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The CJEU decides that punitive damages are not contrary to Directive 2004/48

Miquel Montaña (Clifford Chance) · Monday, February 6th, 2017

On 25 January 2017, the CJEU handed down a very interesting judgment in case [C-367/15](#), concluding that Article 13 of Directive EC 2004/48 (better known as “the Enforcement Directive”) does not prevent a national regulation from stating that when an intellectual property right (“IPR”) has been infringed, the IPR owner may claim an amount corresponding to twice the remuneration amount that the third party would have had to pay to make an authorized use of the IPR in question. This finding is interesting, as it confirms that the aim of the Enforcement Directive was simply to introduce “minimum” standards of protection across the EU, which does not prevent the national laws of Member States from conferring a higher level of protection, such as punitive damages.

In particular, the judgment highlights that the fact that although the inclusion of the concept of punitive damages into the text of the Enforcement Directive was being debated but was ultimately ruled out, does not mean that Member States cannot introduce punitive damages into their national legislation. It simply means that they are not required to do so.

No doubt, this judgment will require the courts of some Member States, such as Spain, to revisit their case law on this topic. Certainly, the clear teaching of this judgment is that national courts cannot rely on the text or negotiation history of the Enforcement Directive to reduce any wider protection resulting from national law.

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