

**Court of Justice EU, 23 November 2023, Kopiosto v Telia Finland**



**ENFORCEMENT – COLLECTIVE RIGHTS MANAGEMENT**

**Enforcement competence of collective management organisation (Article 4 Enforcement Directive)**

- For the status of collective management organisations to seek, in their own name, the application of measures, procedures and remedies applies (i) in addition to the condition relating to the direct interest in the defence of the rights concerned, (ii) as a condition that these organisations have standing to bring legal proceedings for the purposes of defending intellectual property rights, which may result from a specific provision to that effect or from general procedural rules

34. Next, as regards the question whether recognition of that capacity of an intellectual property collective rights-management body to seek, in its own name, the application of the measures, procedures and remedies provided for in Directive 2004/48 is subject to that capacity being expressly recognised in the applicable legislation, it should be recalled that Article 4(c) of that directive refers, in general terms, to the ‘*provisions of the applicable law*’.

35. Such an expression does not necessarily mean that the capacity of intellectual property collective rights-management bodies to seek, in their own name, the application of the measures, procedures and remedies provided for in that directive is expressly recognised by a specific provision, since that standing to bring proceedings may result from general procedural rules.

36. That interpretation is supported by the objective of Directive 2004/48, which is, as stated in recital 10 thereof, to ensure a high level of protection of intellectual property in the internal market (judgment of 17 June 2021, M.I.C.M., C-597/19, EU:C:2021:492, paragraph 75 and the case-law cited). To that end, Article 3 of that directive requires Member States to provide for a minimum set of measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.

37. As is apparent from recital 18 of that directive, the EU legislature considered it desirable that, as noted in paragraph 28 above, not only the holders of intellectual property rights, but also collective management organisations, which, as a general rule, have financial and material resources enabling them effectively to

bring legal proceedings in order to combat infringements of those rights, be recognised as persons entitled to request the application of the measures, procedures and remedies provided for in that directive.

38. Consequently, a restrictive interpretation of Article 4(c) of Directive 2004/48 could, in the Member States that have not adopted a provision specifically governing the right of collective management organisations to bring proceedings, prevent such organisations from seeking, in their own name, the application of the measures, procedures and remedies provided for by that directive, which could diminish the effectiveness of the means put in place by the EU legislature in order to enforce intellectual property rights.

- As EU law currently stands, Member States are not required to recognise that intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights have a direct interest in seeking, in their own name, application of measures, procedures and remedies in the event that the existence of a direct interest in the defence of the rights concerned in respect of those bodies does not follow from the applicable national legislation

48. [...] it must be held that EU law does not govern the conditions in which a collective management organisation must be regarded as having a direct interest in the defence of intellectual property rights and that the ‘*provisions of the applicable law*’ referred to in Article 4(c) of Directive 2004/48 refer to the national law of the Member States.

49. In that regard, it should be borne in mind that the Court has held that the Member States are required to recognise an intellectual property collective rights-management body as a person entitled to seek the application of the measures, procedures and remedies provided for by that directive, and to bring legal proceedings for the purpose of enforcing such rights where, in particular, that body is regarded by national law as having a direct interest in the defence of those rights. Consequently, it is for the national courts to determine whether such a body has, under the applicable national law, a direct interest in the defence of the rights of the proprietors whom it represents, bearing in mind that, in the absence of that condition, no such recognition obligation is incumbent on the Member State concerned (see, to that effect, judgment of 7 August 2018, SNB-REACT, C-521/17, EU:C:2018:639, paragraphs 34, 36 and 38).

Source: C-201/22 – ECLI:EU:C:2023:914

**Court of Justice EU, 23 November 2023**

(E. Regan, Z. Csehi, M. Ilešič (Rapporteur), I. Jarukaitis and D. Gratsias)

JUDGMENT OF THE COURT (Fifth Chamber)

23 November 2023 <sup>(1)</sup>

<sup>1</sup> Language of the case: Finnish.

(Reference for a preliminary ruling – Intellectual property rights – Directive 2014/26/EU – Collective management of copyright and related rights – Collective management organisation – Directive 2004/48/EC – Measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights – Article 4 – Persons entitled to seek the application of the measures, procedures and remedies provided for in Directive 2004/48/EC – Collective management organisation authorised to carry out extended collective licensing – Standing to bring proceedings for the defence of intellectual property rights)

In Case C-201/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 15 March 2022, received at the Court on 15 March 2022, in the proceedings

Kopioisto ry

v

Telia Finland Oyj,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, Z. Csehi, M. Ilešič (Rapporteur), I. Jarukaitis and D. Gratsias, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Kopioisto ry, by S. Lapiolahti and B. Rapinoja, asianajajat,

- Telia Finland Oyj, by M. Manner, asianajaja,

- the Finnish Government, by M. Pere, acting as Agent,

- the Polish Government, by B. Majczyna, acting as Agent,

- the European Commission, by S.L. Kalėda, J. Samnadda and I. Söderlund, acting as Agents,

after hearing [the Opinion of the Advocate General at the sitting on 11 May 2023](#),

gives the following

### Judgment

1. This request for a preliminary ruling concerns the interpretation of Article 4(c) 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, and corrigenda OJ 2004 L 195, p. 16, and OJ 2007 L 204, p. 27) and Articles 17 and 47 of the Charter of Fundamental Rights of the European Union (*‘the Charter’*).

2. The request has been made in proceedings between Kopioisto ry and Telia Finland Oyj (*‘Telia’*) concerning the retransmission by Telia of television broadcasts that allegedly infringe copyrights of the authors represented by Kopioisto.

### Legal context

#### European Union law

#### Directive 2004/48

3. Recitals 3, 10 and 18 of Directive 2004/48 state:

*‘(3) ... without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished. It is therefore*

*necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied effectively in the [European] Community. In this respect, the means of enforcing intellectual property rights are of paramount importance for the success of the internal market.*

...

*(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the internal market.*

...

*(18) The persons entitled to request application of [the] measures, procedures and remedies [provided for in this Directive] should be not only the rightholders but also persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.’*

4. Chapter I of that directive, entitled *‘Objective and scope’*, includes, inter alia, Article 1, entitled *‘Subject matter’*, which provides:

*‘This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term “intellectual property rights” includes industrial property rights.’*

5. Article 2 of that directive, entitled *‘Scope’*, provides, in paragraph 1 thereof:

*‘Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.’*

6. Chapter II of that directive, which comprises Articles 3 to 15 thereof, is entitled *‘Measures, procedures and remedies’*.

7. Article 3 of Directive 2004/48, entitled *‘General obligation’*, provides:

*‘1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.*

*2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.’*

8. Article 4 of that directive, entitled *‘Persons entitled to apply for the application of the measures, procedures and remedies’*, reads as follows:

*'Member States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this chapter:*

- (a) the holders of intellectual property rights, in accordance with the provisions of the applicable law;*
- (b) all other persons authorised to use those rights, ... in so far as permitted by and in accordance with the provisions of the applicable law;*
- (c) intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law;*
- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.'*

**Directive 2014/26/EU**

9. Recitals 8, 9, 12 and 49 of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ 2014 L 84, p. 72) state:

*'(8) The aim of this Directive is to provide for coordination of national rules concerning access to the activity of managing copyright and related rights by collective management organisations, the modalities for their governance, and their supervisory framework, ...*

*(9) The aim of this Directive is to lay down requirements applicable to collective management organisations, in order to ensure a high standard of governance, financial management, transparency and reporting. ...*

...

*(12) This Directive, while applying to all collective management organisations, ... does not interfere with arrangements concerning the management of rights in the Member States such as individual management, the extended effect of an agreement between a representative collective management organisation and a user, i.e. extended collective licensing, mandatory collective management, legal presumptions of representation and transfer of rights to collective management organisations.*

...

*(49) ... Finally, it is also appropriate to require that Member States have independent, impartial and effective dispute resolution procedures, via bodies possessing expertise in intellectual property law or via courts, suitable for settling commercial disputes between collective management organisations and users on existing or proposed licensing conditions or on a breach of contract.'*

10. Article 3(a) of that directive, entitled '*Definitions*', provides:

*'For the purposes of this Directive, the following definitions shall apply:*

- (a) "collective management organisation" means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to*

*copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria:*

- (i) it is owned or controlled by its members;*
- (ii) it is organised on a not-for-profit basis'.*

11. Under Article 35 of that directive, entitled '*Dispute resolution*':

*'1. Member States shall ensure that disputes between collective management organisations and users concerning, in particular, existing and proposed licensing conditions or a breach of contract can be submitted to a court, or if appropriate, to another independent and impartial dispute resolution body where that body has expertise in intellectual property law.*

*2. Articles 33 and 34 and paragraph 1 of this Article shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.'*

**Finnish law**

12. Paragraph 26 of tekijänoikeuslaki (404/1961) (Law on copyright (401/1961)) of 8 July 1961, as amended by laki tekijänoikeuslain muuttamisesta (607/2015) (Law amending the Law on copyright (607/2015)) of 22 May 2015 ('*the Law on copyright*'), which is entitled '*Contractual licence*', provides, in subparagraph 1, that the provisions of the Law on copyright relating to contractual licences are to apply to an agreement concluded between a user and the organisation, approved by the Ministry of Education and Culture, which represents, in a specific sector, a number of authors of works used in Finland, for the use of authors' works falling within that same sector. The approved organisation is deemed, in respect of that agreement, to be entitled also to represent other authors of works in the same sector. A licensee who has obtained a contractual licence pursuant to that agreement may, under the terms specified in that agreement, use all the works of authors falling within the same sector.

13. Under Paragraph 26(4) of the Law on copyright, the arrangements laid down by the organisation referred to in subparagraph 1 of that paragraph with respect to the distribution of the remuneration for the reproduction, communication or transmission of works between the authors which it represents or to the use of the remuneration for purposes common to the authors are also to apply to the authors in the same sector referred to in subparagraph 1 whom the organisation does not directly represent.

14. Paragraph 25 h of the Law on copyright, entitled '*Retransmission of radio or television broadcasting*', provides, in subparagraph 1, that a work included in a radio or television broadcast may be retransmitted without modifying the broadcast, under a contractual licence, as provided for in Paragraph 26 of that law, in order to be received by the public at the same time as the original broadcast.

**The dispute in the main proceedings and the questions referred for a preliminary ruling**



15. Kopiosto is a collective management organisation within the meaning of Article 3(a) of Directive 2014/26, which manages and grants licences on behalf of numerous authors on the basis of mandates conferred on it by those authors. Kopiosto is also approved by the Ministry of Education and Culture as a contractual licensing organisation, within the meaning of Paragraph 26 of the Law on copyright, in particular as regards the retransmission of works included in a radio or television broadcast, within the meaning of Paragraph 25 h(1) of that law.

16. Telia operates a cable television network by which broadcasts of domestic free-to-air television channels are transmitted to the public.

17. On 24 January 2018, Kopiosto applied to the markkinaoikeus (Market Court, Finland) for a declaration that Telia had retransmitted television broadcasts, within the meaning of Paragraph 25 h of the Law on copyright, and that, in the absence of prior authorisation on its part, that retransmission infringed the copyrights of the authors that Kopiosto represents, primarily, as a contractual licensing organisation and, alternatively, by virtue of the mandates conferred on it by the copyright holders.

18. Telia challenged Kopiosto's standing to bring an action for copyright infringement.

19. By judgment of 18 June 2019, the markkinaoikeus (Market Court), inter alia, dismissed as inadmissible Kopiosto's claims alleging infringement of copyright on the ground that Kopiosto was not entitled to bring an infringement action in its own name on behalf of rightholders whom it represents as a contractual licensing organisation in the situations governed by Paragraph 26 of the Law on copyright. That court also took the view that Kopiosto did not have standing to bring an infringement action on behalf of rightholders who had granted it an administrative mandate and powers of attorney in respect of their rights.

20. Kopiosto brought an appeal against that judgment before the Korkein oikeus (Supreme Court, Finland), which is the referring court, claiming, primarily, that, because of its status as a contractual licensing organisation, it has, as required by Article 4(c) of Directive 2004/48, a direct interest in bringing proceedings in the event of unlawful use of the works of authors whom it represents and, in the alternative, that it has, at the very least, the right to bring proceedings in respect of the unauthorised use of the works of authors whose copyright it manages on the basis of the mandates for management and representation conferred on it by those authors.

21. Before the referring court, Telia submits that, as a contractual licensing organisation, Kopiosto is authorised to grant licences for the retransmission of television programmes and to collect the associated remuneration. By contrast, only the initial holder of the copyright concerned or the assignee of that copyright could bring an action for infringement of that copyright.

22. The Korkein oikeus (Supreme Court) maintains, in essence, that, in order to resolve the dispute in the main proceedings, it is necessary, in the absence of a relevant

provision of national law, to determine the conditions under which a collective management organisation, within the meaning of Article 3(a) of Directive 2014/26, may be regarded as having standing to seek the application of the measures, procedures and remedies referred to in Chapter II of Directive 2004/48. In particular, that court asks whether, for that purpose, it is sufficient, according to Article 4(c) of that directive, that a contractual licensing organisation has the general capacity to be a party to legal proceedings under national law and has the right to negotiate and grant such licences for the retransmission of television broadcasts on behalf of all rightholders in the sector in question, or whether standing to bring legal proceedings requires that that organisation be expressly entitled under national law to bring an action for infringement of the rights in question in its own name.

23. In that regard, that court observes, first of all, that, in [the judgment of 7 August 2018, SNB-REACT \(C-521/17, EU:C:2018:639\)](#), the Court made that status subject to the condition that a body collectively representing trade mark proprietors is regarded by national law as having a direct interest in the defence of such rights and that that law allows it to bring legal proceedings for that purpose, without, however, specifying whether that second condition refers to the general capacity of that body to bring legal proceedings as a party before a court, or whether it requires that national law expressly provide that an extended collective licensing organisation is entitled to bring an action for copyright infringement, or otherwise allows it to do so.

24. Next, the referring court considers that, in the light of paragraphs 34 and 35 of that judgment, it is not clear whether Article 4(c) of Directive 2004/48 is to be interpreted as being intended to standardise what is to be understood by the '*direct interest*', set out in recital 18 of Directive 2004/48, of an organisation to defend the rights of the rightholders whom it represents, or whether that is to be determined on the sole basis of national law. Nor is it clear from Article 4(c) of Directive 2004/48, read in conjunction with recital 18 thereof, whether a collective management organisation has a direct interest in defending intellectual property rights merely because it is entitled, by virtue of, on the one hand, the extended collective licence or, on the other hand, the mandates for management granted by the rightholders, to grant rights of use over works and to collect, on behalf of rightholders, the remuneration payable to the latter.

25. Lastly, the referring court expresses doubts with regard, in particular, to the question of standing to bring proceedings on the basis of status as an extended collective licensing organisation, as to how Article 4(c) of Directive 2004/48 is to be interpreted in the light of, first, the protection of property laid down in Article 17 of the Charter and, secondly, the right to an effective remedy under Article 47 of the Charter. In that regard, the Korkein oikeus (Supreme Court) states that, if the extended collective licensing organisation were to be regarded as having the right to bring an action for infringement in its own name, that could have the effect

of limiting the holder's right to bring an action him or herself. In that context, the question arises as to whether such an organisation's standing to bring legal proceedings in the event of infringement of the rights of authors who have not assigned their exclusive rights must be regarded as constituting a disproportionate interference with those authors' entitlement to their copyright. That court states, however, that such an interference could be justified, in particular, in the light of the fact that collective management organisations are likely to intervene more effectively than the copyright holder him or herself.

26. In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

*'(1) With regard to contractual licensing organisations which collectively manage intellectual property rights, does the legal standing to defend those rights, which is conferred by Article 4(c) of Directive 2004/48, refer only to the general capacity to be a party to legal proceedings, or does it require a right expressly recognised by national law to bring legal proceedings in one's own name for the purposes of defending the rights in question?*

*(2) In an interpretation based on Article 4(c) of Directive 2004/48, must the term "direct interest in the defence of the copyright of the rightholders whom it represents" be interpreted uniformly in all Member States as regards the right of a collective representation body within the meaning of Article 3(a) of [Directive 2014/26] to bring an action for copyright infringement in its own name where*

*(a) it concerns uses of works in respect of which an organisation is entitled, as a contractual licensing organisation within the meaning of the Tekijänoikeuslaki (Law on copyright), to grant extended collective licences also allowing the licensee to use works by authors in that sector who have not authorised the organisation to manage their rights;*

*(b) it concerns uses of works in respect of which the authors have authorised the organisation to manage their rights by contract or by way of a mandate, without the copyrights having been assigned to the organisation?*

*(3) If the organisation, in its capacity as a contractual licensing organisation, is presumed to have a direct interest and legal standing to bring an action in its own name: in assessing standing to bring proceedings in the light of, where applicable, Articles 17 and 47 of the [Charter], what significance must be given to the fact that the organisation, as a contractual licensing organisation, also represents authors who have not authorised it to manage their rights, and that the organisation's right to bring an action to defend the rights of such authors is not provided for by law?'*

#### **Consideration of the questions referred**

##### **The first question**

27. By its first question, the referring court asks, in essence, whether Article 4(c) of Directive 2004/48 must be interpreted as meaning that, in addition to the

condition relating to the direct interest in the defence of the rights concerned, recognition of the status of intellectual property collective rights-management bodies to request, in their own name, the application of the measures, procedures and remedies provided for in Chapter II of that directive is subject solely to the capacity of those organisations to be a party to legal proceedings or whether it requires express recognition, in the applicable law, of those organisations to bring legal proceedings for the purposes of defending intellectual property rights.

28. In that regard, it should be recalled, first of all, that the Court has held that it is apparent from recital 18 of Directive 2004/48, in the light of which Article 4 thereof must be read, that the EU legislature intended that not only the holders of intellectual property rights, but also persons who have a direct interest in the defence of those rights and the right to bring legal action, be recognised as persons entitled to seek the application of measures, procedures and remedies, provided for by that directive, in so far as the applicable law allows it and in accordance with that law ([judgment of 7 August 2018, SNB-REACT, C-521/17, EU:C:2018:639](#), paragraph 33).

29. Those persons are listed in Article 4(b) to (d) of that directive. Intellectual property collective rights-management bodies are referred to in point (c) of that article, under which Member States are to recognise intellectual property collective rights-management bodies, which are regularly recognised as having a right to represent holders of intellectual property rights, as persons entitled to seek the application of the measures, procedures and remedies referred to in Chapter II, in so far as permitted by and in accordance with the provisions of the applicable law.

30. The Court held that Article 4(c) of Directive 2004/48 must be interpreted as meaning that the Member States are required to recognise a body collectively representing trade mark proprietors as a person entitled to seek, in its own name, the application of the remedies laid down by that directive, for the purpose of defending the rights of those trade mark proprietors, and to bring legal proceedings, in its own name, for the purpose of enforcing those rights, on condition that the body is regarded by national law as having a direct interest in the defence of those rights and that that law allows it to bring proceedings to that end (see, to that effect, [judgment of 7 August 2018, SNB-REACT, C-521/17, EU:C:2018:639](#), paragraph 39).

31. It follows that the capacity of an intellectual property collective rights-management body to seek, in its own name, the application of the measures, procedures and remedies provided for in Chapter II of Directive 2004/48 is subject to the condition that that body is regarded by the applicable national legislation as having a direct interest in the defence of such rights and that that legislation authorises it to bring legal proceedings for that purpose.

32. Consequently, although an intellectual property collective rights-management body must necessarily have the capacity to be a party to legal proceedings in order to be recognised as having standing to seek, in its

own name, the application of the measures, procedures and remedies provided for by that directive, such capacity cannot be sufficient on its own for that purpose. 33. Moreover, given that the capacity to be a party to legal proceedings is an ordinary attribute of the legal personality enjoyed, in principle, by collective management organisations, a different interpretation would deprive the second condition set out in paragraph 39 of the [judgment of 7 August 2018, SNB-REACT \(C-521/17, EU:C:2018:639\)](#), of its effectiveness.

34. Next, as regards the question whether recognition of that capacity of an intellectual property collective rights-management body to seek, in its own name, the application of the measures, procedures and remedies provided for in Directive 2004/48 is subject to that capacity being expressly recognised in the applicable legislation, it should be recalled that Article 4(c) of that directive refers, in general terms, to the ‘*provisions of the applicable law*’.

35. Such an expression does not necessarily mean that the capacity of intellectual property collective rights-management bodies to seek, in their own name, the application of the measures, procedures and remedies provided for in that directive is expressly recognised by a specific provision, since that standing to bring proceedings may result from general procedural rules.

36. That interpretation is supported by the objective of Directive 2004/48, which is, as stated in recital 10 thereof, to ensure a high level of protection of intellectual property in the internal market ([judgment of 17 June 2021, M.I.C.M., C-597/19, EU:C:2021:492](#), paragraph 75 and the case-law cited). To that end, Article 3 of that directive requires Member States to provide for a minimum set of measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.

37. As is apparent from recital 18 of that directive, the EU legislature considered it desirable that, as noted in paragraph 28 above, not only the holders of intellectual property rights, but also collective management organisations, which, as a general rule, have financial and material resources enabling them effectively to bring legal proceedings in order to combat infringements of those rights, be recognised as persons entitled to request the application of the measures, procedures and remedies provided for in that directive.

38. Consequently, a restrictive interpretation of Article 4(c) of Directive 2004/48 could, in the Member States that have not adopted a provision specifically governing the right of collective management organisations to bring proceedings, prevent such organisations from seeking, in their own name, the application of the measures, procedures and remedies provided for by that directive, which could diminish the effectiveness of the means put in place by the EU legislature in order to enforce intellectual property rights.

39. In the light of the foregoing considerations, the answer to the first question is that Article 4(c) of Directive 2004/48 must be interpreted as meaning that, in addition to the condition relating to the direct interest in the defence of the rights concerned, recognition of the

status of intellectual property collective rights-management bodies to seek, in their own name, the application of the measures, procedures and remedies provided for in Chapter II of that directive is subject to the standing of those organisations to bring legal proceedings for the purposes of defending intellectual property rights, which may result from a specific provision to that effect or from general procedural rules.

#### **The second question**

40. By its second question, the referring court asks, in essence, whether Article 4(c) of Directive 2004/48 must be interpreted as meaning that Member States are required to recognise that intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights have a direct interest in seeking, in their own name, the application of the measures, procedures and remedies provided for in Chapter II of that directive in the event that the existence of a direct interest in the defence of the rights concerned in respect of those bodies does not follow from the applicable national legislation.

41. It should be borne in mind that the concept of ‘*direct interest*’, which does not appear in Article 4 of Directive 2004/48, is referred to in recital 18 of that directive, from which it is apparent that the EU legislature intended that not only the holders of intellectual property rights, but also persons who have a direct interest in the defence of those rights and the right to bring legal action, be recognised as persons entitled to seek the application of the measures, procedures and remedies provided for by that directive, ‘*in so far as permitted by and in accordance with the applicable law*’.

42. Thus, while Article 4(a) of Directive 2004/48 provides that Member States are to recognise, in any event, holders of intellectual property rights as persons entitled to seek application of the measures, procedures and remedies referred to in Chapter II of that directive, Article 4(b) to (d) each state that it is only in so far as is permitted by, and in accordance with, the provisions of the applicable law that Member States may recognise other persons, as well as certain specific bodies, as having that same standing ([judgment of 7 August 2018, SNB-REACT, C-521/17, EU:C:2018:639](#), paragraph 28).

43. In that regard, the Court stated that the reference to the ‘*applicable law*’ made in Article 4(c) of Directive 2004/48 must be understood as referring to both relevant national legislation and EU legislation, as appropriate (see, to that effect, [judgment of 7 August 2018, SNB-REACT, C-521/17, EU:C:2018:639](#), paragraph 31).

44. Therefore, as the Advocate General observed in point 52 of his Opinion, in order to answer the second question, it is necessary to establish whether the provisions of EU law currently in force recognise the existence of a direct interest of collective management organisations in the defence of intellectual property rights.

45. In that regard, first, as is apparent from paragraphs 41 and 42 above, that directive, in so far as it refers, for that purpose, to the applicable legislation, does not itself



govern whether a collective management organisation has a direct interest in the defence of intellectual property rights.

46. That interpretation is supported by the travaux préparatoires for that directive, from which it is apparent that the EU legislature abandoned the idea of harmonising the standing to bring proceedings of the bodies referred to in Article 4(c) of that directive. While the European Commission's initial Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights (COM(2003) 46 final) envisaged imposing an obligation on Member States to recognise collective management organisations as being 'entitled to apply for the application of the measures and procedures and to initiate legal proceedings for the defence of those rights or of the collective or individual interests for which they are legally responsible', that approach was ultimately rejected in favour of a reference to the applicable legislation.

47. Secondly, although Article 35(1) of Directive 2014/26, read in the light of recital 49 thereof, requires Member States to have in place dispute-resolution procedures between collective management organisations and users that are independent, impartial and effective, in particular via courts, the fact remains that, as is apparent from recitals 8 and 9 of that directive, the objective of that directive is not to govern the conditions under which those organisations may bring legal proceedings, but to coordinate national rules concerning access to the activity of managing copyright and related rights, the modalities for their governance, and their supervisory framework, and to ensure a high standard of governance, financial management, transparency and reporting by such organisations. It cannot therefore be held that the purpose of that provision is to govern the question of the direct interest of collective management organisations in the defence of intellectual property rights.

48. In those circumstances, it must be held that EU law does not govern the conditions in which a collective management organisation must be regarded as having a direct interest in the defence of intellectual property rights and that the 'provisions of the applicable law' referred to in Article 4(c) of Directive 2004/48 refer to the national law of the Member States.

49. In that regard, it should be borne in mind that the Court has held that the Member States are required to recognise an intellectual property collective rights-management body as a person entitled to seek the application of the measures, procedures and remedies provided for by that directive, and to bring legal proceedings for the purpose of enforcing such rights where, in particular, that body is regarded by national law as having a direct interest in the defence of those rights. Consequently, it is for the national courts to determine whether such a body has, under the applicable national law, a direct interest in the defence of the rights of the proprietors whom it represents, bearing in mind that, in the absence of that condition, no such recognition obligation is incumbent on the Member State concerned

(see, to that effect, [judgment of 7 August 2018, SNB-REACT, C-521/17, EU:C:2018:639](#), paragraphs 34, 36 and 38).

50. In the light of the foregoing considerations, the answer to the second question is that Article 4(c) of Directive 2004/48 must be interpreted as meaning that, as EU law currently stands, Member States are not required to recognise that intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights have a direct interest in seeking, in their own name, the application of the measures, procedures and remedies provided for in Chapter II of that directive in the event that the existence of a direct interest in the defence of the rights concerned in respect of those bodies does not follow from the applicable national legislation.

#### The third question

51. By its third question, the referring court asks, in essence, what significance must be given, in assessing standing to bring proceedings in the light of, where applicable, Articles 17 and 47 of the Charter, to the fact that the organisation concerned, as a contractual licensing organisation, also represents authors who have not authorised it to manage their rights and that the organisation's right to bring an action to defend the rights of such authors is not provided for by law.

52. As is apparent from its wording, as formulated by the referring court, that question is raised in the event that a collective management organisation is considered to have a direct interest and standing to bring proceedings in its own name in disputes concerning rights covered by extended licenses.

53. As the Advocate General observed in point 65 of his Opinion, such a premiss does not exist in the present case. First, as stated in paragraph 48 above, the EU legislation currently in force does not establish, for collective management organisations, the existence of a direct interest in seeking, in their own name, the application of the measures, procedures and remedies referred to in Chapter II of Directive 2004/48. Secondly, it is apparent from the order for reference that the standing of those organisations to bring proceedings is governed, in Finnish law, neither by a specific provision to that effect of the applicable national legislation nor by general procedural rules.

54. In those circumstances, in view of the answer given to the second question, there is no need to answer the third question.

#### Costs

55. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. Article 4(c) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be

interpreted as meaning that, in addition to the condition relating to the direct interest in the defence of the rights concerned, recognition of the status of intellectual property collective rights-management bodies to seek, in their own name, the application of the measures, procedures and remedies provided for in Chapter II of that directive is subject to the standing of those organisations to bring legal proceedings for the purposes of defending intellectual property rights, which may result from a specific provision to that effect or from general procedural rules.

2. Article 4(c) of Directive 2004/48 must be interpreted as meaning that, as EU law currently stands, Member States are not required to recognise that intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights have a direct interest in seeking, in their own name, the application of the measures, procedures and remedies provided for in Chapter II of that directive in the event that the existence of a direct interest in the defence of the rights concerned in respect of those bodies does not follow from the applicable national legislation.

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## OPINION OF ADVOCATE GENERAL M. SZPUNAR

### OPINION OF ADVOCATE GENERAL SZPUNAR

delivered on 11 May 2023 (1)

Case C-201/22

Kojiosto r.y.

v

Telia Finland Oyj

(Request for a preliminary ruling from the Korkein oikeus (Supreme Court, Finland))

(Reference for a preliminary ruling – Intellectual property rights – Directive 2014/26/EU – Collective management of copyright and related rights – Collective management organisation – Directive 2004/48/EC – Measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights – Article 4 – Persons entitled to apply for the application of the measures, procedures and remedies provided for in the directive – Collective management organisations approved to carry out extended collective licensing – Rightholders who have not authorised the organisation to represent them)

#### Introduction

1. Despite harmonisation on certain specific points, (2) the procedural aspects of the protection of intellectual property rights remain, to a great extent, subject to heterogeneous national legislation. The purpose of the provisions of Directive 2004/48/EC (3) is to limit the resulting disadvantages for the development of the internal market, by specifying, for that purpose, a series of measures that must be provided for in national law to ensure the enforcement of copyright and related rights in the context of judicial proceedings.

2. However, the difficulties which arise in this case concern not the series of measures in question, but rather the persons who should be entitled to have those measures at their disposal before national courts and tribunals. The key question is whether Article 4(c) of Directive 2004/48 obliges Member States to recognise the capacity of intellectual property collective rights management organisations ('CMOs') to bring proceedings in their own name in disputes concerning the application of the measures provided for in that directive.

3. That question arises in the present case in relation to the activities of an organisation with the power to grant collective licences 'with an extended effect'. Introduced in the Scandinavian countries from the 1960s onwards, (4) licences with an extended effect are an original mechanism of intellectual property rights management, which allows certain CMOs to grant rights of exploitation not just in the name of their members, but also in the name of other rightholders who have not opted for the individual management of their rights. That mechanism has proven its worth in those areas in which the multitude of works that can be exploited by licensees and the excessive fragmentation of the market make management on the basis of individual contracts difficult, giving rise to significant legal uncertainty. (5)

4. The broad powers afforded to CMOs in relation to rights management raise the question of what role those organisations should play in the judicial protection of intellectual property. The answer to that question should take into account the profound differences existing between Member States in relation to judicial proceedings. Those differences explain, in my view, the cautious approach of the EU legislature, which has opted not to harmonise national legislation fully within the framework of the provisions of EU law in force.

#### Legal framework

##### European Union law

##### Directive 93/83/EEC

5. Under Article 9 of Directive 93/83/EEC, (6) which is entitled 'Exercise of the cable retransmission right':

'1. Member States shall ensure that the right of copyright owners and holders of related rights to grant or refuse authorisation to a cable operator for a cable retransmission may be exercised only through a collecting society.

2. Where a rightholder has not transferred the management of his rights to a collecting society, the collecting society which manages rights of the same category shall be deemed to be mandated to manage his rights. Where more than one collecting society manages rights of that category, the rightholder shall be free to choose which of those collecting societies is deemed to be mandated to manage his rights. A rightholder referred to in this paragraph shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is deemed to be mandated to manage his rights as the rightholders who have mandated that collecting society and he shall be able to claim those rights within a period, to be fixed by the Member State concerned, which shall



not be shorter than three years from the date of the cable retransmission which includes his work or other protected subject matter.

3. A Member State may provide that, when a [rightholder] authorises the initial transmission within its territory of a work or other protected subject matter, he shall be deemed to have agreed not to exercise his cable retransmission rights on an individual basis but to exercise them in accordance with the provisions of this Directive.'

#### **Directive 2004/48**

6. Recitals 3, 10 and 18 of Directive 2004/48 state:  
(3) ... without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished. It is therefore necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied effectively in the Community. In this respect, the means of enforcing intellectual property rights are of paramount importance for the success of the Internal Market.

...

(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.

...

(18) The persons entitled to request application of [the] measures, procedures and remedies [provided for in this Directive] should be not only the rightholders but also persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.'

7. Under Article 1 of Directive 2004/48, which is entitled 'Subject matter':

'This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights.'

8. Article 2 of that directive, which is entitled 'Scope', provides, in paragraph 1 thereof:

'Without prejudice to the means which are or may be provided for in [Union] or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by [Union] law and/or by the national law of the Member State concerned.'

9. Article 3 of the directive, which is entitled 'General obligation', provides:

'1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. ...

2. Those measures, procedures and remedies shall ... be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of

barriers to legitimate trade and to provide for safeguards against their abuse.'

10. Article 4 of Directive 2004/48, which is entitled 'Persons entitled to apply for the application of the measures, procedures and remedies', reads as follows:

'Member States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Chapter:

- (a) the holders of intellectual property rights, in accordance with the provisions of the applicable law,
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,
- (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,
- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.'

#### **Directive 2014/26/EU**

11. Recital 12 of Directive 2014/26/EU (7) states:

'This Directive, while applying to all collective management organisations, with the exception of Title III, which applies only to collective management organisations managing authors' rights in musical works for online use on a multi-territorial basis, does not interfere with arrangements concerning the management of rights in the Member States such as individual management, the extended effect of an agreement between a representative collective management organisation and a user, i.e. extended collective licensing, mandatory collective management, legal presumptions of representation and transfer of rights to collective management organisations.'

12. Article 3 of that directive, which is entitled 'Definitions', provides, in point (a) thereof:

'For the purposes of this Directive, the following definitions shall apply:

- (a) "collective management organisation" means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria:

- (i) it is owned or controlled by its members;
- (ii) it is organised on a not-for-profit basis'.

13. In accordance with Article 35 of the directive, which is entitled 'Dispute resolution':

'1. Member States shall ensure that disputes between collective management organisations and users concerning, in particular, existing and proposed licensing conditions or a breach of contract can be submitted to a court, or if appropriate, to another independent and impartial dispute resolution body where that body has expertise in intellectual property law.

2. Articles 33 and 34 and paragraph 1 of this Article shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.’

#### **Finnish law**

14. Paragraph 26(1) of the tekijänoikeuslaki (404/1961) (Law on copyright), in the version amended by Law 607/2015 (‘the Law on copyright’), which is entitled ‘Contractual licence’, states that the provisions of that law relating to contractual licences are to apply to an agreement concluded between a user and the organisation, approved by the Ministry of Education and Culture, which represents, in a specific sector, a number of authors of works used in Finland, for the use of authors’ works falling within that same sector. Under such an agreement, an approved organisation is deemed to be entitled also to represent the authors of other works in the same sector. A licensee who has obtained a collective licence with extended effect pursuant to such an agreement may, under the terms specified in that agreement, use all the works of authors falling within the same sector.

15. Under Paragraph 26(4) of the Law on copyright, the arrangements laid down by the organisation referred to in subparagraph 1 of that Paragraph with respect to the distribution of the remuneration for the reproduction, communication or transmission of works between the authors which it represents directly or to the use of the remuneration for purposes common to the authors are also to apply to the authors in the same sector who are not directly represented by that organisation.

#### **Facts at the origin of the dispute, the main proceedings and the questions referred for a preliminary ruling**

##### **Background to the dispute and the procedure in the main proceedings**

16. Kopiosto r.y. is a collective management organisation representing copyright holders within the meaning of Article 3(a) of Directive 2014/26, and approved by the Ministry of Education and Culture as an extended licensing organisation. Such licences relate, inter alia, to the rights of retransmission of the works included in a radio or television broadcast. At the same time, Kopiosto manages and grants licences on behalf of a large number of authors, on the basis of the mandates granted to it by those authors.

17. The company Telia Finland Oyj (‘Telia’) operates a cable television network by which broadcasts of domestic free-to-air television channels are transmitted to the public.

18. On 24 January 2018, Kopiosto brought before the markkinaoikeus (Market Court, Finland) an action for infringement seeking a declaration that Telia had retransmitted television broadcasts without its authorisation. On that basis, Kopiosto sought compensation and damages, relying, primarily, on its capacity as an extended licensing organisation and, in the alternative, on its capacity as the agent of the authors who had entrusted it with the management of their rights.

19. By a judgment of 18 June 2019, the markkinaoikeus (Market Court) rejected Kopiosto’s

claims, finding that that organisation was not entitled to bring an action for infringement in its own name

20. Kopiosto lodged an appeal before the Korkein oikeus (Supreme Court, Finland) against that judgment, invoking its direct interest in bringing proceedings in disputes concerning the rights covered by the licences granted by it.

21. In response to Kopiosto’s arguments, Telia contends that that organisation’s capacity to grant collective licences does not enable it to bring an action for infringement in its own name, as such an action is reserved for the holders of those rights, that is to say either the creators or their assignees.

#### **The questions referred for a preliminary ruling**

22. In the absence of national provisions governing the matter at issue in the main proceedings, the referring court considers that the admissibility of the action for infringement brought by Kopiosto turns on the correct interpretation of the relevant provisions of Directive 2004/48, read in the light of Articles 17 and 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

23. In that context, the referring court asks, first, whether the entitlement of CMOs to seek application of the measures provided for in Directive 2004/48 depends solely on their general capacity to be a party to judicial proceedings, or in fact also on the existence of provisions in the applicable legislation specially adopted in that regard.

24. Next, the Korkein oikeus (Supreme Court) asks whether the concept of a ‘direct interest’ used in recital 18 of Directive 2004/48 constitutes an autonomous concept of EU law, such that the uniform interpretation of that concept should entail the recognition of the direct interest of CMOs in seeking, in their own name, application of the measures provided for in that directive.

25. Finally, if CMOs are entitled to seek application of the measures provided for in Directive 2004/48, the referring court asks about the consequences, having regard to the fundamental rights of rightholders who are not members, which are enshrined in Articles 17 and 47 of the Charter, in cases where those organisations are entitled to grant collective licences with an extended effect.

26. It is in that context that the Korkein oikeus (Supreme Court) has decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) With regard to contractual licensing organisations which collectively manage intellectual property rights, does the legal standing to defend those rights, which is conferred by Article 4(c) of Directive 2004/48, refer only to the general capacity to be a party to legal proceedings, or does it require a right expressly recognised by national law to bring proceedings in one’s own name for the purposes of defending the rights in question?’

(2) In an interpretation based on Article 4(c) of Directive 2004/48, must the term “direct interest in the defence of the copyright of the rightholders whom it

represents” be interpreted uniformly in all Member States as regards the right of a collective representation body within the meaning of Article 3(a) of [Directive 2014/26] to bring an action for copyright infringement in its own name where:

(i) it concerns uses of works in respect of which an organisation is entitled, as a contractual licensing organisation within the meaning of the Tekijänoikeuslaki (Law on copyright), to grant extended collective licences also allowing the licensee to use works by authors in that sector who have not authorised the organisation to manage their rights;

(ii) it concerns uses of works in respect of which the authors have authorised the organisation to manage their rights by contract or by way of a mandate, without the copyrights having been assigned to the organisation?

(3) If the organisation, in its capacity as a contractual licensing organisation, is presumed to have a direct interest and legal standing to bring an action in its own name: in assessing standing to bring proceedings in the light of, where applicable, Articles 17 and 47 of the [Charter], what significance must be given to the fact that the organisation, as a contractual licensing organisation, also represents authors who have not authorised it to manage their rights, and that the organisation’s right to bring an action to defend the rights of such authors is not provided for by law?’

27. The request for a preliminary ruling was received at the Court on 15 March 2022. Written observations were submitted by the parties to the main proceedings, the Finnish and Polish Governments and the Commission. At the end of the written part of the procedure, the Court considered that it had sufficient information to proceed to judgment without a hearing.

#### Analysis

##### The first question referred for a preliminary ruling

28. By its first question, the referring court asks whether, in the case of contractual licensing organisations which collectively manage intellectual property rights, the legal standing to defend those rights, which is a prerequisite for standing to bring proceedings under Article 4(c) of Directive 2004/48, refers only to the general capacity provided for in national law to be a party to proceedings, or also a right to bring an action in one’s own name for the purposes of defending such rights, which must be expressly recognised by national law.

29. For the purposes of readability, and to draw a clear distinction between the capacity to be a party to judicial proceedings (which generally stems from a person’s legal personality) and the standing to bring proceedings (which is assessed having regard to the nature and the subject matter of the dispute), I propose that the Court reword that question to the effect that, by that question, the referring court asks, in essence, whether the entitlement of intellectual property collective rights management organisations to seek application of the measures, procedures and remedies provided for in Chapter II of Directive 2004/48, within the meaning of Article 4(c) of that directive, is conditional merely upon the capacity of those organisations to be a party to

judicial proceedings, or also upon the fact that their standing to bring proceedings in defence of the individual rights for which they are responsible is expressly enshrined in national law.

30. To answer that question, it is necessary, at the outset, to determine whether being ‘entitled to seek’, within the meaning of Article 4(c) of Directive 2004/48, is dependent solely on the capacity of CMOs to be parties to legal proceedings, or also on the fact that those organisations have standing to bring such proceedings. In the latter case, it is also necessary to determine whether that standing to bring proceedings must be explicitly enshrined in the applicable legislation.

##### The interpretation of ‘entitled to seek’ within the meaning of Article 4(c) of Directive 2004/48

31. This first question does not appear to me to be particularly complex. In my view, there can be no doubt that the entitlement of CMOs to seek application of the measures provided for in Chapter II of Directive 2004/48 is conditional upon their standing to bring proceedings, and therefore the mere general capacity to be a party to judicial proceedings is insufficient in that regard.

32. The concept of being ‘entitled to seek’ application, used in Article 4(c) of Directive 2004/48, appears rather imprecise in that connection. However, that provision must be read in the light of recital 18 of that directive. The content of the recital was interpreted in the judgment in SNB-REACT, (8) in which the Court held that ‘the Member States are required to recognise a body collectively representing trade mark proprietors ... as a person entitled to seek, in its own name, the application of the remedies laid down by that directive, for the purpose of defending the rights of those trade mark proprietors, and to bring legal proceedings, in its own name, for the purpose of enforcing those rights, on condition that the body is regarded by national law as having a direct interest in the defence of those rights and that that law allows it to bring proceedings to that end’.

(9)

33. It follows clearly, to my mind, that being ‘entitled to seek’ application, within the meaning of Article 4(c) of Directive 2004/48, depends not only on the general capacity to be a party to judicial proceedings, but also on the fact that CMOs have standing to bring proceedings under the applicable law.

34. I would add that the interpretation to the contrary, which would make being ‘entitled to seek’ application within the meaning of Article 4(c) of Directive 2004/48 conditional solely on the capacity to be a party to legal proceedings, would deprive that condition of any practical effect.

35. Indeed, as the Finnish Government has observed, (10) the capacity to be a party to judicial proceedings is a standard attribute of the legal personality generally enjoyed by CMOs, notwithstanding the variety of forms that such organisations take under national regulations. (11) In practice, uncertainties arise solely in relation to CMOs’ standing to bring, or interest in bringing, legal proceedings. (12)

36. In the light of the foregoing observations, I take the view that the entitlement to seek application for the



purposes of Article 4(c) of Directive 2004/48 is conditional upon the standing of CMOs to bring proceedings being enshrined in law. It is therefore necessary to determine whether such standing has to be explicitly so enshrined.

**The need for standing to bring proceedings to be expressly enshrined in law**

37. In so far as the first question referred for a preliminary ruling concerns the need for the standing of CMOs to bring proceedings to be expressly enshrined in national law, the referring court seeks to ascertain whether the basis for enshrinement of that standing must be a provision of written law.

38. In this respect, in the light of the difficulties arising in relation to the potential recognition of CMOs as being entitled to bring proceedings in their own name in the place of rightholders, (13) I consider that the adoption of a legislative provision would be the best means of meeting the needs of legal certainty.

39. However, in practice, in most Member States, there is no legislation that specifically governs the standing of CMOs to bring proceedings. (14) It cannot therefore be ruled out that that question is governed by general procedural rules or even that it is settled by means of case-law, (15) especially in those Member States in which the lower courts are formally required to follow the case-law of the higher courts. (16)

40. In those circumstances, it appears to me that a literal interpretation of Article 4(c) of Directive 2004/48, to the extent that it makes the standing of CMOs to bring proceedings conditional on the 'provisions of the applicable law' (emphasis added), would risk weakening the effect utile of that directive in certain circumstances.

41. Accordingly, in my view, the Court could be guided in the present case by its case-law on the detailed rules for the transposition of directives. (17) According to that case-law, 'the transposition of a directive does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of that directive in a sufficiently clear and precise manner'. (18)

42. Such a legal context may result, inter alia, from a well-established judicial practice. (19)

43. I therefore propose that the Court answer the first question referred for a preliminary ruling to the effect that the entitlement of CMOs to seek application of the measures, procedures and remedies provided for in Chapter II of Directive 2004/48, within the meaning of Article 4(c) of that directive, is conditional upon their standing to bring proceedings in defence of the individual rights for which they are responsible being enshrined in law. In the absence of provisions adopted to that effect in the applicable law, that standing may result from the general legal context, provided that its scope and its consequences for the situation of individuals are defined in a sufficiently clear and precise manner.

**The second question referred for a preliminary ruling**

44. As it is worded, the second question referred for a preliminary ruling calls for consideration of the autonomous nature of the words 'direct interest in the defence of the copyright of rightholders whom it represents'.

45. Those words do not appear anywhere in Directive 2004/48. However, they were used, in a slightly different form, by the Court in the judgment in *SNB-REACT*, (20) in the context of the interpretation of Article 4(c) of Directive 2004/48 in the light of recital 18 thereof, (21) which refers to the concept of a 'direct interest'.

46. Relying on that recital, the Court held that Article 4(c) of Directive 2004/48 had to be understood as meaning that, where a body in charge of the collective management of intellectual property rights was regarded by national law as having a direct interest in the defence of those rights, the Member States are required to recognise that body as a person entitled to seek application of the measures, procedures and remedies provided for in that directive. (22)

47. In that context, it appears to me that what the referring court is seeking to establish in asking the Court about the autonomous nature of the concept of a 'direct interest' referred to in the judgment in *SNB-REACT* is whether an obligation exists, and what the scope of any such obligation might be, on the part of the Member States, pursuant to the provisions of Directive 2004/48, to recognise the interest of CMOs in bringing proceedings in their own name in disputes concerning the application of the measures referred to in Article 4(c) of that directive, if such an interest does not result from national legislation.

48. I therefore propose that the second question referred for a preliminary ruling be reworded to the effect that, by that question, the referring court asks, in essence, whether the provisions of Article 4(c) of Directive 2004/48 are to be interpreted as meaning that Member States are obliged to recognise the direct interest of collective licensing organisations covered by that provision in seeking, in their own name, application of the measures, procedures and remedies provided for in Chapter II of that directive, such as an action for infringement, if such an interest does not result from national legislation.

49. That question was essentially decided in the negative in the judgment in *SNB-REACT* (23) and I see no reasons capable of prompting the Court to give a different answer in the present case.

50. By way of a reminder, under Article 4(c) of Directive 2004/48, entitlement to seek application, within the meaning of that provision, remains conditional on the 'provisions of the applicable law'. In that context, the Court has stated that, 'while Article 4(a) of Directive 2004/48 provides that Member States are to recognise, in any event, holders of intellectual property rights as persons entitled to seek application of the measures, procedures and remedies referred to in Chapter II of that directive, Article 4(b) to (d) each state that it is only in so far as is permitted by, and in accordance with, the provisions of the applicable law that Member States may recognise other persons, as well

as certain specific bodies, as having that same standing'. (24)

51. As regards the words 'applicable law' contained in that provision, the Court has held that they refer not only to national legislation, but also to EU legislation. (25)

52. Therefore, in order to answer the second question referred for a preliminary ruling, it is necessary to establish whether the provisions of EU law currently in force recognise the direct interest of CMOs, such as Kojiosto, in seeking, in their own name, application of the measures provided for in Directive 2004/48.

53. That is not the case in my view.

54. In the first place, such an interest cannot be inferred from the provisions of Directive 2004/48.

55. On the contrary – and leaving aside the content of Article 4(c) of Directive 2004/48, which appears clear to me – the course of the travaux préparatoires in relation to that provision makes clear that that directive does not oblige the Member States to recognise the ability of CMOs to bring proceedings in disputes concerning the individual rights of rightholders. Indeed, a provision contained in the Commission's initial proposal laying down such an obligation was dropped. (26)

56. In the second place, nor does the interest of CMOs in bringing proceedings appear to me to follow from the provisions of Directive 2014/26. On this point, however, I acknowledge that some hesitation is warranted.

57. Article 35(1) of Directive 2014/26 provides that Member States must ensure 'that disputes between collective management organisations and users concerning, in particular, existing and proposed licensing conditions or a breach of contract can be submitted to a court' (emphasis added). In the light of the wording of that provision, it could be inferred that CMOs are implicitly recognised as having an interest in bringing proceedings in disputes between them and users.

58. However, reading that provision in isolation would run counter to the objectives and the general scheme of Directive 2014/26, which is not intended to govern the contested capacities of CMOs. (27) A reading to that effect would also be difficult to reconcile with the provisions of Article 4(c) of Directive 2004/48, which govern such matters and from which Directive 2014/16 does not have the effect of derogating. I am therefore of the view that Article 35(1) of the latter directive does not enshrine the interest of CMOs in bringing proceedings.

59. Lastly, such an interest likewise does not follow from Article 12 of Directive (EU) 2019/790, (28) which allows Member States to establish an extended collective licensing scheme (29) in certain situations referred to in that provision.

60. I do not agree, on this point, with the analysis of the Commission, (30) which seems to have interpreted the words 'organisation ... presumed to represent rightholders' and 'legal presumptions of representation', contained respectively in Article 12(1)(b) of Directive 2019/790 and in recital 12 of Directive 2014/26, as determining the procedural capacities of CMOs. In the context in which they were used, those expressions

describe one of the modes of issuing licences with an extended effect, which differs from the 'traditional' model by virtue of the greater freedom that it affords to the rightholders. (31)

61. I would add that enshrining in law the capacity to manage rights does not presuppose recognition of the standing to bring, or the interest in bringing, related proceedings. Some collective management mechanisms, such as the legal presumption of representation scheme, do not necessarily entail an assignment of rights to CMOs, and therefore the capacity to grant a licence with an extended effect does not mean that standing to bring proceedings in place of the rightholder is implicitly enshrined in law. (32) That may follow, where appropriate, from provisions specially adopted to that end. (33)

62. In the light of the foregoing observations, I take the view that the provisions of EU law in force do not oblige the Member States to recognise the interest of CMOs in bringing proceedings in their own name in disputes concerning the application of the measures provided for in Directive 2004/48.

63. I therefore propose that the Court answer the second question referred for a preliminary ruling to the effect that the provisions of Article 4(c) of Directive 2004/48 are to be interpreted as meaning that the Member States are not obliged to recognise the direct interest of the collective licensing organisations referred to in those provisions, to seek, in their own name, application of the measures, procedures and remedies provided for in Chapter II of that directive, such as an action for infringement, if such an interest does not result from the applicable national legislation.

#### **The third question referred for a preliminary ruling**

64. The third question referred for a preliminary ruling is submitted in the event that, in the absence of any relevant rules in national law, the view were taken that the provisions of Directive 2004/48 require Member States to recognise CMOs as being entitled to bring proceedings in their own name in disputes concerning the rights covered by licences with an extended effect. The referring court asks whether such an obligation is consistent with the rights enshrined in Articles 17 and 47 of the Charter.

65. In view of the answer that I propose be given to the second question referred for a preliminary ruling, there is, in my view, no need to answer the third question. The problem raised by the referring court can arise and can be analysed only in the context of national legislation which enshrines CMOs' standing to bring, or interest in bringing, proceedings, which does not exist in the present case. (34)

66. I would add that CMOs can usefully be recognised as having standing to bring proceedings only if the interests and the fundamental rights of the creators are appropriately secured, which depends on a series of substantive and procedural rules of national law, which have been harmonised in part by the provisions of Directive 2014/26.

67. Those rules cover matters such as the existence of an 'opt-out' mechanism in relation to rights

management, the rightholder's right of intervention or opposition, the consequences of a possible withdrawal by a CMO, the scope and the effects of the alternative dispute resolution procedures or even the possibility of the manager incurring liability for damages in the context of a quasi-contractual relationship, such as in the case of negotiorum gestio. Such matters are, however, purely hypothetical in the circumstances of this case.

### Conclusion

68. In the light of all the foregoing observations, I propose that the Court answer the questions referred by the Korkein oikeus (Supreme Court, Finland) for a preliminary ruling as follows:

(1) The entitlement of intellectual property collective rights management organisations to seek application of the measures, procedures and remedies provided for in Chapter II of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, within the meaning of Article 4(c) of that directive, is conditional upon their standing to bring proceedings in defence of the individual rights for which they are responsible being enshrined in law. In the absence of provisions adopted to that effect in the applicable law, that standing may result from the general legal context, provided that its scope and its consequences for the situation of individuals are defined in a sufficiently clear and precise manner.

(2) The provisions of Article 4(c) of Directive 2004/48 are to be interpreted as meaning that the Member States are not obliged to recognise the direct interest of the collective licensing organisations referred to in those provisions, to seek, in their own name, application of the measures, procedures and remedies provided for in Chapter II of that directive, such as an action for infringement, if such an interest does not result from the applicable national legislation.

### Sources

1 Original language: French.

2 See Article 8 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

3 Directive 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, and corrigenda OJ 2004 L 195, p. 16 and OJ 2007 L 204, p. 27).

4 On the incorporation of collective licences with an extended effect into EU law, see Quaedvlieg, A., 'Les licences collectives étendues. Un oiseau exotique des lacs du Nord fait un atterrissage réussi à Bruxelles', *Revue internationale du droit d'auteur*, No 4, 2020, p. 189.

5 For a general description of the mechanism and detailed mapping of the solutions adopted by the Member States in relation to licences with an extended effect on digital markets, see the study carried on behalf of the European Commission, *Study on Emerging Issues on Collective Licensing Practices in the Digital*

*Environment*, Publications Office of the European Union, Luxembourg, 2021, pp. 131 to 242.

6 Council Directive of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15).

7 Directive of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ 2014 L 84, p. 72).

8 Judgment of 7 August 2018 (C-521/17, 'the judgment in SNB-REACT', EU:C:2018:639).

9 Judgment in SNB-REACT (paragraph 39). Emphasis added.

10 See written observations of the Finnish Government, paragraphs 12 and 14.

11 It is clear from recital 14 of Directive 2014/26 that that directive does not require CMOs to adopt a specific legal form. In practice, such organisations take the form of companies, associations, unions or foundations.

12 With regard to the controversies generated on this point in French law, see Vivant, M., Bruguère, J.-M., *Droit d'auteur et droits voisins*, 4th ed., Dalloz, Paris, 2019, paragraph 1348, pp. 1288 to 1289.

13 Such difficulties have been raised by the referring court in the context of the third question referred for a preliminary ruling.

14 Specifically, no provision of that kind has been adopted in Finland (see paragraph 16 et seq. of the request for a preliminary ruling).

15 As appears to have been in the case in France, where the Cour de cassation (Court of Cassation) put an end to the (earlier) divergences in case-law by refusing to recognise the standing of CMOs to bring proceedings in disputes relating to the defence of the rights of those creators who are not members of such organisations (judgment of 11 September 2013, No 12-17.795, FR:CCASS:2013:C100905).

16 For instance, this may be the case in Poland, where the extended formations of the Sąd Najwyższy (Supreme Court) have the power to adopt 'resolutions with the force of a legal principle' under Article 87(1) of the ustawa o Sądzie Najwyższym (Law on the Supreme Court).

17 That case-law can be applied in the case at issue in the main proceedings only by way of analogy, and not directly, since the recognition that CMOs have standing to bring proceedings under national law does not follow, in my view, from the requirements laid down in Directive 2004/48. I will set out the reasons that lead me to that conclusion in the part of my analysis devoted to the second question referred for a preliminary ruling.

18 See judgment of 13 February 2014, *Commission v United Kingdom* (C-530/11, EU:C:2014:67, paragraph 33 and the case-law cited).

19 See judgment of 13 February 2014, *Commission v United Kingdom* (C-530/11, EU:C:2014:67, paragraphs 34 to 36 and the case-law cited).

20 Judgment in SNB-REACT (paragraph 38).



21 Judgment in SNB-REACT (paragraph 33).  
22 Judgment in SNB-REACT (paragraph 34).  
23 See, in particular, judgment in SNB-REACT (paragraph 38).  
24 Judgment in SNB-REACT (paragraph 28).  
25 Judgment in SNB-REACT (paragraph 31).  
26 Article 5 of the Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure enforcement of intellectual property rights (COM(2003) 46 final), entitled ‘Persons entitled to apply for application of the measures and procedures’, provided, in paragraph 2 thereof, that ‘Member States shall confer upon rights management or professional defence bodies, wherever they represent intellectual property right holders or other persons authorised to use these rights according to the applicable law, an entitlement to seek application of the measures and procedures referred to in this Chapter, including the authority to initiate legal proceedings for the defence of those rights or of the collective or individual interests for which they are responsible’ (emphasis added).  
27 In the light of recitals 8 and 9 of Directive 2014/26, the aim of that directive is to provide for coordination of national rules concerning access to the activity of managing copyright and related rights by CMOs, the modalities for their governance and their supervisory framework, and to ensure a high standard of governance, financial management, transparency and reporting by those organisations.  
28 Directive of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29 (OJ 2019 L 130, p. 92). As the Commission has observed, that directive has no bearing on the answer that should be given in the present case to the second question referred for a preliminary ruling, since it does not apply to the dispute in the main proceedings *rationae temporis*. It does, however, seem to me to be appropriate to revisit the interpretation of Article 12(1)(b) of that directive adopted by the Commission in its written observations.  
29 Article 12, entitled ‘Collective licensing with an extended effect’, of Directive 2019/790, provides, in paragraph 1 thereof:  
‘Member States may provide, as far as the use on their territory is concerned and subject to the safeguards provided for in this Article, that where a collective management organisation that is subject to the national rules implementing Directive [2014/26], in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject matter:  
(a) such an agreement can be extended to apply to the rights of rightholders who have not authorised that collective management organisation to represent them by way of assignment, licence or any other contractual arrangement; or  
(b) with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.’

30 Paragraphs 24 and 26 of the Commission’s written observations.  
31 For a typology of licensing mechanisms with an extended effect and their features, see the study conducted on behalf of the Commission, Study on Emerging Issues on Collective Licensing Practices in the Digital Environment, Publications Office of the European Union, Luxembourg, 2021, p. 132.  
32 For the same reason, I consider that Kopto’s standing to bring proceedings in the main proceedings cannot be inferred from the provisions of Directive 93/83, since Article 9 of that directive provides for a mandatory collective management mechanism in relation to cable retransmission.  
33 By way of example, this is the case in Poland, where the standing of CMOs enjoying a legal presumption of representation to bring proceedings has been enshrined in Article 5(1) of the *ustawa o zbiorowym zarządzaniu prawami autorskimi i prawami pokrewnymi* (Law on the collective management of copyright and related rights), of 15 June 2018.  
34 See paragraphs 16 to 19 of the request for a preliminary ruling.