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Judgment of the Court in Joined Cases C-775/21 | Blue Air Aviation and C-826/21 | UPFR

The broadcasting of a musical work as background music in a means of passenger transport constitutes a communication to the public within the meaning of EU law

That is not however the case for the mere installation, on board a means of transport, of sound equipment, and, where appropriate, of software enabling the broadcasting of background music

Two Romanian collective management organisations handling music copyright and related rights brought actions, respectively, against the air transport company Blue Air and against the CFR, a Romanian rail transport company, seeking payment of remuneration still due and of penalties for the broadcasting, without a licence, of musical works on board aircraft and passenger carriages.

Those cases having been brought before it, the Court of Appeal, Bucharest asks the Court of Justice in particular:

1. whether the broadcasting, inside a commercial aircraft occupied by passengers, of a musical work or a fragment of a musical work on take-off, on landing or at any time during a flight, via the aircraft's public address system, constitutes a communication to the public;
2. whether a rail carrier which uses train carriages in which sound systems intended for the communication of information to passengers are installed thereby makes a communication to the public.

The Court holds that **the broadcasting in a means of passenger transport of a musical work as background music constitutes a communication to the public** within the meaning of EU law.¹ **The mere installation, on board a means of transport, of sound equipment and, where appropriate, of software enabling the broadcasting of background music does not, however, constitute one.** Consequently, **EU law precludes national legislation which establishes a rebuttable presumption that musical works are communicated to the public because of the presence of sound systems in means of transport.**

The Court notes first of all that the Member States are to provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them. Authors thus have a right which is preventive in nature enabling them to intervene between possible users of their works and the communication to the public which such users might contemplate making, in order to prohibit such communication.

In the present case, the Court observes that the broadcasting in a means of passenger transport, **by the operator**

¹ In this case 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 L167, p.10).

of that means of transport, of a musical work as background music constitutes a communication to the public of that work, since, on the one hand, in so doing, that operator intervenes, in full knowledge of the consequences of its conduct, to give its customers access to a protected work. In fact, in the absence of that intervention, those customers would not, in principle, be able to enjoy the broadcast work. On the other hand, that work is broadcast to all the groups of passengers who, simultaneously or successively, took that means of transport.

By contrast, the mere provision of physical facilities for enabling or making a communication does not in itself constitute a communication. Consequently, EU law precludes national legislation which establishes a rebuttable presumption that there is a communication to the public because of the presence of sound systems in means of transport. Indeed, such legislation may have the consequence of requiring payment of remuneration for the mere presence of those systems in those means of transport, even in the absence of any act of communication to the public.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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