



Time for Greek jurisprudence to reconsider presumption of communication to public?

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Greek law does not provide for a presumption of "communication to the public" merely due to the possession of a TV or radio set. However, the Greek Copyright Office (OPI) in a circular issued in 2017 clearly stated that the possession of TV or radio sets creates a presumption of use or communication to the public of works protected by the relevant collective management organisations (CMOs).

This interpretation of the law has been accepted on various occasions by Greek courts. For example, the recent decision 495/2023 from the First Instance Court of Volos held that the mere possession of a TV set creates a presumption of communication to the public of copyrighted works enjoying protection under the umbrella of local CMOs.

However, while it may appear to be a logical conclusion, the law itself does not introduce such a presumption.⁽¹⁾ Indeed, the practical result of the Court adopting this presumption, which may seem reasonable but does not in fact constitute a presumption under the law, is that the burden of proof is unjustifiably and illegally reversed.

The application of a "logical" but not legal presumption imposes the burden of proof on the defendant, who is obliged to prove a negative fact – namely that despite the possession of a TV or radio set they did not use protected musical works. This is

instead of the applicant CMOs having to prove the use of protected works by the users in the form of communication to the public. Such a reversal clearly violates basic principles of Greek civil procedural rules.

Indeed, in a recent ECJ decision highlighted that the ECJ considers such a presumption as incompatible with EU law.⁽²⁾

It is expected that Greek courts and the OPI will align themselves with this recent EU decision and comply with its contents. As a result, it is likely the OPI will abstain from considering the mere possession of a TV or radio set as a presumption of act of communication to the public of works "protected" by local CMOs.

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Endnotes

(1) However, the law does introduce a presumption in other instances (for example, a presumption of representation in article 7 of Law 4481/2017.

(2) *Case citations*

The decision concerned joint cases regarding the obligation to pay royalties when:

- broadcasting of background musical works on board passenger aircraft; and
- there are physical facilities on board trains capable of being used to carry out communication to the public of musical works.

In brief, the Court held that:

- article 3(1) of Directive 2001/29/EC must be interpreted as meaning that broadcasting of a musical work on

passenger transport as background music constitutes a communication to the public.

- article 3(1) of Directive 2001/29 and article 8(2) of Directive 2006/115/EC must be interpreted as meaning that the installation of sound equipment and, where appropriate, of software enabling the broadcasting of background music on board a means of transport does not constitute a communication to the public. This establishes a rebuttable presumption that musical works are communicated to the public because of the presence of sound systems in means of transport.
- article 8(2) of Directive 2006/115 must be interpreted as precluding national legislation, as interpreted by the national courts.