

# "MORAL PREJUDICE" DAMAGES IN COPYRIGHT INFRINGEMENT

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- ▶ Documentary film maker claims copyright infringement against another documentary film maker
- ▶ Spanish court seeks guidance from the CJEU
- ▶ In what circumstances should damages for "moral prejudice" be awarded?

## What's it about?

The EU Enforcement Directive requires member states to ensure that victims of IP infringement can claim damages which take account of the "moral prejudice" that they have suffered. The Enforcement Directive itself does not define "moral prejudice". However, case law has interpreted it as referring to non-economic losses concerning things like distress and hurt feelings.

The Spanish Supreme Court asked the CJEU whether a claimant could claim damages under the EU Enforcement Directive for "moral prejudice" in addition to damages based on the amount of royalties or fees that would have been due to the claimant.

## Why does it matter?

The claimant, Mr Liffers, sued the defendant, Mandarinina, in Spain for copyright infringement. Mr Liffers produced a documentary which related to personal stories concerning various homosexual and transsexual inhabitants of Havana. Mandarinina produced a documentary on child prostitution in Cuba, which used excerpts of Mr Liffers' work without permission.

Mr Liffers claimed a royalty payment for use of his work but also a separate payment of EUR 10,000 for the moral prejudice that he had suffered.

The CJEU considered the Enforcement Directive, looking not only at the "wording but also the context...and the objectives pursued by the rules". It emphasised that the objective behind the Directive is to ensure that rights holders are compensated in full for the actual prejudice suffered, which includes any moral prejudice suffered. Accordingly, the CJEU determined that in some cases a damages payment calculated simply by reference to royalties or fees would not fully compensate a claimant for the moral prejudice suffered; in such cases, additional damages should be awarded.

## Now what?

The decision in *Liffers* will not have significant impact in the UK as the Courts here have already confirmed that a successful rights holder can claim both royalties and damages for moral prejudice.

In addition, the availability and value of a claim for moral prejudice will depend heavily on the facts of each case and is unlikely to represent a significant uplift in the majority of cases. However, it is always something that should be considered by claimants as an additional damages element.

[Christian Liffers v Producciones Mandarinina SL, Case C-99/15](#)

For further information on this or any other IP related matter please contact [Rachel Cook](#) on 0207 160 3028