

Central and Eastern European Moot Court Competition 2024

2024 WRITTEN PLEADINGS FOR THE APPLICANT

[West University of Timișoara, Faculty of Law]

Tsitra Evitaerc (Applicant)

v.

The Arty-Zen Gallery, Oleg Nalechim and Nevet Sbergspiel (Respondents)

Reference for a Preliminary Ruling to the European Court of Justice



List of abbreviations

· European Union	EU
· European Commission	Commission
· Treaty of the European Union	TEU
· Treaty on the functioning of the European Union	TFEU
· CEEMC Moot case 2024 edition.	Moot Case
· Page	pg.
· Pages	pgs.
· Paragraph(s)	para(s).
· Court of Justice of the European Union	Court
· Advocate General	AG
· Charter on Fundamental Rights of the European Union	Charter
· Directive 2001/29/EC	ISD

Index of cases abbreviations

CJEU case-law

- Joined Cases C-558/18 and C-563/18 Miasto Łowicz v Skarb Państwa - Wojewoda Łódzki (C-55/18) Opinion of Advocate General Tanchev	Joined Cases C-558/18 and C-563/18, AG Tanchev Opinion in Miasto Łowicz
- Joined Cases C-558/18 and C-563/18 Miasto Łowicz v Skarb Państwa - Wojewoda Łódzki (C-55/18), Judgement of the Court	Joined Cases C-558/18 and C-563/18, Miasto Łowicz
- Joined Cases C-748/19 to C-754/19 Prokuratura Rejonowa w Mińsku Mazowieckim (and other joined cases); Opinion of Advocate General Bobek	Joined Cases C-748/19 to C-754/19, AG Bobek Opinion in Prokuratura Rejonowa
- Joined Cases C-748/19 to C-754/19 Prokuratura Rejonowa w Mińsku Mazowieckim (and other joined cases) (Judgement of the Court (Grand Chamber))	Joined Cases C-748/19 to C-754/19, Prokuratura Rejonowa
- Case C-192/18 European Commission v Republic of Poland (Judgement of the Court (Grand Chamber))	Case C-192/18, European Commission v Republic of Poland
- Case C-210/06 Cartesio Oktató és Szolgáltató bt (Judgment of the Court (Grand Chamber))	Case C-210/06, Cartesio
- Case C-55/20, AG Bobek Opinion in Ministerstwo Sprawiedliwości v Prokurator Krajowy	Case C-55/20, AG Bobek Opinion in Ministerstwo Sprawiedliwości
- Case C-55/20, Ministerstwo Sprawiedliwości v Prokurator Krajowy: Judgment of the Court	Case C-55/20, Ministerstwo Sprawiedliwości
- Case C-64/16, Associação Sindical dos Juizes Portugueses v Tribunal de Contas (Judgment of the Court (Grand Chamber))	Case C-64/16, Associação Sindical dos Juizes Portugueses
- Joined Cases C-585/18, C-624/18 and C-625/18 A. K. v Krajowa Rada Sądownictwa (C-585/18) and CP (C- 624/18), DO (C-625/18)	Joined Cases C-585/18, C-624/18 and C-625/18, A.K. and others
- C-5/08 Infopaq International A/S v Danske Dagblades Forening	Case C-5/08, Infopaq
- Joined Cases C-403/08 and C-429/08 Football Association Premier League Ltd and others v QC Leisure and others (C-403/08) and Ken Murphy v Media	Joined Cases C-403/08 and C-429/08, FAPL

Protection Services Ltd (C-429/08)	
- Case C-145/10 Eva-Maria Painer v Standard VerlagsGmbH (and others)	Case C-145/10, Painer
- Case C-476/17 Pelham GmbH (and others) v Ralf Hütter (and others): Opinion of Advocate General Szpunar	Case C-476/17, AG Szpunar Opinion in Pelham
- Case C-476/17 Pelham GmbH (and others) v Ralf Hütter (and others)	Case C-476/17, Pelham
- Case C-306/05 Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SL, Opinion of Advocate General Sharpston	Case C-306/05, AG Sharpston Opinion in SGAE
- Case C-306/05 Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SL, Judgement of the Court	Case C-306/05, SGAE
- Case C-162/10 Phonographic Performance (Ireland) Limited v Ireland	Case C-162/10, Phonographic Performance
- Case C-201/13, Johan Deckmyn (and others) v Helena Vandersteen (and others), Opinion of Advocate General Cruz Villalon	Case C-201/13, AG Cruz Villalón Opinion in Deckmyn
- Case C-201/13, Johan Deckmyn (and others) v Helena Vandersteen (and others), Judgment of the Court	Case C-201/13, Deckmyn
- Case C-160/15, GS Media BV v Sanoma Media Netherlands BV (and others)	Case C-160/15, GS Media
- Case C-527/17, Stichting Brein v Jack Frederik Willems	Case C-527/17, Stichting Brein

Index of legal documents

- The Treaty on European Union as amended, hereinafter cited as ***TEU***
- The Treaty on the Functioning of the European Union, hereinafter cited as ***TFEU***
- Charter of Fundamental Rights of the European Union, hereinafter cited as ***the Charter***
- 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, hereinafter cited as **ISD**

Q1: Do Article 19 TEU, Article 47 of the Charter or any other provisions of EU law preclude a President of a court appointed in accordance with rules such as those in force in Melbörp from sitting in a case in circumstances such as those of the present case?

1. According to the second subparagraph of Article 19(1) TEU ‘Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law’. This provision is considered to have a larger applicability, going beyond the subjective considerations of a case.¹
2. In the same vein, Article 47 of the Charter confers individuals the right to a fair trial, therefore guaranteeing a subjective right of any party to access judicial proceedings.² To that end, it encompasses the conditions of independence and impartiality that national courts should comply with, in order for Member States to guarantee effective legal protection.
3. Consequently, the guarantees provided for in Article 19(1) TEU and Article 47 of the Charter preclude such national rules that allow for a President of a court to sit in a case in circumstances similar to those of the present case. This perspective stems from the relation of the two provisions, as it will be explained further.
4. As consistently established in the case-law of this Court,³ it is only by respecting independence and impartiality, as they appear mentioned in Article 47 of the Charter, that the concept of ‘effective legal protection’ provided for in Article 19 TEU can be guaranteed. This consideration is further emphasized by the fact that this Court has previously held that the independence of national courts manifests itself as a ‘part of the essence of the right to effective judicial protection and the right to a fair trial’.⁴
5. *Per a contrario*, it becomes clear that disregarding the independence and impartiality conditions imposed upon national courts automatically leads to the infringement of the effective legal protection principle. Consequently, it should be demonstrated that circumstances such as those in the present case do not comply with any of the aforementioned conditions, starting with Article 47 of the Charter. Seeing that impartiality is treated as an internal aspect of independence,⁵ it is essential to consider both the external and the internal facets of Article 47 of the Charter.
6. First, in regard to its external aspect, independence requires the national court to exercise its functions without being subject to any foreign intervention or subordination.⁶ As a result, it is essential for the Member States to ensure an indispensable separation between the judiciary and the executive powers.⁷ This aspect is disregarded in the present case, considering the level of discretion provided to the Minister of Justice in the process of appointment of the Presidents of courts in Melbörp.
7. Particularly, the Minister’s decisions regarding the re-appointment of judges are made on grounds of satisfactory performance.⁸ That being so, it has been considered that such decisions should be motivated, while the criteria on which they are based should be known *ex ante*⁹ and made public.¹⁰ In addition, as

¹ Joined Cases C-558/18 and C-563/18 *AG Tanchev Opinion in Miasto Łowicz*, para. 94, pg. 160 of Bundle; Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 164, pg. 217 of Bundle; Case C-64/16 *Associação Sindical dos Juízes Portugueses*, para. 29, pg. 126 of Bundle; Case C-192/18 *European Commission v Republic of Poland*, para. 101, pg. 139 of Bundle; Joined Cases C-558/18 and C-563/18 *Miasto Łowicz*, para. 33, pg. 172 of Bundle;

² Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 165, pg. 217 of Bundle;

³ Case C-192/18 *European Commission v Republic of Poland*, para. 105, pg. 139 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 115, pg. 190 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 168, pg. 195 of Bundle; Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 65, pg. 231 of Bundle;

⁴ Case C-192/18 *European Commission v Republic of Poland*, para. 106, pg. 140 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 120, pg. 190 of Bundle; Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 66, pg. 231 of Bundle;

⁵ Case C-192/18 *European Commission v Republic of Poland*, para. 110, pg. 140 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 122, pg. 190 of Bundle; Case C-55/20 *Ministerstwo Sprawiedliwości*, para. 64, pg. 260 of Bundle; Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 174, pg. 218 of Bundle; Case C-55/20 *AG Bobek Opinion in Ministerstwo Sprawiedliwości*, para. 47, pg. 242 of Bundle;

⁶ Case C-192/18 *European Commission v Republic of Poland*, para. 109, pg. 140 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 121, pg. 190 of Bundle; Case C-55/20 *Ministerstwo Sprawiedliwości*, para. 63, pg. 260 of Bundle; Case C-64/16 *Associação Sindical dos Juízes Portugueses*, para. 44, pg. 127 of Bundle; Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 173, pg. 218 of Bundle; Case C-55/20 *AG Bobek Opinion in Ministerstwo Sprawiedliwości*, para. 45, pg. 242 of Bundle;

⁷ Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 68, pg. 231 of Bundle; Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 195, pg. 220 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 124, pg. 191 of Bundle;

⁸ Moot Case, para. 15, pg. 7 of Bundle;

⁹ Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 182, pg. 219 of Bundle;

¹⁰ Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 82, pg. 233 of Bundle;

resulting from the case-law of this Court,¹¹ the Minister of Justice should base his decision on criteria which are not too vague or unverifiable.

8. In this sense, the present issue appears to be similar to the one considered in the *European Commission v Republic of Poland* case, as both regard the right of the Minister for Justice to authorise the extension of the judges' mandates. Thus, just as in the referred case, because the criteria based on which the Minister decides the re-appointment of the President's mandates are not clear, the guarantees of irremovability are not respected.¹²
9. To conclude, the discretion of the Minister for Justice reflects a problem of judicial autonomy. This stems from the fact that there are no guarantees concerning the external aspect of independence, on the one hand, and it creates a relationship of subordination between the one who appoints and the one who is appointed, on the other hand.
10. Second, it is important to analyse the requirements posed by impartiality as it is also part of Article 47 of the Charter. In this context, the established case-law confirms that the purpose of impartiality is to ensure objectivity and lack of conflicting interests that might alter the outcome of the proceedings.¹³
11. As resulting from the circumstances in the case at hand, the President's impartiality is put into question by various elements. To begin with, the President was appointed by the Minister for Justice, the wife of the Arty-Zen Gallery's Director. Prior to that, it is worth noting that the President had been the Minister's personal lawyer and a member of the same political party as the Minister. Finally, his daughter works as a personal advisor to the Minister of Justice.¹⁴
12. In respect to the case-law of this Court,¹⁵ the circumstances listed above can be classified as indirect influence, provided that they are 'liable to have an effect on the decisions of the judges concerned'. By applying the objective test, as proposed in this Court's case-law,¹⁶ not only the aspects surrounding the present case become noticeable, but they have also undoubtedly given rise to doubts regarding the President's impartiality.¹⁷ The influence of such external factors can lead individuals to consider that the national court lacks neutrality, which contradicts the previous considerations of this Court.¹⁸
13. Apart from the conflict of interests which gives rise to doubts concerning the President's objectivity, there are other issues showing that his impartiality is certainly affected. It should be pointed out that the Presidents are provided with a personal assistant and an official car. In addition, they also receive double the salary of ordinary judges.¹⁹ As the Court has previously stated in regard to the objective testing of the condition of impartiality, 'even appearances may be of certain importance'.²⁰
14. Alternatively, even if the provisions of Article 47 of the Charter are considered inapplicable in circumstances such as those of the present case, the guarantees of Article 19(1) TEU would in themselves preclude a situation similar to the one at hand.²¹ In this view, as AG Bobek stated in *Ministerstwo Sprawiedliwości* case, Article 19(1) TEU is applicable whenever a national court, such as the one in the present case, is called to rule upon the application or interpretation of EU law.²²

¹¹ Case C-192/18 *European Commission v Republic of Poland*, para. 122, pg. 142 of Bundle;

¹² Case C-192/18 *European Commission v Republic of Poland*, para. 116, pg. 141 of Bundle;

¹³ Joined Cases C-585/18, C-624/18 and C-625/18 A.K. and others, para. 122, pg. 190 of Bundle;

¹⁴ Moot Case, para. 17, pg. 8 of Bundle;

¹⁵ Joined Cases C-585/18, C-624/18 and C-625/18 A.K. and others, para. 125, pg. 191 of Bundle; Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 69, pg. 231 of Bundle; Case C-55/20 *Ministerstwo Sprawiedliwości*, para. 67, pg. 261 of Bundle; Case C-192/18 *European Commission v Republic of Poland*, para. 120, pg. 141 of Bundle;

¹⁶ Joined Cases C-585/18, C-624/18 and C-625/18 A.K. and others, para. 128, pg. 191 of Bundle;

¹⁷ Moot Case, para. 18, pg. 8 of Bundle;

¹⁸ Joined Cases C-585/18, C-624/18 and C-625/18 A.K. and others, para. 134, pg. 192 of Bundle; Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 67, pg. 231 of Bundle; Case C-192/18 *European Commission v Republic of Poland*, para. 119, pg. 141 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 A.K. and others, para. 123, pg. 190 of Bundle; Case C-55/20 *AG Bobek Opinion in Ministerstwo Sprawiedliwości*, para. 46, pg. 242 of Bundle; Case C-55/20 *Ministerstwo Sprawiedliwości*, para. 65, pg. 260 of Bundle;

¹⁹ Moot Case, para. 15, pg. 7 of Bundle;

²⁰ Joined Cases C-585/18, C-624/18 and C-625/18 A.K. and others, para. 128, pg. 191 of Bundle;

²¹ Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 169, pg. 218 of Bundle;

²² Case C-55/20 *AG Bobek Opinion in Ministerstwo Sprawiedliwości*, para. 103, pg. 248 of Bundle;

15. In light of the circumstances already mentioned above, it can be concluded that if the organisation and functioning of judicial bodies present issues that cannot be resolved under national law,²³ Member States fail to ensure effective legal protection as required under Article 19(1) TEU.
16. Having regard to the arguments above, it can be concluded that the second subparagraph of Article 19(1) TEU and Article 47 of the Charter preclude a President of a court appointed in accordance with rules such as those in force in Melborp from sitting in a case where there are circumstances apt to give rise to doubts that ultimately lead to damaging the individuals' trust in the judicial system.

Q2: Does Article 267 TFEU preclude a national rule permitting the President of a court, who is not himself a part of the judgement formation for the purposes of a particular decision, to veto a request for a preliminary ruling which the members of the judgement formation consider necessary to resolve the issue pending in front of them?

17. First, it should be noted that Article 267 TFEU states that a 'court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court to give a ruling thereon'. It has been entrenched in this Court's case-law that by virtue of their position, the national courts are better able to analyse the circumstances of the case and determine both the necessity of a preliminary ruling and the relevance of the questions they refer to the Court.²⁴
18. Regarding the preliminary ruling procedure, it has been considered that the concepts of necessity and relevance should be analysed together, as they are 'two sides of the same coin'.²⁵ This assessment demonstrates that there is an inherent link between the referred questions and the final solution given by the national court in any case pending before it.
19. Moreover, it has been settled in this Court's case-law²⁶ that national courts have a wide discretion when it comes to referring matters. This gives rise to the conclusion that national judges have the option to make use of the preliminary ruling procedure as they are the ones invested with the direct application of EU law. Consequently, when faced with a situation in which a national judge has doubts regarding the interpretation or application of EU law provisions, their individual right to refer a question for a preliminary ruling must be ensured at whatever stage of the proceedings they consider appropriate.²⁷
20. In the case at hand, the President of the court has the capacity to veto any procedural measure proposed by judges, including their decision to submit a reference for a preliminary ruling.²⁸ In evaluating the conformity of the President's powers with EU law provisions, an analysis should be made in regard to the principles of celerity and cooperation.
21. First, it should be mentioned that the declared purpose of the President's right to veto is to avoid undue delay.²⁹ Therefore, he is bound to weigh the necessity of ensuring celerity of the proceedings, on the one hand, against the need to guarantee effective judicial protection for individuals, on the other hand.
22. Celerity focuses on the speediness of a process, while effective judicial protection assures that the rights and interests of individuals are respected. Therefore, it is obvious that, when a case pending before a national court raises some questions regarding the interpretation of EU law provisions, the need to ensure a fair trial comes first.
23. Consequently, in circumstances like those in the main proceedings, the goal cannot justify the means. More precisely, the President's right of veto undermines the discretion of judges, which is contrary to Article 267 TFEU.³⁰

²³ Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 164, pg. 217 of Bundle;

²⁴ Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 97, pg. 188 of Bundle; Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 52, pg. 230 of Bundle; Joined Cases C-558/18 and C-563/18 *AG Tanchev Opinion in Miasto Łowicz*, para. 100, pg. 160 of Bundle; Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 76, pg. 207 of Bundle;

²⁵ Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 77, pg. 208 of Bundle;

²⁶ Case C-210/06 *Cartesio*, para. 88, pg. 115 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 103, pg. 188 of Bundle;

²⁷ Joined Cases C-558/18 and C-563/18 *Miasto Łowicz*, para. 56, pg. 174 of Bundle; Case C-55/20 *AG Bobek Opinion in Ministerstwo Sprawiedliwości*, paras. 38, 43, pg. 242 of Bundle;

²⁸ Moot Case, para. 15, pg. 7 of Bundle;

²⁹ Moot Case, para. 15, pg. 7 of Bundle;

³⁰ Joined Cases C-748/19 to C-754/19 *AG Bobek Opinion in Prokuratura Rejonowa*, para. 93, pgs. 209-210 of Bundle;

24. Second, it is common ground that Member States are required, by reason, *inter alia*, of the principle of sincere cooperation, referred to in the first subparagraph of Article 4(3) TEU, to ensure at national level the application of EU law.³¹ Within this framework, Article 267 TFEU acts as an ‘instrument of cooperation’,³² through the means of which national courts can enter into dialogue with the Court regarding the interpretation of EU law provisions.³³ In circumstances such as those in the main proceedings, investing the President with the right to veto is contrary to EU law, as it severely curtails the national judges’ discretion.
25. Article 267 TFEU has been interpreted in this Court’s case-law³⁴ in the sense that judges should have the capacity to refer questions for a preliminary ruling without being subject to any risks. In addition, as it has been previously held,³⁵ the restriction of the right to formulate questions for a preliminary ruling implies a serious menace to the spirit of cooperation which must guide the relationship between the Member States and the Court.
26. Moreover, the same logic derived from the *Cartesio* case applies to the case at hand, as their common issue regards the possibility of deviating from the objectives of the preliminary ruling.³⁶ In this sense, the Court has found that national legislation cannot allow for an appellate court to set aside the reference for a preliminary ruling.³⁷ This conclusion is also applicable in light of circumstances such as those of the present case, considering that the President’s right to veto cannot be used with the purpose of controlling the right of national judges to refer questions for a preliminary ruling.
27. It follows that judges must be guaranteed the right to request the Court’s opinion in matters related to EU law. In the present case, it is clear that the preliminary question was sent only because the President was absent.³⁸ Otherwise, the judges, although they agreed on the necessity of referring questions, were prevented from cooperating with this Court. Thus, the principle of sincere cooperation is disregarded in situations similar to the present dispute.
28. Therefore, the right of judges to submit references for preliminary rulings is the rule and not the exception. They must be free to exercise this discretion whenever they consider it necessary. As in the present case the referral was possible only due to the absence of the President, the discretion that national judges enjoy was jeopardised. This is all the more important considering that national courts are the ones who are responsible for the final decisions given in the cases pending before them.³⁹
29. Consequently, in the present case, it should be concluded that the President’s right to veto a request for a preliminary ruling which the members of the judgement formation consider necessary to resolve the issue pending in front of them is contrary to the provisions of Article 267 TFEU.

Q3: Is there an infringement of the film producer’s exclusive right under article 2(d) of the Information Society Directive if a very short extract is taken from a film and used in the creation of another film?

30. First, it must be determined whether the thirteen seconds extract taken from “Tsitra’s Cats” is, in itself, protected under the provisions of the ISD. This arises from the fact that copyright is applicable to subject-matter that is original, meaning it must represent the author’s own intellectual creation.
31. Since it was not disputed by the parties that the film “Tsitra’s Cats” is protected by the ISD, as it is a work and film fixation within the meaning of national legislation,⁴⁰ it follows that the extract at issue should benefit from the same level of protection, pursuant to the arguments detailed in the following paragraphs.

³¹ Case C-64/16 *Associação Sindical dos Juizes Portugueses*, para. 34, pg. 126 of Bundle;

³² Joined Cases C-558/18 and C-563/18 *Miasto Lowicz*, para. 44, pg. 173 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 69, pg. 185 of Bundle; Case C-55/20 *AG Bobek Opinion in Ministerstwo Sprawiedliwości*, para. 129, pg. 251 of Bundle;

³³ Joined Cases C-558/18 and C-563/18 *AG Tanehev Opinion in Miasto Lowicz*, para. 104, pg. 161 of Bundle; Joined Cases C-558/18 and C-563/18 *Miasto Lowicz*, para. 55, pg. 174 of Bundle;

³⁴ Joined Cases C-558/18 and C-563/18 *AG Tanehev Opinion in Miasto Lowicz*, para. 64, pg. 155 of Bundle;

³⁵ Case C-64/16 *Associação Sindical dos Juizes Portugueses*, para. 43, pg. 127 of Bundle;

³⁶ Case C-210/06 *Cartesio*, para. 95, pg. 116 of Bundle;

³⁷ Case C-210/06 *Cartesio*, para. 98, pg. 116 of Bundle;

³⁸ Moot Case, para. 29, pg. 11 of Bundle;

³⁹ Joined Cases C-558/18 and C-563/18 *AG Tanehev Opinion in Miasto Lowicz*, para. 100, pg. 160 of Bundle; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and others*, para. 97, pg. 188 of Bundle; Joined Cases C-748/19 to C-754/19 *Prokuratura Rejonowa*, para. 52, pg. 230 of Bundle;

⁴⁰ Moot Case, para. 21, pg. 8 of Bundle;

32. It was established in this Court's case-law, in AG opinions and by The Intellectual Property Enterprise Court of England and Wales, that parts of a work can enjoy protection under article 2(a) of the ISD provided they contain elements which reflect the author's intellectual creation.⁴¹ As settled by this Court, a subject-matter is to be considered an intellectual creation if its author was 'able to express his creative abilities in the production of the work by making free and creative choices'.⁴²
33. In situations similar to those of the present case, where the disputed extract constitutes part of an intentional footage assembly of Tsitra's feline companions captured by her motion sensor cameras in the hallway of her property,⁴³ such circumstances are apt to reveal the author's originality. Moreover, it should be taken into consideration that the footage was not only compiled with the scope of producing an original idea, but also that those materials were gathered in an individual effort made by Applicant.⁴⁴
34. The elements of the extract reflecting the author's originality align with the considerations in the *Painer* case, in which this Court found that by making creative choices, the author of a portrait photograph can 'stamp the work created with his 'personal touch'.⁴⁵ This conclusion is also incidental in the case of a short film, given that it represents 'a montage of moving image'.
35. Consequently, as long as the author makes use of free and creative choices in the making of a film, and an extract thereof still reflects the author's 'personal touch', that extract should also find protection under the provisions of the ISD.
36. Bearing in mind that the nature of the Applicant's work classifies it as a short-film, 'a montage of moving image',⁴⁶ the subject-matter should find protection under article 2(d) of that same Directive. This reasoning is evidenced by considerations of the Court pursuant to which, in the field of protection of exclusive rights under the ISD, there exists no impediment related to possible differences in the degree of creative freedom in the production of various categories of works.⁴⁷
37. Since the thirteen seconds extract is a protected 'part of work' in accordance with the Court's case-law, the use of such extract in conditions similar to the case at hand qualifies as a 'reproduction in part' within the meaning of the ISD.
38. Being an autonomous concept, the term 'reproduction' should be given a uniform interpretation that is in accordance with EU law.⁴⁸ For this reason, the Court has established in the case of sound sampling that reproduction by a user of a sound sample, even if very short, falls within the exclusive right granted to the original author, unless that sample appears in the new work in a form unrecognisable to the ear.⁴⁹
39. Thus, considering the existence of opinions in favour of the lack of a quantitative threshold,⁵⁰ taking a short sequence of an original work should nevertheless require authorisation from the initial author, seeing as the extract is used without any heavy alteration.⁵¹ Hence, as demonstrated before,⁵² the substance of the sequence still reflects the Applicant's originality. In this view, it has been considered that animal videos 'testify the creative efforts of the uploading user'.⁵³
40. The notion of 'reproduction in part' has also been discussed by this Court in regard to written articles, where it was found that the display of 11 consecutive words of an article could qualify as 'reproduction in part' in case that the extract contains elements which express the author's own intellectual creation.⁵⁴

⁴¹ Case C-5/08 *Infopaq*, para. 39, pg. 291 of Bundle; Joined Cases C-403/08 and C-429/08 *FAPL*, para. 156, pg. 316 of Bundle; Case C-145/10 *Painer*, para. 87, pg. 330 of Bundle; Case C-476/17 *AG Szpunar Opinion in Pelham*, para. 28, pg. 378 of Bundle; [2022] EWHC 1379 *Shazam Productions LTD*, para. 125, pg. 420 of Bundle;

⁴² Case C-145/10 *Painer*, para. 89, pg. 330 of Bundle;

⁴³ Moot Case, para. 12, pg. 7 of Bundle;

⁴⁴ Moot Case, para. 3, pg. 5 of Bundle;

⁴⁵ Case C-145/10 *Painer*, para. 92, p. 330 of Bundle;

⁴⁶ Moot Case, para. 3, pg. 5 of Bundle;

⁴⁷ Information Society Directive, Recital (31), pg. 72 of Bundle; Case C-145/10 *Painer*, para. 97, pg. 331 of Bundle;

⁴⁸ Case C-5/08 *Infopaq*, paras. 27-29, pg. 290 of Bundle; Case-476/17, Joined Cases C-403/08 and C-429/08 *FAPL*, para. 154, pg. 316 of Bundle; Case C-476/17 *AG Szpunar Opinion in Pelham*, para. 76, pg. 384 of Bundle;

⁴⁹ Case C-476/17 *Pelham*, para. 39, pg. 399 of Bundle;

⁵⁰ Case C-476/17 *AG Szpunar Opinion in Pelham*, para. 32, pg. 379 of Bundle;

⁵¹ Moot Case, para. 12, pg. 7 of Bundle;

⁵² As demonstrated at para. 33 of Written Pleadings;

⁵³ *Comment of the European Copyright Society on Selected Aspects of Implementing Article 17 of the Directive on Copyright in the Digital Single Market Into National Law*, pg. 465 of Bundle;

⁵⁴ Case C-5/08 *Infopaq*, paras. 47, 50, pg. 291-292 of Bundle;

41. One important aspect to consider, as it appears in the case-law of the Court, is that the protection of those exclusive rights set out in the ISD allows for very few limitations. The term ‘reproduction’ should therefore be given a broad interpretation,⁵⁵ as resulting from the very construction of Article 2 of the ISD. This should not result, however, in the superiority of the right of intellectual property over other fundamental rights.⁵⁶
42. Notwithstanding the equality of the fundamental rights as recognized in this Court’s case-law,⁵⁷ it is important to consider that ‘the freedom of arts should not free artists from the restraints of everyday life’.⁵⁸ Because of the economical implications that copyright and related rights have within the community, such an approach would prove to be in relation to the objectives of the ISD, as resulting from its preamble.⁵⁹
43. Considering that copyright and related rights are protected also in respect to economic development,⁶⁰ in circumstances similar to the present case, the exclusive rights provided for within the ISD are infringed. This is due to the fact that through the use of several extracts in the making of a new work, a user gains economic benefits such as those amounting to 500 Euros from the authorisation of a licence to the Kamino Museum.⁶¹
44. In the context of earning financial gain from the use of an unauthorised extract of an original piece of work, Article 5(5) of the ISD provides that the exceptions and limitations therein are incidental in cases which do not conflict with a normal exploitation of the original work. In a situation like the one of the present case, it should be found that the use of the extract from an original work is *de facto* commercially competing with the proprietor’s exploitation of that copyrighted work.⁶² It is for this reason that the pastiche exception cannot find application in the present circumstances.
45. In consideration of all of the above, given that the extract used from the original work is itself protected by the provisions of the ISD, a use of such extract in circumstances such as those in the present case constitutes an infringement of the film producer’s exclusive right under Article 2(d) thereof, irrespective of its quantity.

Q4: Does the concept of communication to the public in Article 3 of the directive extend to the situation in which (i) a video is played in a publicly accessible exhibition space and/or (ii) the sculpture is exhibited in a publicly-accessible exhibition space?

46. Arty-Zen Gallery exhibited the works of Oleg (creator of the sculpture called ‘Roar Energy’) and Nevet (producer of the video entitled ‘A wild day’s night’). Hereafter Applicant will refer to both these artistic works as the ‘works at issue’.
47. Firstly, the act of exhibiting an artistic work or other subject-matter is an internal prerogative of the author in relation to his or her work and consists in the *communication* of the work by allowing, through an organised establishment, the public access for an indefinite number of people.⁶³ Both *communication* and *public* are abstract concepts⁶⁴ that need to be clarified in order to be applied to the dispute in the main proceedings.
48. In order to determine if Arty-Zen made, by physical means, a communication to the public in the sense given to the expression by the ISD, it is worth examining its purpose and scope.
49. According to its third recital, the ISD implements the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property, including intellectual property, freedom of expression and the public interest.⁶⁵ By using this EU legal instrument, Member

⁵⁵ Case C-5/08 *Infopaq*, para. 43, pg. 291 of Bundle;

⁵⁶ Case C-476/17 *Pelham*, para. 33, pg. 398 of Bundle;

⁵⁷ Case C-476/17 *Pelham*, para. 34, pg. 398 of Bundle;

⁵⁸ Case C-476/17 *AG Szpunar Opinion in Pelham*, para. 92, pg. 387 of Bundle;

⁵⁹ Information Society Directive, Recital (10), pg. 71 of Bundle; Case C-476/17 *AG Szpunar Opinion in Pelham*, para. 83, pg. 385 of Bundle;

⁶⁰ Case C-476/17 *AG Szpunar Opinion in Pelham*, para. 96, pg. 387 of Bundle;

⁶¹ Moot Case, para. 11, pg. 6-7 of Bundle;

⁶² [2022] EWHC 1379 *Shazam Productions LTD*, para. 152, pg. 426 of Bundle;

⁶³ Case C-306/05 *SGAE*, para. 41, pg. 283 of Bundle;

⁶⁴ Case C-527/15 *Stichting Brein*, para. 27, pg. 409 of Bundle;

⁶⁵ Information Society Directive, Recital (3), pg. 70 of Bundle;

States are bound to guarantee a high level of protection of intellectual property to a wide range of artists and creators such as authors, performers, phonogram producers or broadcasting organisations.⁶⁶ Moreover, intellectual property is considered to be an integral part of property.⁶⁷

50. Pursuant to article 3(1) of the ISD, Member States are to provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including making available their works to the public in such a way that members of the public may access them from a place and at a time individually chosen by them.
51. As the Court has previously held⁶⁸ in the *GS Media* case, the concept of communication to the public includes two cumulative criteria, namely the ‘act of communication’ of a work and the communication of that work to a public.
52. Given the fact that the works at issue were exhibited in a commercial art gallery that promotes local emerging artists⁶⁹ by organising exhibitions publicly accessible, the establishment had clearly made a *communication to the public* within the meaning of the Article 3 of the Directive. Moreover, members of the public are welcome to visit the Arty-Zen during the opening hours to view the artwork⁷⁰.
53. Although the nature of the terms *communication* and *public are autonomous* and those concepts must be interpreted broadly,⁷¹ in the *FAPL* case the Court stated that communication encompasses any transmission of the protected works, irrespective of the technical means or process used.⁷² In that specific case, the Court concluded that Article 3(1) of the ISD must be interpreted as covering transmissions of football matches via a television screen, to the customers present in a public house. With a conclusion as such, a wide sense was attributed to the right of communication to the public.
54. In addition, according to the WIPO glossary, the concept of *communication to the public* also integrates the idea of ‘making a work ... perceptible in any appropriate manner to persons in general, that is not restricted to specific individuals belonging to a private group.’⁷³ Albeit not binding for this Court, the glossary may be used as a soft law instrument useful to clarify the meaning of certain concepts.
55. The situation is comparable to the one at issue in the main proceedings since an art gallery *intentionally* gives to the visitors present in the establishment access to artistic works via screening.
56. Secondly, the other element of the concept described as *communication to the public* also plays a major role. This element concerns the public, which must be consistent and to refer to a ‘fairly large number of people’.⁷⁴
57. In the *Phonographic Performance* case, the Court established that the guests of a hotel that had access to copyright protected works in the hotel rooms were an indeterminate number of potential listeners, in so far as the access of those guests to the services of that establishment was the result of their own choice and was limited only by the capacity of the establishment in question.⁷⁵ For analogy purposes, the hotel rooms referred to in that case may be considered similar to the art gallery described in the main dispute.
58. Consequently, the *public* is an element which must be considered if (i) it refers to a significant number of persons acting as receptors of the act of communication, (ii) they were not foreseen by the author as a possible audience when they authorised the initial communication (thus we shall refer to a *new public*)⁷⁶ and (iii) they may have access to the same works in succession.⁷⁷ An in-depth analysis is required, since no definition of the *public* is provided for by the ISD and the concept also qualifies as *autonomous*.

⁶⁶ Information Society Directive, Article (1) and Article (3), pg. 76 of Bundle;

⁶⁷ Information Society Directive, Recital (9), pg. 71 of Bundle;

⁶⁸ Case C-160/15 *GS Media BV v Sanoma Media Netherlands*, para. 32, pg. 371 of Bundle;

⁶⁹ Moot Case, para. 15, pg. 6 of Bundle;

⁷⁰ Moot Case, para. 5, pg. 6 of Bundle;

⁷¹ Joined Cases C-403/08 and C-429/08 *FAPL*, para. 186, pg. 319 of Bundle;

⁷² Joined Cases C-403/08 and C-429/08 *FAPL*, para. 193, pg. 319 of Bundle;

⁷³ Case C-162/10 *Phonographic performance*, para. 34, pg. 342 of Bundle;

⁷⁴ Case C-162/10 *Phonographic performance*, para. 33, pg. 342 of Bundle.

⁷⁵ Case C-162/10 *Phonographic performance*, para. 41, pg. 343 of Bundle;

⁷⁶ Case C-160/15 *GS Media BV v Sanoma BV*, para. 42, pg. 372 of Bundle;

⁷⁷ Case C-527/15 *Stichting Brein*, para. 44, pg. 411 of Bundle;

59. The Court has consistently emphasised the need for uniform application of EU law. As stated in the *SGAE* case,⁷⁸ for any autonomous concept that a directive refers to, an uniform interpretation throughout the Union must be assured as long as there is no express reference to the laws of the Member States. That interpretation must consider the context of the provision and the purpose of the EU legislation in question.
60. Thirdly, the concept of communication to the public implies a certain assessment of the ‘user’ of those specific works. The user plays an essential role, since the works would have been hardly made *public* without the user’s action. In the *Stichting Brein* case, the Court held that the user makes an act of communication when he intervenes, in full knowledge of the consequences of its action, to give access to a protected work to its customers. Moreover, the Court’s conclusions were that, specifically in the absence of that intervention, the customers above mentioned would not, in principle, be able to benefit of that work.⁷⁹
61. Although the works at issue were previously *made available* to the public by other means, namely the Gallery included the sculpture in its online catalogue⁸⁰ and Nevet’s film was publicly shown in Melbop in April 2022,⁸¹ one month before the exhibition was launched, the Gallery action brought both of the works to the attention of an undoubtedly larger public. In addition, a proof of the phenomenal success of the exhibition was that Oleg’s sculpture was sold for the highest price he had ever achieved for one of his works.⁸²
62. By taking account of all these facts, the Arty-Zen Gallery communicated the works at issue to a *new public*, its contribution being indispensable for the promotion of the artistic works.
63. Undoubtedly, the works at issue can be regarded as intellectual creations within the meaning of the ISD. By this point of view, the present case should be distinguished from the *FAPL* case since in that judgement, the Court had to establish whether football matches were subject to copyright protection.⁸³
64. As a final remark, it should be borne in mind that as in the *SGAE* case,⁸⁴ it is not irrelevant that a ‘communication’ within the meaning of article 3(1) of the ISD is of a profit-making nature. The Arty-Zen Gallery receives a commission from the artists with every purchased work.⁸⁵ It cannot be denied that the gallery is pursuing a financial interest by organising exhibitions.
65. Having regard to the foregoing, Article 3(1) of the ISD should be interpreted as encompassing the concept of communication to the public on behalf of a gallery that exposes works of art in a situation such as the one in the main proceedings.

Q5: Is the concept of ‘pastiche’ an autonomous concept of EU law? If so, must a pastiche satisfy the following conditions or conform to the following characteristics:

- **imitates the style of another work or comprises an assemblage (medley) of a number of pre-existing works;**
- **is an evident recombination, in terms of both (i) the author having the subjective intention to create a pastiche and (ii) the pastiche being perceptible to those viewing or listening to the work; and**
- **cannot reasonably be ascribed to the author of the original work.**

Must a work satisfy any other conditions or conform to other characteristics in order to be capable of being labelled as a pastiche?

66. Applicant submits that the findings of this Court in the *Deckmyn* case concerning the concept of parody must apply *mutatis mutandis* in consideration of the pastiche exception. Unequivocally, Applicant holds that the concept of pastiche is also an autonomous concept of EU law.⁸⁶

67. Although the parody and pastiche exceptions are provided for under the same provision,⁸⁷ it is worth noting that there is a consensus that the term pastiche is, nevertheless, distinct from that of parody⁸⁸ and as

⁷⁸ Case C-306/05 *SGAE*, para. 42, pg. 270 of Bundle;

⁷⁹ Case C-527/10 *Stichting Brein*, para. 31, pg. 410 of Bundle;

⁸⁰ Moot Case, para. 6, pg. 6 of Bundle;

⁸¹ Moot Case, para. 11, pg. 6 of Bundle;

⁸² Moot Case, para. 10, pg. 6 of Bundle;

⁸³ Joined Cases C-403/08 and C-429/08 *FAPL*, para 95, pg. 311 of Bundle;

⁸⁴ Case C-306/05 *SGAE*, para. 44, pg. 270 of Bundle;

⁸⁵ Moot Case, para. 5, pg. 6 of Bundle;

⁸⁶ Case C-201/13 *Deckmyn*, para. 17, pg. 363 of Bundle; Case C-201/13 *AG Cruz Villalón Opinion in Deckmyn*, para. 35, pg. 352 of Bundle; *The Pastiche Exception In Copyright Law: A Case Of Mashed-Up Drafting?*, pg. 444 of Bundle;

such, it is the Applicant's position that it is important that a purposive semantic assessment⁸⁹ be conducted separately in the context of pastiche. This appears to be in accordance with popular opinions in the sense that 'delineating pastiche as a separate exception could infuse greater flexibility into the EU copyright system'.⁹⁰

68. A purposive semantic assessment aims to provide the term of pastiche with a contextual interpretation that can aid in determining its conditions and characteristics. 'Pastiche' must consequently be interpreted in accordance with both its usual meaning and the legislative context in which it appears.⁹¹ As such, naturally, pastiche covers both 'creating a new work in the style of another artist or genre' and 'making a new work from a compilation or assembly of pre-existing works'.⁹²
69. Considering this, starting from the previous interpretations of the Court⁹³ and the role of exceptions in copyright law,⁹⁴ it can be concluded that pastiche is the artistic method that reflects two essential elements: first, it can be an imitation of previous works and secondly, it can incorporate a compilation of pre-existing works into a new work.
70. Pastiche, like caricature and parody, entails an imitation. These forms of artistic expression are meant to indicate their connection to the original work.⁹⁵ However, unlike in the case of caricature or parody, it has been considered that pastiche is 'a kind of imitation that you are meant to know is an imitation'.⁹⁶ The resulting consequence is that another essential condition of pastiche rests in the intentional aspect of the use of a work, particularly that this style of work is intended to reflect to the viewers of the work the idea that it was created based on an original source.⁹⁷ This condition also appears mentioned in the EWHC *Shazam Productions LTD* case.⁹⁸
71. As regards the last condition proposed by the national court, while this Court has stated in the *Deckmyn* case that it is not important that the parody 'could reasonably be attributed to a person other than the author of the original work itself',⁹⁹ the Applicant's position is that in the case of pastiche such a condition must be regarded as essential, as it is important in concluding upon the effectiveness of an potential fair dealing defence.
72. While it is considered unattainable to provide an adequate definition of the concept of fair dealing,¹⁰⁰ it appears implicit that such activity reflects the justified use of a copyrighted work. In addition to the conditions analysed before, the Applicant proposes that in order to be classified as pastiche, a work should qualify to benefit from the fair dealing defence as provided for in the English law system.¹⁰¹ This is in conformity with the provisions of the ISD,¹⁰² which indicates that exceptions and limitations mentioned in the Directive should apply only in cases that are not to the detriment of either the exploitation of the work or the legitimate interest a rightsholder might have.
73. In appropriating the fair dealing test as an essential condition, it could become more accessible to the national courts to assess whether the applications of the exceptions provided for by the ISD preserve the fair balance between the interests and rights of rightsholders and the freedom of expression of the interested users.¹⁰³
74. In conclusion, for all the above mentioned reasons, pastiche should be considered an autonomous concept of EU law. In this view, Applicant submits that all the conditions proposed by the referring court and the fair dealing test should be taken into consideration.

⁸⁷ Information Society Directive, Article 5(3)(k), pg. 78 of Bundle;

⁸⁸ *The Pastiche Exception In Copyright Law: A Case Of Mashed-Up Drafting?*, pg. 441 of Bundle;

⁸⁹ *The Pastiche Exception In Copyright Law: A Case Of Mashed-Up Drafting?*, pg. 444 of Bundle;

⁹⁰ *The Parody Exception: Revisiting The Case For A Distinct Pastiche Exception*, pg. 468 of Bundle;

⁹¹ *AG Villalón Opinion in Deckmyn*, para. 45, pg. 353 of Bundle;

⁹² *The Pastiche Exception In Copyright Law: A Case Of Mashed-Up Drafting?*, pg. 439 of Bundle;

⁹³ Case C-201/13 *Deckmyn*, para. 33, pg. 365 of Bundle; Case C-201/13 *AG Cruz Villalón Opinion in Deckmyn*, para. 44, pg. 353 of Bundle;

⁹⁴ Information Society Directive, Recital (44), pg. 74 of Bundle;

⁹⁵ *The Parody Exception: Revisiting The Case For A Distinct Pastiche Exception*, pg. 469 of Bundle;

⁹⁶ *The Pastiche Exception In Copyright Law: A Case Of Mashed-Up Drafting?*, pg. 441 of Bundle;

⁹⁷ Case C-201/13 *AG Cruz Villalón Opinion in Deckmyn*, para. 50, pg. 353 of Bundle;

⁹⁸ [2022] EWHC 1379 *Shazam Productions LTD*, para. 188, pg. 433 of Bundle;

⁹⁹ Case C-201/13 *Deckmyn*, para. 21, pg. 364 of Bundle;

¹⁰⁰ [2022] EWHC 1379 *Shazam Productions LTD*, para. 15, pg. 433 of Bundle;

¹⁰¹ [2022] EWHC 1379 *Shazam Productions LTD*, para. 152, pg. 426 of Bundle;

¹⁰² Information Society Directive, Article 5(5), pg. 78 of Bundle;

¹⁰³ Case C-201/13 *Deckmyn*, para. 27, pg. 364 of Bundle;

Q6: What is meant by a ‘use for the purpose of ... pastiche’ in Article 5(3)(k) of the Directive? Can the pastiche exception extend to acts by a third party with works that were created ‘for the purpose of pastiche’, if the third party does not itself have an artistic purpose?

75. Considering the fact that the Gallery’s purpose was to host an exhibition and sell artworks, it cannot be inferred, in the absence of any statement on behalf of the Respondent, that its purpose included pastiche. Since the Arty-Zen Gallery is a commercial gallery¹⁰⁴ that obtains income almost exclusively from the sale of artworks¹⁰⁵, it is evident that its main purpose is selling artworks.
76. In the *Shazam* case, the Intellectual Property Enterprise Court of England and Wales held that the intentions and motives of the user of another’s copyright material were highly relevant for the purpose of defences such as the pastiche exception.¹⁰⁶ As such, should the Court accept this interpretation, the Arty-Zen Gallery could not make use of the pastiche exception, since it has a different purpose.
77. Furthermore, it is stated in the preamble of the ISD¹⁰⁷ and it was later held by this Court’s case-law,¹⁰⁸ by *AG Sharpston in the SGAE case*¹⁰⁹ and by doctrine¹¹⁰ that ‘harmonisation of copyright and related rights must take as a basis a high level of protection’. Moreover, it is stated in the abovementioned Directive that exceptions and limitations such as pastiche ‘shall only be applied in certain special cases which do not conflict with a normal exploitation of the work [...] and do not unreasonably prejudice the legitimate interests of the rightsholder’.¹¹¹ Were third-parties to be allowed to take advantage of the pastiche exception, it would lead to a situation completely detrimental to the interests of the rightsholders. Countless third parties could copy pastiches of their works, which would be in complete opposition to the high level of protection required and to the fact that the exception should only be applied in certain special circumstances. In such a scenario, the exception would almost become a rule.
78. In conclusion, Applicant submits that the meaning of the phrase “use for the purpose of... pastiche” is that the exception does not extend to acts of third parties, due to the importance of intentions, motives and of the exceptional character of the exception.

¹⁰⁴ Moot Case, para. 4, pg. 5 of Bundle;

¹⁰⁵ Moot Case, para. 5, pg. 6 of Bundle;

¹⁰⁶ [2022] EWHC 1379 *Shazam Productions LTD*, para. 157, pg. 427 of Bundle;

¹⁰⁷ Information Society Directive, Recital (9), pg. 71 of Bundle;

¹⁰⁸ Case C-306/05 *SGAE*, para. 36, pg. 282 of Bundle; Case C-5/08 *Infopaq*, para. 40, pg. 291 of Bundle; Joined Cases C-403/08 and C-429/08 *FAPL*, para. 186, pg. 319 of Bundle; Case C-160/15, *GS Media*, para. 30, pg. 370 of Bundle; Case C-145/10 *Painer*, para. 107, pg. 332 of Bundle; Case C-160/15 *GS Media*, para. 30, pg. 370 of Bundle; Case C-476/17 *Pelham*, para. 30, pg. 398 of Bundle; Case C-527/17 *Stichting Brein*, para. 27, pg. 409 of Bundle;

¹⁰⁹ Case C-306/05 *AG Sharpston Opinion in SGAE*, para. 33, pg. 270 of Bundle;

¹¹⁰ *Sampling and copyright – did the CJEU make the right noises?*, pg. 466 of Bundle;

¹¹¹ Information Society Directive, Article 5(5), pg. 78 of Bundle;