

16th November 2015

Marc Wild
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Dear Marc,

CJ case: C-367/15: Stowarzyszenie Olawska Telewizja Kablowa

Further to your notification of 4th November 2015 and IPOs question:-

"Is Article 13 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) to be interpreted as meaning that the rightholder whose economic rights of copyright have been infringed may seek redress for the damage which it has incurred on the basis of general principles, or, without having to prove loss and the causal relationship between the event which infringed its rights and the loss, may seek payment of a sum of money corresponding to twice the amount of the appropriate fee, or, in the event of a culpable infringement, three times the amount of the appropriate fee, whereas Article 13 of Directive 2004/48 states that it is a judicial authority which must decide on damages by taking into account the factors listed in Article 13(1)(a), and only as an alternative in certain cases may set the damages as a lump sum, taking into consideration the elements listed in Article 13(1)(b) of that directive? Is the award, made at the request of a party, of damages as a pre-determined lump sum corresponding to twice or three times the amount of the appropriate fee permissible pursuant to Article 13 of the directive, regard being had to the fact that recital 26 of the preamble thereto states."

The BCC has the following comment to make.

At the heart of this case is the efficient of enforcement of rights, something to which we give strong support.

In the context of the above case, the BCC emphasizes the importance of the availability of additional damages for flagrant infringement. In the absence of additional damages being possible, claimants will be restricted to getting no more than the licence fee which they could have secured if the defendant had done the right thing in the first place.

If you need anything further please do not hesitate to contact me at janet@britishcopyright.org.

Yours sincerely,



Janet Ibbotson
Chief Executive Officer