



# Liability of ISP

## Access Providers

### Cross Border Litigation

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# Access Providers

Protected by safe harbor Art 12 ECD -  
no damages but injunctive relief

UPC Telekabel CJEU C-314/12, Austrian Supreme Court 4 Ob  
71/14s, 4 Ob 22/15m  
blocking of kinox.to - no specification of measures

MC Fadden/Sony C-484/14  
injunction and costs  
Stoererhaftung - German doctrine for contributory liability  
measures examined – only password protection proportionate

Art 8/1/c Enforcement Directive - right to information  
Coty Germany C-580/13



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# Jurisdiction

Art 2 et seq Brussels Regulation  
general jurisdiction domicile of defendant

## Art 5/3 Brussels Regulation

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

1. Place of the infringing act / harmful event
2. Place where damage occurred

Other possibilities for domicile of plaintiff?



# Jurisdiction – Examples 1

Art 5/3

Pez Hejduk CJEU C-441/13

1. actions of the owner of infringing site – seat of owner  
Germany
2. accessibility of website containing infringing fotos in Austria

Pinckney CJEU C-170/12

1. owner of website offering infringing CDs in GB
2. accessibility of website in France

directing of website to the MS not necessary



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# Jurisdiction – Examples 2

## Art 5/3

Austro Mechana / Amazon CJEU C-572/14

Preface: fair remuneration no contractual but tort claim under Art 5/3 Brussels Regulation

1. failure to pay fair remuneration – place of performance
2. lost profits – seat of Austro Mechana in Austria

## Art 15 consumer jurisdiction

Schrems / Facebook CJEU C-498/16

lawsuit in Austria, assertion of similar claims assigned by consumer  
Consumer jurisdiction for Austrian “class action”?

Art 5 applicable according to eDate Advertising and Martinez?



# Jurisdiction v Remedies

## Art 5/3 jurisdiction in IP matters

court may rule only on damages occurred in respective MS (CJEU C-170/12 Pinckney, C-441/13 Pez Hejduk, C-523/10 Wintersteiger)

## Art 5/3 jurisdiction for infringements of personality rights

court may rule on full damages at domicile of plaintiff (CJEU C-509/09 und C-161/10 eDate Advertising and Martinez)

Territoriality principle of IP rights as justification for distinction, exception – Art 97 et seq EUTMR



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# Cross Border Issues EU – Liechtenstein

Brussels Regulation not applicable – no enforcement of foreign judgements

Various directives applicable (InfoSoc Dir, Enforcement Dir, TM Dir), but transposition partly missing

CJEU case law “somewhat” relevant but not binding, EFTA-Court competent to construe EEA law

priority of Swiss case law over EEA obligations?

Active standing of (non-exclusive) licensees unclear

Security deposit approx 10% of value in dispute



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# Outlook – “Construction Sites”

Efficiency of Remedies

Necessity of class actions in IP/data protection cases?

Multi Territorial Licensing in Online Music – Art 29/1  
Directive 2014/26/EU

no active standing of licensing bodies?



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# Thank you!

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