his domicile.

**It gives the plaintiff the choice.**

It is therefore the exception from the principle ***actor sequitur forum rei.***

## ***Special jurisdiction as derogation from the general principle***

„the jurisdiction provided for in Article 2 of Regulation No 44/2001, namely that the courts of the Member State **in which the defendant is domiciled** are to have jurisdiction, constitutes **the general principle** and it is only by way of derogation from that principle that that regulation provides for special rules of jurisdiction for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Member State (...)

those special rules on jurisdiction **must be strictly interpreted** and cannot be given an interpretation going beyond the cases expressly envisaged by Regulation No 44/2001.”

ECJ 13 July 2006, C-103/05, ***Reisch Montage AG vs Kiesel Baumaschinen Handels GmbH***

## Reasons for special jurisdiction:

### The principle of proximity (the closest connection)

„Thus, the rule that jurisdiction is generally based on the defendant's domicile is complemented, in Article 5(1), by a rule of special jurisdiction in matters relating to a contract. The reason for that rule, which reflects **an objective of proximity**, is the existence of a close link between the contract and the court called upon to hear and determine the case.

Under that rule the defendant may be sued in the court for the place of performance of the obligation in question, since **that court is presumed to have a close link to the contract.**”

ECJ 3 May 2007, C-385/06, *Color Drack GmbH vs Lexx International Vertriebs GmbH*

## Reasons for special jurisdiction:

### The principle of foreseeability (predictability)

„That principle requires, in particular, that the special rules on jurisdiction be interpreted in such a way as to enable a normally well-informed defendant reasonably **to foresee** before which courts, other than those of the State in which he is domiciled, he may be sued”

ECJ 13 July 2006, C-103/05, ***Reisch Montage AG vs Kiesel Baumaschinen Handels GmbH***

## **General jurisdiction**

Article 4 of the Regulation



## **special jurisdiction**

Article 7-9 of the Regulation

**The court of  
the defendant's domicile**



**other court**

## **International competence**

National law determines  
local competence

Ex.:

Hungarian courts have jurisdiction  
(international competence)



## **International & local competence**

European law determines  
local competence

The court in Eger has international  
and local competence

### **General jurisdiction – Article 4.1.:**

*Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.*

### **Special jurisdiction – Article 5.1.:**

*Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.*

### **Defendants not having domicile in a Member State – Article 6.1.:**

*If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.*

## **Determining the defendants domicile – natural persons – the *lex causae***

Article 62 of the Brussels Ia Regulation:

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

## Determining the defendants domicile – legal persons – autonomous definition

Article 63 of the Brussels Ia Regulation:

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where

it has its:

- a) statutory seat; or
- b) central administration; or
- c) principal place of business.

2. For the purposes of Ireland, Cyprus and the United Kingdom, ‘**statutory seat**’ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

## **Determining the defendant's domicile – trusts – private international law of the *lex fori***

Article 63.3. of the Brussels Ia Regulation

In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

## Brussels Convention

### Article 5

A person domiciled in a Contracting State may, in another Contracting State, be sued:

(1) in matters relating to a contract, in the courts for the place of performance of the **obligation in question**;

## Brussels I Regulation

### Article 5

A person domiciled in a Member State may, in another Member State, be sued:

1. **(a)** in matters relating to a contract, in the courts for the place of performance of **the obligation in question**;

**(b)** for the purpose of this provision and unless otherwise agreed, the place of performance of the **obligation in question** shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

**(c)** if subparagraph (b) does not apply then subparagraph (a) applies;

## Brussels I Regulation

### Article 7

A person domiciled in a Member State may be sued in another Member State:

1. **(a)** in matters relating to a contract, in the courts for the place of performance of the **obligation in question**;

**(b)** for the purpose of this provision and unless otherwise agreed, the place of performance of the **obligation in question** shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

**(c)** if point (b) does not apply then point (a) applies;

## **ECJ 6 October 1976 C-12/76 *Industrie Tessili vs Dunlop***

„Having regard to the differences obtaining between national laws of contract and to the absence at this stage of legal development of any unification in the substantive law applicable, it does not appear possible to give any more substantial guide to the interpretation of the reference made by Article 5 (1) to the "place of performance" of contractual obligations. This is all the more true since the determination of the place of performance of obligations depends on the contractual context to which these obligations belong.

In these circumstances the reference in the Convention to the place of performance of contractual obligations cannot be understood otherwise than by reference to **the substantive law** applicable under the rule of **conflict of laws** of the court before which the matter is brought.”

## **ECJ 6 October 1976 C-14/76 *De Bloos v Bouyer***

It follows for the purpose of determining the place of performance within the meaning of Article 5 (...), the obligation to be taken into account is that which corresponds **to the contractual right on which the plaintiff 's action is based.**

In a case where the plaintiff asserts the right to be paid damages or seeks the dissolution of the contract by reason of the wrongful conduct of the other party, the obligation referred to in Article 5 (1) is still that which arises under the contract and the non-performance of which is relied upon to support such claims.

# Jurisdiction over claims in contract

## Article 7 of the Brussels Ia Regulation

A person domiciled in a Member State may be sued in another Member State:

1.

- a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
- b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
  - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
  - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
- c) if point (b) does not apply then point (a) applies;

**Brussels I Regulation – Article 7.1. point a and b:  
one, single place of performance – one obligation**

„In that regard, it is appropriate to take into consideration the origins of the provision under consideration. By that provision, the Community legislature intended, in respect of sales contracts, **expressly to break** with the earlier solution under which the place of performance was determined, **for each of the obligations in question**, in accordance with the private international rules of the court seised of the dispute.

By designating **autonomously** as ‘the place of performance’ the place where the obligation which characterises the contract is to be performed, the Community legislature sought to centralise at its place of performance jurisdiction over disputes concerning all the contractual obligations and to determine sole jurisdiction for all claims arising out of the contract.”

ECJ 3 May 2007, C-385/06, *Color Drack GmbH vs Lexx International Vertriebs GmbH*

# The principle of characteristic performance

## Special jurisdiction over contract claims

→ place of delivery

### (Article 7.1. b of the Brussels I a Regulation):

For the purpose of this provision and unless otherwise agreed, the place of performance of the **obligation in question** shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

## The law applicable to the contract in the absence of choice → habitual residence

### (Article 4.1. a and b of the Rome I Regulation)

To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

- a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;
- b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;

There must only **one place** of delivery, which decides on jurisdiction, because ...

„it is necessary to point out that **one court** must have jurisdiction to hear all the claims arising out of the contract...

...where there are several places of delivery of the goods, ‘place of performance’ must be understood, for the purposes of application of the provision under consideration, as the place with **the closest linking factor** between the contract and the court having jurisdiction. In such a case, the closest linking factor will, as a general rule, be at the place of the principal delivery, which must be determined on the basis of economic criteria...

... If it is not possible to determine the principal place of delivery, each of the places of delivery has a sufficiently close link of proximity to the material elements of the dispute and, accordingly, a significant link as regards jurisdiction. In such a case, the plaintiff may sue the defendant in the court for the place of delivery **of its choice**...”

ECJ 3 May 2007, C-385/06, *Color Drack GmbH vs Lexx International Vertriebs GmbH*

The place of delivery may be determined by the applicable law or directly by the parties, but it must be

**the actual place of performance**

„whilst the parties are free to agree on a place of performance for contractual obligations which differs from that which would be determined under the law applicable to the contract, without having to comply with specific conditions as to form, they are nevertheless not entitled, having regard to the system established by the Convention, to designate, **with the sole aim of specifying the courts having jurisdiction**, a place of performance having no real connection with the reality of the contract at which the obligations arising under the contract could not be performed in accordance with the terms of the contract”

ECJ 20 February 1997, C-106/97, *Mainschiffahrts-Genossenschaft eG (MSG) v Les Gravières Rhénanes SARL*

## ***SECTION 5 Jurisdiction over individual contracts of employment***

### *Article 21*

1. An employer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled; or

(b) in another Member State:

- i. in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or
- ii. if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

### *Article 22*

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

# Jurisdiction over claims in tort / delict

## Article 7 of the Brussels Ia Regulation

A person domiciled in a Member State may be sued in another Member State:

**3.** in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful **event occurred** or may occur;

## Article 4.1. of the Rome II Regulation

Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of **the country in which the damage occurs** irrespective of the country in which the **event** giving rise to the damage **occurred** and irrespective of the country or countries in which the indirect consequences of that event occur.

## **The Rome II Regulation – Preamble:**

*15. The principle of the lex loci delicti commissi is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries varies. This situation engenders uncertainty as to the law applicable.*

*16. Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage.*

*A connection with the country where the direct damage occurred (lex loci damni) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.*

## Article 7.3. of the Brussels Ia Regulation:

*the place where the damage occurred*

or

*the place of the event giving rise to it ?*

Taking into account the close connexion between the component parts of every sort of liability, it does not appear appropriate to opt for one of the two connecting factors mentioned to the exclusion of the other, since each of them can, depending on the circumstances, be particularly helpful from the point of view of the evidence and of the conduct of the proceedings.

Thus the meaning of the expression 'place where the harmful event occurred' in Article 5 (3) must be established in such a way as to acknowledge that **the plaintiff has an option to commence proceedings either at the place where the damage occurred or the place of the event giving rise to it.**

ECJ 30 November 1976, C 12/76, Handelskwekerij G. J. Bier B.V.  
v Mines de Potasse d'Alsace S.A.

## **Article 7.3. of the Brussels Ia Regulation:**

### **The place of purely financial damage:**

Article 5(3) of the Convention must be interpreted as meaning that the expression 'place where the harmful event occurred' does not refer to the place where the claimant is domiciled or where 'his assets are concentrated' by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Contracting State.

ECJ 10 June 2004, C-168/02, Rudolf Kronhofer vs Marianne Maier, Christian Möller, Wirich Hofius and Zeki Karan

## **Article 7.3. of the Brussels Ia Regulation:**

### **The place of purely financial damage:**

(...) purely financial damage which occurs directly in the applicant's bank account cannot, in itself, be qualified as a 'relevant connecting factor', pursuant to Article 5(3) of Regulation No 44/2001 (...)

It is only where the other circumstances specific to the case also contribute to attributing jurisdiction to the courts for the place where a purely financial damage occurred, that such damage could, justifiably, entitle the applicant to bring the proceedings before the courts for that place.

ECJ 16 June 2016, C-12/15, Universal Music International Holding BV vs Michael Tétreault Schilling, Irwin Schwartz, Josef Brož

# Jurisdiction over torts in Internet

## 1) The transnational violations of personality rights, such as reputation or privacy

1. The '**mosaic**' approach: Fiona Shevill Case
2. The '**centre of interests**' approach: eDate Advertising Case

## 2) The transnational violations of intellectual property rights

1. The '**targeting**' approach: l'Oréal vs eBay Case
2. The '**access**' approach: Hejduk Case

## The transnational violations of personality rights

### The 'mosaic' approach:

**29** In the case of an international libel through the press, the injury caused by a defamatory publication to the honour, reputation and good name of a natural or legal person occurs in the places where the publication is distributed, when the victim is known in those places.

**30** It follows that the courts of each Contracting State in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation have jurisdiction to rule on the injury caused in that State to the victim's reputation.

ECJ 7 March 1997, C-68/93, Fiona Shevill, Ixora Trading Inc., Chequepoint SARL, Chequepoint International Ltd, vs Presse Alliance SA

# The transnational violations of personality rights

## The 'mosaic' approach:

**31** In accordance with the requirement of the sound administration of justice, the basis of the rule of special jurisdiction in Article 5(3), the courts of each Contracting State in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation are territorially the best placed to assess the libel committed in that State and to determine the extent of the corresponding damage.

**32** Although there are admittedly disadvantages to having different courts ruling on various aspects of the same dispute, the plaintiff always has the option of bringing his entire claim before the courts either of the defendant's domicile or of the place where the publisher of the defamatory publication is established.

ECJ 7 March 1997, C-68/93, Fiona Shevill, Ixora Trading Inc.,  
Chequepoint SARL, Chequepoint International Ltd, vs Presse Alliance  
SA

## The 'centre of interests' approach:

In that regard, the Court has also stated that, while it is true that the limitation of the jurisdiction of the courts in the State of distribution solely to damage caused in that State presents disadvantages, the plaintiff always has the option of bringing his entire claim before the courts either of the defendant's domicile or of the place where the publisher of the defamatory publication is established (*Shevill and Others*, paragraph 32).

ECJ 25 October 2011, C-509/09 and C-161/10, joined cases: eDate Advertising GmbH vs X and Olivier Martinez, Robert Martinez vs MGN Limited

## **The ‘centre of interests’ approach:**

However, as has been submitted both by the referring courts and by the majority of the parties and interested parties which have submitted observations to the Court, the placing online of content on a website is to be distinguished from the regional distribution of media such as printed matter in that it is intended, in principle, to ensure the ubiquity of that content. That content may be consulted instantly by an unlimited number of internet users throughout the world, irrespective of any intention on the part of the person who placed it in regard to its consultation beyond that person’s Member State of establishment and outside of that person’s control.

ECJ 25 October 2011, C-509/09 and C-161/10, joined cases: eDate Advertising GmbH vs X and Olivier Martinez, Robert Martinez vs MGN Limited

## The 'centre of interests' approach:

The difficulties in giving effect, within the context of the internet, to the criterion relating to the occurrence of damage which is derived from *Shevill and Others* contrasts, as the Advocate General noted at point 56 of his Opinion, with the serious nature of the harm which may be suffered by the holder of a personality right who establishes that information injurious to that right is available on a world-wide basis.

ECJ 25 October 2011, C-509/09 and C-161/10, joined cases: eDate Advertising GmbH vs X and Olivier Martinez, Robert Martinez vs MGN Limited

## **The ‘centre of interests’ approach:**

The connecting criteria referred to in paragraph 42 of the present judgment must therefore be adapted in such a way that a person who has suffered an infringement of a personality right by means of the internet may bring an action in one forum in respect of all of the damage caused, depending on the place in which the damage caused in the European Union by that infringement occurred. Given that the impact which material placed online is liable to have on an individual’s personality rights might best be assessed by the court of the place where the alleged victim has his centre of interests, the attribution of jurisdiction to that court corresponds to the objective of the sound administration of justice, referred to in paragraph 40 above.

ECJ 25 October 2011, C-509/09 and C-161/10, joined cases: eDate Advertising GmbH vs X and Olivier Martinez, Robert Martinez vs MGN Limited

## **The ‘centre of interests’ approach:**

The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State.

ECJ 25 October 2011, C-509/09 and C-161/10, joined cases: eDate Advertising GmbH vs X and Olivier Martinez, Robert Martinez vs MGN Limited

## The transnational violations of intellectual property rights

### The ‘targeting approach’:

It must, however, be made clear that the mere fact that a website is accessible from the territory covered by the trade mark **is not a sufficient basis** for concluding that **the offers for sale displayed there are targeted at consumers in that territory** (see, by analogy, Joined Cases C-585/08 and C-144/09 *Pammer and Hotel Alpenhof* [2010] ECR I-0000, paragraph 69). Indeed, if the fact that an online marketplace is accessible from that territory were sufficient for the advertisements displayed there to be within the scope of Directive 89/104 and Regulation No 40/94, websites and advertisements which, although obviously targeted solely at consumers in third States, are nevertheless technically accessible from EU territory would wrongly be subject to EU law.

ECJ 12 July 2011, C-324/09, L’Oréal SA and others vs eBay International AG and others

# The transnational violations of intellectual property rights

## The ‘targeting approach’:

It therefore falls to the national courts to assess on a case-by-case basis whether there are any relevant factors on the basis of which it may be concluded that an offer for sale, displayed on an online marketplace accessible from the territory covered by the trade mark, **is targeted at consumers in that territory**. When the offer for sale is accompanied by details of the geographic areas to which the seller is willing to dispatch the product, that type of detail is of particular importance in the said assessment.

ECJ 12 July 2011, C-324/09, L’Oréal SA and others vs eBay International AG and others

# **The transnational violations of intellectual property rights**

## **The ‘access approach’:**

## **The place of the event giving rise to the damage:**

In a situation such as that at issue in the main proceedings, in which the alleged tort consists in the infringement of copyright or rights related to copyright by the placing of certain photographs online on a website without the photographer’s consent, the activation of the process for the technical display of the photographs on that website must be regarded as the causal event.

ECJ 22 January 2015, C-441/1, Pez Hejduk vs EnergieAgentur.NRW GmbH

## **The transnational violations of intellectual property rights**

### **The ‘access approach’:**

### **The place of the event giving rise to the damage:**

In a case such as that in the main proceedings, the acts or omissions liable to constitute such an infringement may be localised only at the place where EnergieAgentur has its seat, since that is where the company took and carried out the decision to place photographs online on a particular website. It is undisputed that that seat is not in the Member State from which the present reference is made.

ECJ 22 January 2015, C-441/1, Pez Hejduk vs EnergieAgentur.NRW GmbH

# **The transnational violations of intellectual property rights**

## **The ‘access approach’:**

### **The place where the damage occurred:**

the Court has stated not only that the place where the alleged damage occurred within the meaning of that provision may vary according to the nature of the right allegedly infringed, but also that the likelihood of damage occurring in a particular Member State is subject to the condition that the right whose infringement is alleged is protected in that Member State (...).

ECJ 22 January 2015, C-441/1, Pez Hejduk vs EnergieAgentur.NRW GmbH

# **The transnational violations of intellectual property rights**

## **The ‘access approach’:**

### **The place where the damage occurred:**

With regard to the likelihood of the damage occurring in a Member State other than the one where EnergieAgentur has its seat, that company states that its website, on which the photographs at issue were published, operating under a country-specific German top-level domain, that is to say ‘de’, is not directed at Austria and that consequently the damage did not occur in that Member State.

ECJ 22 January 2015, C-441/1, Pez Hejduk vs EnergieAgentur.NRW GmbH

# The transnational violations of intellectual property rights

## The ‘access approach’:

### The place where the damage occurred:

It is clear from the Court’s case-law that, unlike Article 15(1)(c) of Regulation No 44/2001, which was interpreted in the judgment in *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), Article 5(3) does not require, in particular, that the activity concerned be ‘directed to’ the Member State in which the court seised is situated (see judgment in *Pinckney*, EU:C:2013:635, paragraph 42).

ECJ 22 January 2015, C-441/1, *Pez Hejduk vs EnergieAgentur.NRW GmbH*

# **The transnational violations of intellectual property rights**

## **The ‘access approach’:**

### **The place where the damage occurred:**

Therefore, for the purposes of determining the place where the damage occurred with a view to attributing jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, it is irrelevant that the website at issue in the main proceedings is not directed at the Member State in which the court seised is situated.

ECJ 22 January 2015, C-441/1, Pez Hejduk vs EnergieAgentur.NRW GmbH

# **The transnational violations of intellectual property rights**

## **The ‘access approach’:**

### **The place where the damage occurred:**

In circumstances such as those at issue in the main proceedings, it must thus be held that the occurrence of damage and/or the likelihood of its occurrence arise from the accessibility in the Member State of the referring court, via the website of EnergieAgentur, of the photographs to which the rights relied on by Ms Hejduk pertain.

ECJ 22 January 2015, C-441/1, Pez Hejduk vs EnergieAgentur.NRW GmbH

# **The transnational violations of intellectual property rights**

## **The ‘access approach’:**

### **The place where the damage occurred:**

The issue of the extent of the damage alleged by Ms Hejduk is part of the examination of the substance of the claim and is not relevant to the stage in which jurisdiction is verified.

However, given that the protection of copyright and rights related to copyright granted by the Member State of the court seised is limited to the territory of that Member State, a court seised on the basis of the place where the alleged damage occurred has jurisdiction only to rule on the damage caused within that Member State (...).

# The transnational violations of intellectual property rights

## The 'access approach':

### The place where the damage occurred:

The courts of other Member States in principle retain jurisdiction, in the light of Article 5(3) of Regulation No 44/2001 and the principle of territoriality, to rule on the damage to copyright or rights related to copyright caused in their respective Member States, given that they are best placed, first, to ascertain whether those rights guaranteed by the Member State concerned have in fact been infringed and, secondly, to determine the nature of the damage caused (see, to that effect, judgment in *Pinckney* EU:C:2013:635, paragraph 46).

ECJ 22 January 2015, C-441/1, Pez Hejduk vs EnergieAgentur.NRW GmbH