FACULTAD DE DERECHO

PRIVATE INTERNATIONAL LAW: 2024 PAX CASE

NICOLÁS IBÁÑEZ SORIANO

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PRIVATE INTERNATIONAL LAW

TUTOR: EDUARDO ÁLVAREZ ARMAS

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INDEX:

1. INTRODUCTION:

In this paper, we are going to resolve the PAX Moot 2024 Competition case. PAX Moot is an international European competition specialized in Private International Law. For this edition, five questions regarding international jurisdiction, applicable law, contractual clauses and interim orders are to be responded. The answers have to be responded from the perspective of both parties, Claimants and Defendants, regarding their best interests. The answers are directed to the District Court of Ljubljana, where the process is initiated. The case deals with a minor, suffering from Tourette´s syndrome, that establishes a contractual relationship with an online content platform. The creation of several videos featuring a celebrity married to her father increases the child´s popularity, who starts perceiving remuneration from the platform. This triggers a breach of contract that causes alleged damages to one of the claimants. The repercussion of her popularity also causes her father to claim against this contractual relationship, alleging that he did not permit and that the contract is not valid due to lack of parental consent. The arguments of both parties are presented to the District Court of Ljubljana, which will decide whether it has the international jurisdiction necessary for the proceedings to take place there and what law is applicable to the case. Legislation, case law and doctrine has been used to support every answer.

Introducción:

En este trabajo, se va a resolver el caso del Concurso PAX Moot 2024. PAX Moot es un concurso internacional europeo especializado en Derecho Internacional Privado. Para esta edición, hay que responder a cinco preguntas sobre competencia judicial internacional, ley aplicable, cláusulas contractuales y medidas cautelares. Las respuestas tienen que ser contestadas desde la perspectiva de ambas partes, Demandantes y Demandados, en lo que respecta a sus mejores intereses. Las respuestas se dirigen al Tribunal de Distrito de Liubliana, donde se inicia el proceso. El caso trata de una menor, enferma de síndrome de Tourette, que establece una relación contractual con una plataforma de contenido online. La creación de varios vídeos en los que aparece una celebridad casada con su padre aumenta la popularidad de la menor, que empieza a percibir una remuneración de la plataforma. Esto desencadena un incumplimiento de contrato que causa supuestos daños y perjuicios a uno de los demandantes. La repercusión de su popularidad también provoca que su padre reclame contra esta relación contractual, alegando que él no dio permiso y que el contrato no es válido por falta de consentimiento paterno. Los argumentos de ambas partes se presentan ante el Tribunal de Distrito de Liubliana, que decidirá si tiene la competencia internacional necesaria para que el procedimiento tenga lugar allí y qué ley es aplicable al caso. Legislación, jurisprudencia y doctrina ha sido usada para argumentar cada una de las respuestas.

KEY WORDS: international jurisdiction, applicable law, choice of jurisdiction, choice of law, clause, parental responsibility, domicile, tort, contract.

CLAIMANT

2. CLAIMANT´S MEMORANDUM

· Giulia (or "Defendant") is a minor, daughter to Ms. Marchetti (or "Defendant"), Italian national and Mr. Zupancic (or "Claimant"), Slovenian national. Giulia suffers from a condition known as tourettes syndrome, that causes spontaneous reactions in her body resulting on strange movements and facial expressions. Giulia is residing in Trieste, Italy with her mother.

· MyStream ("MS" or "Defendant") is an online platform based in Raleigh, North Carolina, USA. The platform is intended for the uploading of content related to university and young social life. Its subsidiary is MyStream Europe ("MSE") and is established in Tallinn, Estonia.

· Giulia started her contractual relationship with MyStream Europe in March 2022 due to her rapid ascension in popularity. At this time, Giulia was still residing in Slovenia. Her mother, Ms. Marchetti accepted the terms and conditions of the contract, including a clause of jurisdiction in favor of the Wake County Court, North Carolina and a choice of law in favor of the North Carolina Law.

· In June 2022, Mr. Zupancic married Ms. Saro (or "Claimant"). Ms. Saro is popular in Slovenia and has a sponsorship contract with a local brand, Feline. In the regular visits of Giulia to her father, Ms. Saro and her recorded content in more than fifty (50) occasions.

· In February 2023 Giulia and Ms. Marchetti relocated to Trieste, Italy. Mr. Zupancic consented.

· Feline SE, terminated its contractual relationship with Ms. Saro alleging a breach of contract due to Ms. Saro´s appearances in Giulia´s videos wearing clothing from other brands.

· In November 2023, Ms. Saro filed a lawsuit against MyStream Europe, Ms. Marchetti and Giulia before the District Court of Ljubljana. She requests removal of the content featuring her, claiming infringement upon her personal rights.

· In November 2023, Mr. Zupancic filed a lawsuit against MyStream Europe before the District Court of Ljubljana. He requests the termination of the contract between the Defendant and his daughter alleging lack of consent.

3. DOES THE COURT SEIZED HAVE INTERNATIONAL JURISDICTION TO HEAR THE CASE OF MS. SARO ON THE DAMAGES?

Your Honor, the necessary international jurisdiction to preside over this case is correctly established in this Court. You have the authority to hear over the case at hand.

3.1 Applicability:

Your Honor, Brussels I bis[1] regulation is applicable to determine the jurisdiction of the case. We are going to test the suitability of the Brussels I bis regulation. The necessary requirements are threshold, material scope, temporal scope and geographic scope. All four requirements are met so the application of this Regulation is mandatory.

First of all, the binding force of the Regulation is clear: the countries involved (Italy, Slovenia and Estonia) have a relationship with Brussels I bis, as both have accepted it. In this case, both countries are Member states, so both recognize the Regulation. In this sense, they are linked to it.

Another important point to take into consideration is if there are any exorbitant power prerogatives. As Ms. Saro and Giulia are private parts, there are not such prerogatives nor the possibility of any of them using the resources of the state against the other part in a way that may cause a huge disparity. According to García (2021) To follow the distinction between acts of iure imperii and iure gestiones, only the performance of functions directly correlated to the exercise of sovereignty could involve the arising of the assessment of immunity from jurisdiction[2].

The material scope is met as well. For the purpose of testing it, we reference art.1, which establishes that the Regulation mentioned is applicable to civil and commercial matters.

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[1] **REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[2] **García, R. A. (2021).** Inmunidad de jurisdicción de las organizaciones internacionales y distinción entre actos iure imperii y iure gestionis [a propósito de la stc 120/2021 (sala segunda), de 31 de mayo]. Revista electrónica de estudios internacionales (REEI), (42), 25., pag 11.

The main object of the claim is, for our client, to receive compensation for the damages caused by Giulia, by provoking the breach of Ms. Saro´s contract. The claims are not contractual because there is not a free compromise of both parties, therefore there is not a contractual relationship between claimant and defendant. Art. 1 states that "*these rules shall apply in civil and commercial matters regardless of the nature of the court or tribunal"*. As this is a non-contractual commercial claim, it is safe to say that material scope is met.

Also, the issue being addressed does not fall within the exceptions of the Regulation. Its second article states: "*This Regulation shall not apply to:*

a) *the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage*
b) *bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings*
c) *social security*
d) *arbitration*
e) *maintenance obligations arising from a family relationship, parentage, marriage or affinity; wills and succession, including maintenance obligations arising by reason of death".*

In this case, the issue does not fall within any of the exceptions questioned because we are discussing non-contractual commercial matters.

The temporal scope is met as well. Ms. Saro sued in November 2023 so we should use Brussels I bis because it is after January 10th 2015, date of the start of the effectiveness of this regulation.

Lastly, the geographic scope. We refer to arts 4, 5 and 6 of Brussels I bis. The main requirement is that the defendant´s domicile is a Member State. In this case, Giulia and her mother, who are the defendants, reside in Italy, which is a Member State, consequently there are domiciled in that country.

Given that all the requirements are met, is safe to assume that, in order to determine the international jurisdiction of the court, we irremediably have to resort to the Regulation known as Brussels I Bis.

3.2 Jurisdiction:

Brussels I bis (No 1215/2012) is a fundamental pillar of Private International Law and which, in its second chapter, deals with the issue of jurisdiction. It is in its article 7.2 where it says *that in delictual or quasi-delictual matters, (may be sued) before the court of the place where the harmful event has occurred or may occur.*

Your honor, you will find that the place where the harmful event took place is indeed Slovenia. The main reason is that the tort is not the mere recording of the video itself, but the subsequent uploading of the content to the MySpace social network, and thus allowing all of its users to watch it. Is the uploading of the videos to the online platform that actually causes the damage, rather than the mere possession of the videos for personal use, since it would not have had any public repercussions for Ms. Saro, as there would be no dissemination of the content.

In fact, as it is described in the statement of the facts, it was during constant visits to her father in Slovenia, Mr. Zupancic, that Giulia recorded these videos with Ms. Saro. The exact place of uploading of the content is not specified, but it is stated that about 50 videos were recorded in total. Based on the facts provided, we state that the events occurred in Slovenia.

It is also of a remarkable importance to address that the repercussion of the harmful events took place in Slovenia, where she resides and where her public image was damaged due to her renowned fame in the country. The visualization of the videos, their impact in the public, and the consequential termination of the sponsorship contract happened in Slovenia. These facts could justify the claim of jurisdiction of the Slovenian court. Furthermore, the contract with Feline (the sponsor) would be subject to Slovenian law, so it is right to say that financial consequences were materialized there.

Our position on the claim of jurisdiction is strongly supported on the existing jurisprudence. There are two main case law on the subject.

The first case law is Judgment of the Court of Justice November 30, 1976: Bier v. Mines de Potasse d´Alsace (Case 21/76)[3]. The Court of Justice of the European Union (CJEU) interpreted the Art. 7.2 of the Brussels i Regulation, and established that the jurisdiction for claim for damages could be either at the place where the damage occurred or at the place where the event that caused the damage happened in first place. Following Mendiola (2012), it is stated by the CJEU that the place of the causal event and the place where the damage materializes, can both constitute a significant connection from the point of view of international jurisdiction [4]. The conclusion of this judgment supports Ms. Saro´s claim for the jurisdiction of this court.

The other case law in which we can support Ms Saro´s claim of jurisdiction is the eDate Advertising GmbH case (Cases C-509/09 and C-160/10)[5]. This case has proven determinant to situations involving the spread of unwanted content on the internet that attempted against personal rights, such as privacy. The sentence stated: "*the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his interests is based. That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seized*". The CJEU claimed that in cases of infringement of personality through internet content, the affected person could in fact sue in any of the Member States in which the content was accessible, but only for the

[3] **Bier v. Mines de Potasse d'Alsace (Case 21/76):** Court of Justice of the European Union, 30 November 1976, Case 21/76.

[4] **Mendiola, E. T. (2012).** La difamación en la era de las comunicaciones:¿ Nuevas? perspectivas de Derecho Internacional Privado Europeo. InDret, 1. Pág,11.

[5] **The eDate Advertising GmbH case (Cases C-509/09 and C-160/10):** Court of Justice of the European Union, 25 October 2011, Joined Cases C-509/09 and C-160/10, eDate Advertising GmbH v X and Olivier Martinez, Robert Martinez v MGN Limited.

respective quantity of damages caused in that singular territory. This creates a great window for the claimant to sue in the country that she considers beneficial to her.

However, as the claimant is looking for an integral compensation of the entire damage, she must sue in the Member State of the plaintiff´s center of interests. In this case, the center of interest is undoubtedly Slovenia. It is her domicile, where she conducts her main professional activities, where the contract was established in the first place and also where Feline, Ms. Saro´s sponsor, is established.

Therefore, according to article 7.2 of the Brussels I bis Regulation and previous case law on the subject, the District Court of Ljubliana has international jurisdiction to hear over the claim. Due to the connections between the parties and the closeness of the territories, the District Court of Ljubljiana ensures their access to justice.

4. WHAT IS THE APPLICABLE LAW ON THE CLAIM FOR DAMAGES?

Your Honor, Regulation Rome II (No 864/2007)[6] determines that Slovenian law must be applied for the present case.

4.1 Applicability

Rome II is applicable to the claims based on arts. 1, 2, 3, 31 and 32. This Regulation has a capital importance for the Claimant´s provisions for the non-contractual claims. As you will see, all the requirements for the applicability of the Regulation are met.

Firstly, this binding to European legislation implies binding force between the Member States involved and Rome II Regulation. Slovenia is a Member State, consequently it is bond by European legislation, as well as Italy and Estonia. None of the parties are using extraordinary prerogatives neither.

[6] **REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 11 July of 2007 on the law applicable to non-contractual obligations (Rome II).

Another important point is that, as stated in art. 1, Rome II is applicable to non-contractual obligations in commercial matters, as it is with the case at hand. Also, the case is not included within any of the exclusions in Art. 1.

Art. 2 states that any damage out of a tort shall be covered by the Regulation. We have already stated that the damages occurred form a tort, so the application of Rome II is necessary for this case.

In the third place, art. 3 establishes that any law specified by this Regulation shall be applied. This universal application clause leaves no room for interpretation since the applicability of the Regulation is strongly stated.

Supported by art. 32, the temporal scope is met. As the tort is way after January 9, 2009.

The defendants are domiciled in Member States (Italy and Estonia) that host European legislation and this Regulation.

Your Honor, we consider Rome II applicable due to all the requirements being met.

4.2 Slovenian Law

Your Honor, Slovenian law is applicable to this case as Art. 4.1 of the Regulation confirms it. If the Court considers maintaining its jurisdiction based on the previous claims, the Claimant confirms that Slovenian law is applicable to the matter at hand. Not only it will bring cohesion within to the proceedings, but also in its relationship with the Brussels I bis Regulation, as it is stated in Recital 7 that the substantive scope should be consistent with it.

Doctrinally, Stone (2007) makes a differentiation between the general law of art. 4.1 and the “escape clause” of art. 4.3. “Article 4 envisages that a single law will govern the various issues which may arise in the context of a tort claim between a given plaintiff and a given defendant”. On the other hand, art. 4.3 provides an exception, which is described

by Recital 18 as an "escape clause," and that acts in favor of the law of another country which has a manifestly closer connection with the tort[7].

Rome II´s second chapter focuses on tort, and in its article 4.1 it states that "*Unless otherwise provided in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country where the damage occurs, irrespective of the country where the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of the event in question arise*".

In other words, as for the determination of international jurisdiction, the law to be applied will be decided according to the member state in which the harmful event occurred. Okoli & Roberts (2019) stated that art. 4.1 of the Rome II regulation applied the principle of lex loci damni to the choice of law for non-contractual obligations. The concept of lex loci damni in this article revolves around where the victim suffered direct damage[8]. Therefore, the law to be applied is Slovenian law, where the harmful event occurred.

Firstly, the videos were uploaded on Slovenian territory during Giulia's visits to her father. This fact directly relates the damage caused by the defendants with Ms. Saro´s territory, making the application of the aforementioned art. 4.1 necessary.

The fact that Ms. Saro´s public image is mostly damaged in Slovenia since that is where she is famous, that the contract is with a Slovenian brand or that the Feline brand and the contract she has with it follow Slovenian law, are important points to highlight if we want to align with the principles of effectiveness in legal proceedings, fairness and access to justice.

Also, Article 4.3 of the Rome II Regulation supports the Ms. Saro´s claim. It states that "*If it appears from the circumstances as a whole that the tort is manifestly more closely*

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[7] **Stone, P. (2007).** The Rome II Regulation on choice of law in tort. Ankara Law Review, 4(2), 95-130. Pag 10.

[8] **Okoli, C. S. A., & Roberts, E. (2019).** The operation of Article 4 of Rome II Regulation in English and Irish courts. Journal of Private International Law, 15(3), 605-625. Pag 7

connected with a country other than that indicated in paragraph 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country could be based on a pre-existing relationship between the parties, such as a contract, which is closely connected with the tort in question".

In this case, it is proven that there is a closer link of the tort with the Slovenian country, consequently the link to the Slovenian law is remarkable. Not only because of the damage as stated in art. 4.1, but also because Slovenia is the center of interest.

To defend our claim, we can review the case law in this regard. ECLI:EU:C:2015:802 case C 350/14[9] states that, "*for the purpose of identifying the law applicable to a non-contractual obligation arising out of a tort, Article 4(1) of that Regulation opts for the law of the country in which the "damage" occurs, irrespective of the country in which the event giving rise to the damage occurs and of the country or countries in which the "indirect consequences" of that event are suffered. The damage to be taken into account, for the purpose of determining the place where such damage occurs, is the direct damage, as is clear from recital 16 of the aforementioned Regulation*".

Following the previous arguments, the applicable law for Ms. Saro´s claim is the Slovenian law. We strongly encourage your Honor to apply Rome II (864/2007) based on all the nature of the claim, the exposed articles and the case-law presented.

5. DOES THE COURT HAVE INTERNATIONAL JURISDICTION TO ORDER THE REMOVAL OF THE VIDEOS DEPICTING MS. SARO UPLOADED BY GIULIA ON MYSTREAM, AND TO ISSUE AN INTERIM ORDER UNTIL THE FINAL JUDGMENT IS GIVEN?

Your Honor, Ljubljana´s Court has international jurisdiction to hear over the claims presented based on art. 7.2 and art. 35 of Brussels I bis Regulation.

[9] **ECLI:EU:C:2015:802 (Case C 350/14):** Court of Justice of the European Union, 1 October 2015, Case C-350/14, Florin Lazar v Allianz SpA.

5.1 Jurisdiction for the removal of the content.

In order to address the jurisdiction claim to order the removal of the videos, Regulation Brussels I bis should be applied. As we have already mentioned, all 4 requirements are met.

First of all, both involved Member States are bonded by the Regulation. The Treaty on the Functioning of the European Union (TFEU)[10], states that Brussels I bis is applicable when international litigation is involved.

The civil and commercial matters treated on the Regulation include non-contractual torts like the one we are addressing. Consequently, the material scope is met.

As Brussels I bis is effective to actions initiated from January 10, 2015, the temporal scope is also met. The proceeding was initiated in November 2023, making the Regulation applicable for the case at hand.

The last of the four requirements is the geographical scope, addressed in arts. 4, 5 and 6 of the Brussels I bis. The rule of application of the Regulation to Member States is mandatory as it is stated in its art. 4 that "persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State".

Therefore, as the four necessary requirements are met, we strongly advise the application of the Brussels I bis Regulation.

As it was stated in point 1.2 (*Jurisdiction*), according to article 7.2 of the Brussels I bis Regulation and previous case law on the subject, the District Court of Ljubliana has international jurisdiction to hear the claim.

The application of provisional measures is addressed in section 10, art. 35 of the Regulation: "*Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter*".

[10] **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, 2000/C 364/01.**

To support the question before us, we will use the case law of the Court of Justice of the EU related to the issue. There are various judgments that will help us discern whether the Slovenian court has international jurisdiction to order the removal of the aforementioned videos.

Specifically, we will focus on the judgment in case C-251/20 Gtflix Tv[11]. The fundamental pillar on which the judgment pivots is the determination of international jurisdiction in a case of compensation for damages for the online dissemination of harmful content. The court rules that a person can claim damages in each member state where the harmful content has been accessible. Therefore, in order to preserve the jurisprudence, the jurisdiction for the removal of Giulia's videos could extend directly to all EU member states in which such accessibility was shown to have been harmful, as the platform operates throughout Europe. The videos were reproduced mainly in Slovenia, were the defendant is popular, so the jurisdiction this Court is correctly established.

Another judgment that strongly supports our clients petition is *Bolagsupplysningen and Ilsjan* (C 194/16, EU:C:2017:766)[12]. It addressed the application of international jurisdiction of a case of publication of defamatory information between two private parties of two different Member States: Poland and Sweden. The main conclusion of the sentence is that courts of Member States where a genuine interest is demonstrated can be seized. This case law addresses the concept of "center of interest" previously mentioned.

The connection between the relevance of the videos and the Slovenian territory is obvious due to it being where the defendant is popular, where the brand is established and which law was used in the contract between Ms. Saro and Feline. The defendants´ actions had its main repercussion in Slovenian territory.

The third case law that supports Ms. Saro´s position is *eDate Advertising and Others [C 509/09 and C 161/10, EU:C:2011:685]* points out to us the importance of the adaptation

[11] **Gtflix Tv (Case C-251/20):** Judgment of the Court (Grand Chamber) of 21 December 2021 (request for a preliminary ruling from the Cour de cassation – France) – Gtflix Tv v DR (Case C-251/20).

[12] **Bolagsupplysningen and Ilsjan (Case C 194/16, EU:C:2017:766):** Court of Justice of the European Union, 17 October 2017, Case C-194/16, Bolagsupplysningen OU, Ingrid Ilsjan v Svensk Handel AB.

of the Regulation to spread of content in the internet, where it can reach many different territories and jurisdictions easily.

In this law case, the court ruled that in order to bring an action for liability for damages, the claimant could do one of two things: rather claim for damages in every Member State that had access to the content, or claim for the entirety of the damages. This last option would be based on the concept of "center of interest". The court said:

"The answer to the first two questions in Case C 509/09 and to the single question in Case C 161/10 must therefore be that Article 5(3) of the Regulation must be interpreted as meaning that, in the event of an alleged infringement of personal rights by content published on an internet site, (...) the person who considers himself injured may bring an action for liability for the entirety of the damage caused, either before the courts of the Member State of the place of establishment of the sender of that content or before the courts of the Member State in which his center of interests is situated. Such a person may also, instead of bringing an action for liability for the entire damage caused, bring his action before the courts of each Member State in whose territory the content published on the Internet is, or has been, accessible. These courts have jurisdiction only for the damage caused in the territory of the Member State of the court seized".

Based on art. 35 of the Regulation and the 3 judgments analyzed, the jurisdiction for the removal of the videos depicting Ms. Saro is correctly established in the Court of Ljubliana.

5.2 Jurisdiction to issue an interim order.

We request the precautionary measure of the removal of the videos from the platform, while the judgment is handed down. According to Honorati (2014) the current system on which provisional measures work can be granted on the "so-called double track system". Meaning that provisional measures could be granted either by the court that has jurisdiction to hear over the case or by a provisional court that has no competence[13].

[13] **Honorati, C. (2014).** Provisional measures and the recast of Brussels I regulation: a missed opportunity for a better ruling. Available at SSRN 2443137. Pag 4

We find support to our claim yet again in Article 35 of the Brussels I Regulation which states "*Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if a court of another Member State has jurisdiction as to the substance of the matter*".

This article has several points that deserve analysis. The first is that it confirms to us that the Slovenian court can request the removal of these videos until the ruling of the judgment following the Slovenian law. Therefore, Ms. Saro claims to this Court the removal of the videos as an interim measure.

The second point to highlight is that even if the Slovenian court was not declared competent to judge the case, Ms. Saro could also request the application of this injunction to download the videos from the cloud. Therefore, it gives full protection to Ms. Saro in all facets of her claim.

Your Honor, based on art. 35 we strongly support that you have the jurisdiction to issue and interim order to remove the videos until the final judgment is given.

6. DOES THE COURT HAVE INTERNATIONAL JURISDICTION TO HEAR THE CASE OVER THE NULLITY OR TERMINATION OF THE CONTRACT BETWEEN GIULIA AND MYSTREAM EUROPE?

Firstly, in order to answer to the claim, we must determine if Mr. Zupancic was exercising his parental responsibility when his daughter signed the contract without his approval. This point is fundamental for the addressing of the clause of jurisdiction in favor of the Wake County. Then we will address the international jurisdiction for the Ljubliana Court.

6.1 Parental responsibility of Mr. Zupancic

In order to see if Mr. Zupancic was effectively exercising his parental responsibility, we must focus on when the events happened. When the contract is signed (March 2022), Giulia is in Slovenia, where parents share responsibility for the care and development of their daughter by law. Even if they are not married.

When Giulia goes to Italy with her mother, that responsibility is acquired by law for couples who are not married. Giulia starts uploading videos when she is in Slovenia,

which may contribute to the deterioration of her psychological well-being and personal development. Mr. Zupancic could argue two things fundamentally:

When the contract is signed, Giulia is in Slovenia, where the responsibility for the child's development is shared between father and mother. Considering Giulia's (Tourettes syndrome) special condition, and knowing that her fame is due to the reactions caused in her body by this disease, it could be said that Giulia's apparent success is due to her condition. This could already be a direct threat to her personal development and psychological well-being, for which both parents are responsible by Slovenian law.

From this fact we can infer that the contract was not signed with the consent of Mr. Zupancic. Therefore, the signature of the mother would not be valid, since this fact would affect a fundamental area of Giulia's life that should have been decided by both parties, and the contract would be void for lack of consent.

In this case, Mr, Zupancic could argue that there was a lack of sufficient representation of Giulia following the Slovenian law. When a person agrees to a contract with a clause of jurisdiction on behalf of another, he must have sufficient power of representation for the clause to be enforceable against the principal.

Thus, it is understood that the jurisdiction clause in favor of Wake County is invalid. Consequently, it has not international jurisdiction to hear over the case.

The other point for Mr. Zupancic's defense is the way in which the clause has been presented in the contract. In relation to the choice of forum clauses included in the general conditions of the contract, they must meet two requirements:

- That the contracting party is warned of the existence of such general conditions.

- The contracting party must have had an effective opportunity to know their content at the time of the conclusion of the contract.

In the case of online documents, the case law of the CJEU states in its judgment *C-322/14*[14] that "(...) electronic means provide a durable record of that clause (...) provided that it allows the text of those conditions to be printed and saved before the conclusion of

[14] **Jaouad El Majdoub v CarsOnTheWeb.Deutschland GmbH (Case C-322/14)** Court of Justice of the European Union, 16 July 2015**.**

the contract". If Mr. Zupancic demonstrated that the formal scope of the clause was not correctly presented it could invalidate the claim of law in favor of the Wake County.

6.2 Applicability

The application of the Brussels 2 ter Regulation (2019/1111)[15] is essential for this case. This regulation focuses on jurisdiction, the recognition and enforcement of decisions in the matters of parental responsibility. In its memorandum 19 it states: "*The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure*". Following Esplugues (2022) "it entails, among other advances, an additional step in the promotion of mediation, and any other mechanism, as a means of resolving disputes arising in matters of parental responsibility"[16].

6.3 Jurisdiction

Your Honor, the Court of Ljubliana has international jurisdiction to hear over the parental responsibility case that Mr. Zupancic claims. We support our claim in the best interest of the minor affected and in art. 10 of the Brussels 2 ter Regulation.

Following art. 10 of the Regulation, it states: "*The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met:*

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[15] **COUNCIL REGULATION (EU) 2019/1111** of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).

[16] **Esplugues, C. (2022).** Avances en torno a la circulación de los acuerdos alcanzados en materia de responsabilidad parental y sustracción internacional de menores en la UE: el Reglamento Bruselas II ter. Estudios de derecho privado en homenaje al profesor Salvador Carrión Olmos, Valencia, Tirant lo Blanch, 555-576. Pag 5

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that: (i) at least one of the holders of parental responsibility is habitually resident in that Member State; (ii) that Member State is the former habitual residence of the child; or (iii) the child is a national of that Member State; (…) (c) the exercise of jurisdiction is in the best interests of the child".

We can appreciate that Giulia meets all three requirements:

- His father, Mr. Zupancic, the claimant, is Slovenian and is residing there.
- Slovenia is the former member state of residence of Giulia.
- The child is national of that country.

Consequently, it is right to say that the child has a substantial connection with that Member State. Once this is proven, the Slovenian Court must hear about the parental responsibility case.

Given that the jurisdiction clause in favor of the Wake County is not valid due to a lack of consent following the Slovenian law, we strongly encourage this Court to apply its jurisdiction to the case.

Consequently, as Mr. Zupancic has proven every one of the aforementioned arguments, and is backed by the Brussels II ter Regulation, we claim the Slovenian court to hear about the nullity or termination of the contract and use its rightful jurisdiction for the sake of the minor.

7. WHAT IS THE APPLICABLE LAW TO THE VALIDITY OR THE TERMINATION OF THE CONTRACT?

Your Honor, the choice of law clause in favour of the law of South Carolina (USA) does not have legitimacy. As it has been already stated, the contract was signed without the consent of Mr. Zupancic, who could not practice his parental responsibility rightfully, as he was not informed about the contractual relationship. We strongly suggest that Slovenian law is applicable for the case.

The European Court of Justice has consistently held the importance of ensuring that there is real consent on part of the persons concerned in respect of the jurisdiction clause so as

to protect the weaker party to the contract by avoiding such clauses, incorporated in a contract by one party, going unnoticed.

Under the Rome Convention, an agreed choice of law must be express or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. The work of Lando (2008) highlights that Under Rome I, party autonomy is also permitted, but the choice shall be made "expressly or clearly demonstrated by the terms of the contract or the circumstances of the case." [17]

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008, commonly known as Rome I Regulation[18], on the law applicable to contractual obligations, must be considered in order to address the applicable law concerning the validity or termination of the contract. As we have done with every other Regulation, we verify that all the requirements for its correct applicability are met.

Slovenia is bound to Rome I Regulation because it is a Member State that has recognized it.

As for the material scope, it involves private law, specifically contractual obligations in civil matters. The contractual relationship between Giulia, her mother and MyStream is a clear example of this category, as they voluntarily agreed to establish it. This relationship does not fall under any of the exceptions described on art. 2 of the Regulation. Consequently, the material scope is met.

In terms of temporal scope, Rome I is applicable for any contractual relationship started after December 17, 2009. Giulia´s contract with MyStream was signed in March 2022, therefore it is subject to Rome I Regulation.

Thirdly, as for the geographic scope, all Member States, except Denmark, have admitted the Rome I Regulation. In the present case, Slovenia is also subject to it.

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[17] **Lando, O., & Nielsen, P. A. (2008).** The Rome I Regulation. Common Market Law Review, 45(6). Pag 5

[18] **REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 17 June 2008 on the law applicable to contractual obligations (Rome I)

7.1 Applicability

Your Honor, Slovenian law is applicable for the case, as art. 10 of the Rome I Regulation states that "*the existence and validity of the contract, or any provision thereof, shall be subject to the law that would be applicable hereunder if the contract or provision were valid*".

As the principle of party autonomy cannot be used to determine the applicable law, we focus on art. 4.3 of the Regulation. This article states that "*If it is clear from the circumstances as a whole that the contract is manifestly more closely connected with a country other than that indicated in paragraph 1 or 2, the law of that other country shall apply*".

Slovenia is definitely a country with a strong connection. Slovenia is Giulia's country, as she is a national and has been her domicile for most of her life. Also, the contract was signed when she was still established there, ignoring the necessity of counting with approval of both parents to sign it as it is established in Slovenian law, and the main repercussions of the contract were felt there as well. Slovenian law should be applied to determine the validity or termination of the contract.

DEFENDANT

8. DEFENDANT´S MEMORANDUM

· Giulia (or “Defendant”) is a minor, daughter to Ms. Marchetti (or “Defendant”), Italian national and Mr. Zupancic (or “Claimant”), Slovenian national. Giulia is residing in Trieste, Italy with her mother. Mr. Zupancic is residing in Ljubljana, Slovenia along with Ms. Saro (or “Claimant”), his wife. Giulia suffers from a condition known as Tourette’s syndrome.

· MyStream (“MS” or “Defendant”) is an online platform based in Raleigh, North Carolina, USA. The platform is intended for the uploading of content related to university and young social life. Its subsidiary is MyStream Europe (“MSE”) and is established in Tallinn, Estonia.

· Giulia uploaded videos commenting on celebrities and, due to her rapid ascension in popularity, started her contractual relationship with MyStream Europe in March 2022. At this time, Giulia was still residing in Slovenia. This contractual relationship offered Ms. Giulia remuneration for her viewership. Her mother, Ms. Marchetti accepted the terms and conditions of the contract, including a clause of jurisdiction in favor of the Wake County Court, North Carolina and a choice of law in favor of the North Carolina Law.

· In June 2022, Mr. Zupancic married Ms. Saro (or “Claimant”). Ms. Saro is popular in Slovenia and has a sponsorship contract with a local brand, Feline. In the regular visits of Giulia to her father, both the Claimants and her recorded content in more than fifty (50) occasions. Mr. Zupancic encouraged this behavior, as he also appeared in the Defendant´s videos.

· In February 2023 Giulia and Ms. Marchetti relocated to Trieste, Italy. Mr. Zupancic consented, accepting that it was the best for his daughter´s personal development to stay with her mother.

· After more than 50 videos were posted on MyStream, Feline SE, terminated its contractual relationship with Ms. Saro alleging a breach of contract due to Ms. Saro´s appearances in Giulia´s videos wearing clothing from other brands. Ms. Saro was totally conscious of the recording of the videos.

· In November 2023, Ms. Saro filed a lawsuit against MyStream Europe, Ms. Marchetti and Giulia before the District Court of Ljubljana. She requests removal of the content featuring her, claiming infringement upon her personal rights.

· In November 2023, Mr. Zupancic filed a lawsuit against MyStream Europe before the District Court of Ljubljana. He requests the termination of the contract between the Defendant and his daughter alleging lack of consent.

9. DOES THE COURT SEIZED HAVE INTERNATIONAL JURISDICTION TO HEAR THE CASE OF MS. SARO ON THE DAMAGES?

Your Honor, you do not possess international jurisdiction to hear over this case. Based on Brussels I bis Regulation, this Court does not have the necessary jurisdiction.

9.1 Applicability

Your Honor, Brussels I bis regulation is applicable to determine the jurisdiction of the case. We are going to test the suitability of the Brussels I bis regulation. The necessary requirements are threshold, material scope, temporal scope and geographic scope. All four requirements are met so the application of this Regulation is mandatory.

First of all, the binding force of the Regulation is clear: the countries involved (Italy, Slovenia and Estonia) have a relationship with Brussels I bis, as all have accepted it. The aforementioned countries are Member states, so they recognize the Regulation. In this sense, they are linked to it.

Another important point to take into consideration is if there are any exorbitant power prerogatives. As the Defendants are private parts, there are not such prerogatives nor the possibility of any of them using the resources of the state against the other part in a way that may cause a huge disparity. There is not any demonstration of *iure imperii*.

The material scope is met as well. For the purpose of testing it, we reference art.1, which establishes that the Regulation mentioned is applicable to civil and commercial matters. The claims are not contractual because there is not a contractual relationship between claimant and defendant, so they must be qualified as non-contractual. Art. 1 states that "*these rules shall apply in civil and commercial matters regardless of the nature of the court or tribunal"*. As this is a non-contractual commercial claim, it is safe to say that

material scope is met. Also, the issue being addressed does not fall within the exceptions of the Regulation.

The temporal scope is met as well. The Claimant sued in November 2023, so we should use Brussels I bis because it is after January 10th 2015, date of the start of the effectiveness of this regulation.

Lastly, the geographic scope. We refer to arts 4, 5 and 6 of Brussels I bis. The main requirement is that the defendant´s domicile is a Member State. In this case, Giulia and her mother, reside in Italy, consequently there are domiciled in that country, as well as MyStream Europe is established in Stonia, which are both Member States.

Given that all the requirements are met, is safe to assume that, in order to determine the international jurisdiction of the court, we irremediably have to resort to the Regulation known as Brussels I Bis.

9.2 Jurisdiction

Art. 4 of the Brussels I bis Regulation establishes the defendant´s domicile principle. As a general rule, a claim should be done before the Courts of the defendant´s domicile. It is stated as: “persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State”. If we divide our clients´ situation in two different locations, we have Ms. Giulia and her mother domiciled in Italy and MS Europe domiciled in Stonia. If we followed the general rule for jurisdiction, this Court should not hear over the case.

The correct assignment of the jurisdiction is fundamental in order to prevent citizens from being sued in places which may cause defenselessness due to logistical or economic issues. The wrong assignment of the jurisdiction can result in a very disproportionate situation for the defendant, making it impossible for the Court to assess a rightful verdict. Legal entities, as well as individuals, should be able to anticipate in which jurisdictions they might reasonably be required to defend themselves.

Based on art. 63.1b) MyStream Europe is domiciled in Tallin, Estonia, because it is the territory where its subsidiary is located. Miss Marchetti and Giulia are domiciled in Trieste, Italy because it is the territory where they have their statutory seat. Your Honor, the Claimant´s choice of demanding before this Court is wrong.

For the case of Giualia and her mother, Art. 7.2 states that "a person domiciled in a Member State may be sued in another Member State (…) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred".

One of the possible ways for the Claimant to try to establish the jurisdiction in this Court, could be to convince you that my clients have, allegedly, committed some kind of tort and, consequently, damages were provoked. Even if this Court considered that this kind of action took place, the damages could not be placed in Slovenia.

Undoubtably, the responsibility for the continuity and correct development of the contract between Ms. Saro and Feline is Ms. Saro. The claimant should have taken the necessary precautions in order to maintain the contractual relationship unaltered. Ms. Saro is the one who does not comply with the requirements of the contract, as Giulia has no knowledge of the agreement or its content. There are more than 50 videos in total featuring Ms. Saro, which signals low commitment with the contract. This situation kept going for months without any measures taken by Ms. Saro to ensure the continuity of the contract with Feline. The claimant is totally responsible for the breach of contract. My client has not incurred in any tort or any other punishable act.

For the case of MyStream Europe, my client performs only as a platform service, and does not take any kind of responsibility of their creator´s actions. The link between Ms. Giulia´s actions and MyStream Europe is pure intermediation, as MyStream does not take place into the process of creating any of the content in the platform and gives total freedom to its creators. There is not a connection between the alleged damages and MyStream offering their usual services. Regarding this connection, George c.E. & Scerri (2007)[19] stated that due to practical reasons, intermediaries cannot monitor and control all the content uploaded to their websites. The vas quantity of data and fast rate at which it is published makes it difficult to control. They also stated that Directive 2000/31/EC[20]

[19] **George, C. E., & Scerri, J. (2007).** Web 2.0 and User-Generated Content: legal challenges in the new frontier. Journal of Information, Law and Technology, 2. pag 11

[20] **DIRECTIVE 2000/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

section 4 has acknowledged this and protects intermediaries from liability unless they have notice of punishable content and do not act upon it.

Even if a correlation between my clients and the alleged damages was proven, this Court would not have jurisdiction to hear over the case. Art. 7.2 of the Regulation supports this claim, as the videos were recorded in a large period of time in which Ms. Giulia was residing in Italy with her mother. She was, and still is domiciled in that country. So it is clear that alleged damages would have been provoked in Italy.

To support our position, we review the case eDate advertising GmbH C-509/09 and C-161/10. In this sentence, the Court stated that, for personal rights: "the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, (…) before the courts of the Member State in which the publisher of that content is established". Ms. Giulia, being the publisher of the content in this case, is established in Italy.

For these reasons, we strongly encourage Your Honor to reconsider the jurisdiction of this claim, in order to propitiate a process with no defenselessness for any of the two parties and according to European law and established case laws. Italian jurisdiction must be applied to judge over this case.

10. WHAT IS THE APPLICABLE LAW ON THE CLAIM FOR DAMAGES?

10.1 Applicability

Rome II is applicable to the claims based on arts. 1, 2, 3, 31 and 32. Italy, Slovenia and Estonia are Member States, consequently they are bond by European legislation. As you will see, all the requirements for the applicability of the Regulation are met. Its application is relevant for the non-contractual claims brought before this court.

Firstly, this binding to European legislation implies binding force between the Member States involved and Rome II Regulation.

Another important point is that, as stated in art. 1, Rome II is applicable to non-contractual obligations in commercial matters, as it is with the case at hand. Also, the case is not included within any of the exclusions in Art. 1.

In the third place, art. 3 establishes that any law specified by this Regulation shall be applied. This universal application clause leaves no room for interpretation since the applicability of the Regulation is strongly stated.

Supported by art. 32, the temporal scope is met. As the claim is way after January 2009.

Your Honor, we consider Rome II applicable due to all the requirements being met.

10.2 Italian Law

Your Honor, Italian Law is the only plausible law to apply for the case at hand involving the Defendants Ms. Giulia, Ms. Marchetti and MyStream, based on principle lexi loci damni and arts. 4.1 and 4.3 of the Rome II Regulation.

Art. 4.1 states that "the law applicable to a non-contractual obligation arising from a tort/delict shall be the law of the country in which the damages occurred". Regarding this article, Okoli & Roberts (2019)[21] stated the nature of its two sections: "Article 4(1) of Rome II is a fixed rule and not a presumption. Article 4(1) of Rome II is not in the same form or structure as Article 4(2) of the Rome Convention. Article 4(2) of the Rome Convention is a presumption of closest connection for contractual obligations, while Article 4(1) of Rome II is the general rule embodying the principal connecting factor thatindicates the law, which applies for non-contractual obligations".

As we have already highlighted, the alleged damage (meaning the uploading of the videos to the internet by Ms. Giulia) was never done in Slovenia, but in Italy. Several months passed for the Defendant to record over 50 videos, months in which the Claimant did not take any care of precaution to ensure her contractual relationship, neither she alerted my client of the possible repercussions. The majority of this period of time took place while Ms. Giulia was residing in Italy with her mother, under her tutelage. Therefore, the uploading of the videos also took place in Trieste, and the alleged damages that Ms. Saro claim could not be originated anywhere but in that territory. Consequently, the application of the Italian Law is mandatory.

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[21] **Okoli, C. S. A., & Roberts, E. (2019).** The operation of Article 4 of Rome II Regulation in English and Irish courts. Journal of Private International Law, 15(3), 605-625. Pag 6

To defend our claim, we can review the case law in this regard. ECLI:EU:C:2015:802 case C 350/14 states that, "*for the purpose of identifying the law applicable to a non-contractual obligation arising out of a tort, Article 4(1) of that Regulation opts for the law of the country in which the "damage" occurs, irrespective of the country in which the event giving rise to the damage occurs and of the country or countries in which the "indirect consequences" of that event are suffered. The damage to be taken into account, for the purpose of determining the place where such damage occurs, is the direct damage, as is clear from recital 16 of the aforementioned Regulation*".

Art 4.3 of the Rome II Regulation strongly supports our petition as well. This article highlights the importance of the strong connection that the parties have with the Italian territory. It is written that "*where it is clear from all circumstances of the case that the tort/delict is manifestly more closely connected with a country (...) the law of that country shall apply*". In this case, the nationality of Ms. Giulia and Ms. Marchetti, the territory where the videos where uploaded and the necessity of Ms. Giulia´s wellbeing clearly justify its connection with Italy.

A case-law that supports our claim is Owen v Galgey (2020) EHWC 3456 (QB)[22] in which the English High Court displaces English law under art. 4.3 and applied French law in a case of damages due to the strong connection of the case with the events occurred in the French territory. The court considered "*the desire for a single law to govern the whole case, the circumstances relating to all the parties, the place of direct damage and the nationalities of the parties*" relevant circumstances that could give rise to applying art.

Your Honor, Italian law should be applied, based on art. 4. and the preestablished case-law, for our clients to have a rightful judgment. We strongly encourage the Court to take it into consideration.

11. DOES THE COURT HAVE INTERNATIONAL JURISDICTION TO ORDER THE REMOVAL OF THE VIDEOS DEPICTING MS. SARO UPLOADED BY GIULIA ON MYSTREAM, AND TO ISSUE AN INTERIM ORDER UNTIL THE FINAL JUDGMENT IS GIVEN?

[22] **Owen v Galgey (2020) EWHC 3456 (QB),** High Court of Justice, Queen's Bench Division, 18 December 2020.

11.1 Jurisdiction for the removal of the content

In order to support our position, there is a certain case law of the Court of Justice of the EU relating to the issue which already laid the principles of our defense. These judgments will help us state that the international jurisdiction to order the removal of the aforementioned videos does not belong to this Court.

Case 251/20 Gtflix Tv is one of these judgments. The judgment revolves around the determination of international jurisdiction for compensation of damages, but with the particularity that the damages were provoked by the online dissemination of harmful content. The Court ultimately ruled that a person could claim damages in each Member State where the harmful content has been accessible. Consequently, and with the purpose of preserving the jurisprudence, the jurisdiction for the removal of the videos could extend to all EU Member States in which the content is accessible for the general public.

MyStream Europe offers its services all throughout Europe, meaning that every Member State could have the capacity to address such international jurisdiction. This case reflects the capacity of Italy as a jurisdiction to hear over this case. Italy is the territory where the videos were uploaded. Giulia´s account is based in Italy, where she collects the paychecks for her work. Also, a significant proportion of Giulia´s subscribers and viewers would also be from Italy. Therefore, the main repercussions of the uploading of the videos were suffered in Italy.

EDate Advertising and Others *[C 509/09 and C 161/10, EU:C:2011:685]* deal with the necessary adaptation of the Regulation to Internet´s reality, as it allows a widespread of the content like never before. This dissemination of the content can involve several countries and jurisdictions.

The caselaw, collecting the already stablished jurisprudence of the aforementioned case, states that the claimant has two options when bringing an action for liability for damages. The first option is claiming for damages in every Member State that had access to the content, but only for the respective part of the damages. The other option is to claim for the entirety of the damages.

The court stated: *"The answer to the first two questions in Case C 509/09 and to the single question in Case C 161/10 must therefore be that Article 5(3) of the Regulation must be*

interpreted as meaning that, in the event of an alleged infringement of personal rights by content published on an internet site, (...) the person who considers himself injured may bring an action for liability for the entirety of the damage caused before the courts of the Member State of the place of establishment of the sender of that content (...). Such a person may also, instead of bringing an action for liability for the entire damage caused, bring his action before the courts of each Member State in whose territory the content published on the Internet is, or has been, accessible. These courts have jurisdiction only for the damage caused in the territory of the Member State of the court seized".

If the Claimant insists on removing the videos, in order to preserve the jurisprudence, she should bring an action before the place of establishment of Giulia, as she is the sender of the content, who uploaded the videos in the first place. Italy is that territory. Therefore, Ms. Saro should claim before the Court District of Trieste.

Your Honor, based on the previous arguments and the judgments analyzed, the jurisdiction for the removal of the videos depicting Ms. Saro is wrongly stablished in the Court of Ljubljana. We strongly encourage this Court to recognize the rightful jurisdiction of the District Court of Trieste.

11.2 Applicability of the Brussels I bis Regulation

In order to address the jurisdiction claim to order the removal of the videos, Regulation Brussels I bis should be applied. As we have already mentioned, all 4 requirements are met.

First of all, both involved Member States are bonded by the Regulation. Art. 65 of the Treaty on the Functioning of the European Union, states that Brussels I bis is applicable when international litigation is involved.

The civil and commercial matters treated on the Regulation include alleged non-contractual torts like the one we are addressing. Consequently, the material scope is met.

As Brussels I bis is effective to actions initiated from January 10, 2015, the temporal scope is also met. The proceeding was initiated in November 2023, making the Regulation applicable for the case at hand.

The last of the four requirements is the geographical scope, addressed in arts. 4, 5 and 6 of the Brussels I bis. The rule of application of the Regulation to Member States is mandatory as it is stated in its art. 4 that "persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State". This article was already utilized to support our position for the jurisdiction to hear over this case.

Therefore, as the four necessary requirements are met, we strongly advise the application of the Brussels I bis Regulation.

As it was already stated, according to article 4 of the Brussels I bis Regulation and previous case law on the subject, the District Court of Trieste has international jurisdiction to hear over the claim. As well as the District Court of Tallin would have international jurisdiction if the Claimant acted separately against MyStream Europe.

11.3 Jurisdiction to issue an interim order.

Your Honor, we strongly suggest this Court not to issue an interim order for the removal of the videos while the judgment is taking place. This action is not necessary, as the request does not meet the necessary criteria for the granting of an interim measure.

The application of provisional measures is addressed in section 10, art. 35 of the Regulation: "*Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter*".

First of all, there is not a sense of urgency, as the contract between the Claimant and Feline is already broken and their economic agreements revoked. There is no irreparable or imminent damage of any kind that would justify such a drastic measure. Ms. Saro is in a significant economic position and can withstand without any problems the repercussions of her actions. More than 50 videos were uploaded in a matter of months but in any moment did the Claimant refer in any way to the possibility of incurring in a breach of contract, or the necessity of not showing other brands to the Defendants. If she did not see the need of taking care of her contractual relationship during these months, there is nothing that indicates that we should hurry to remove the videos now.

Another important point to highlight is the disproportionality of the measure requested. We shall remind that Giulia is perceiving a flow of money for her work, which attracts a significant number of viewers to her content and is a sample of her free expression right. The removal of the content would mean to delete the majority of Giulia´s work in the last months, as well as the portion of the videos that most economically benefit her.

Your Honor, based on the ponderation of the circumstances, we strongly suggest not to issue and interim order to remove the videos until the final judgment is given.

12. DOES THE COURT HAVE INTERNATIONAL JURISDICTION TO HEAR THE CASE OVER THE NULLITY OR TERMINATION OF THE CONTRACT BETWEEN GIULIA AND MYSTREAM EUROPE?

Firstly, in order to answer to the claim, we are obligated to state that Mr. Zupancic was exercising his parental responsibility when his daughter signed the contract. This point is fundamental for the addressing of the clause of jurisdiction in favor of the Wake County. Your Honor, this Court does not have international jurisdiction to hear over the case at hand.

12.1 Parental responsibility of Mr. Zupancic

In order to see if Mr. Zupancic was effectively exercising his parental responsibility, we must focus on when the events happened. When the contract is signed (March 2022), Giulia is in Slovenia, living with Ms. Marchetti, her mother. The parents of Ms. Giulia agreed upon their separation in 2015 that the best thing for the correct development and upbringing of their daughter was to live with her mother. For more than 8 years, Ms. Marchetti has taken care of this responsibility almost entirely by herself.

In March 2022, Giulia starts her contractual relationship with the Defendant (MyStream) supported by her mother who, in total exercise of her parental responsibility as a parent, agrees to the terms and conditions of the contract. From this point on, Giulia uploads videos constantly to the web, gaining popularity and income for her content. This conduct goes on for more than 21 months without a single complaint of the Claimant. Mr. Zupancic, as her father, was totally conscious of the activity of her daughter. Proof of it

is that he permitted the creation of more than fifty (50) videos featuring his actual wife, Ms. Saro, who created a close relationship with Ms. Giulia. It is safe to say that Mr. Zupancic, not only accepted Giulia´s contractual relationship with the Defendant, but encouraged it in every encounter with his daughter. Mr. Zupancic was totally conscious of the contract and accepted it tacitly. Is important to highlight that in Slovenia, the responsibility for the child's development is shared between father and mother. In other words, if Mr. Zupancic wanted in any moment, he could have terminated the contract, but he did not because he agreed to it.

In February 2023 Ms. Giulia and Ms. Marchetti moved to Trieste, Italy, where the parental responsibility is acquired by operation of law if parents are married. Unmarried parents do not automatically acquire parental responsibility by operation of law. In this jurisdiction, Ms. Marchetti made use of her parental responsibility and still considered that the relationship Ms. Giulia had with the Defendant was correct.

The signature of Ms. Marchetti is enough to agree to the terms and conditions, and the behavior of Mr. Zupancic during the more than 18 months that have passed since, being totally conscious of it, did not oppose in any way to it. Only when his wife lost her contract with Feline he thought about breaking his daughter's relationship with MyStream. Therefore, the contract is valid because it had the approvement of both parents in the moment of the signature.

It is also relevant to mention the way in which the clause has been presented in the contract. In relation to the choice of forum clauses included in the general conditions of the contract, they must meet two requirements:

- That the contracting party is warned of the existence of such general conditions.

- The contracting party must have had an effective opportunity to know their content at the time of the conclusion of the contract.

In the case of online documents, the case law of the CJEU states in its judgment *C-322/14* that "(...) electronic means provide a durable record of that clause (...) provided that it allows the text of those conditions to be printed and saved before the conclusion of the contract". The formal scope of the clause was correctly presented.

Thus, it is understood that the jurisdiction clause in favor of Wake County is valid. Consequently, this Court does not have international jurisdiction to hear over the case.

12.2 Applicability

Your Honor, you do not possess international jurisdiction to hear over this case. Based on Brussels I bis Regulation, this Court does not have the necessary jurisdiction.

Your Honor, Brussels I bis regulation is applicable to determine the jurisdiction of the case. We are going to test the suitability of the Brussels I bis regulation. The necessary requirements are threshold, material scope, temporal scope and geographic scope. All four requirements are met so the application of this Regulation is mandatory.

First of all, the binding force of the Regulation is clear: the countries involved (Italy, Slovenia and Estonia) have a relationship with Brussels I bis, as all have accepted it. The aforementioned countries are Member states, so they recognize the Regulation. In this sense, they are linked to it.

The material scope is met as well. For the purpose of testing it, we reference art.1, which stablishes that the Regulation mentioned is applicable to civil and commercial matters. The claims are contractual because there is a contractual relationship between claimant and defendant, that they freely agreed upon. Art. 1 states that "*these rules shall apply in civil and commercial matters regardless of the nature of the court or tribunal"*. As this is a contractual commercial claim, it is safe to say that material scope is met. Also, the issue being addressed does not fall within the exceptions of the Regulation.

Another important point to take into consideration is if there are any exorbitant power prerogatives. As the Defendants are private parts, there are not such prerogatives nor the possibility of any of them using the resources of the state against the other part in a way that may cause a huge disparity.

The temporal scope is met as well. The Claimant sued in November 2023, so we should use Brussels I bis because it is after January 10th 2015, date of the start of the effectiveness of this regulation.

Lastly, the geographic scope. We refer to arts 4, 5 and 6 of Brussels I bis. The main requirement is that the defendant´s domicile is a Member State. In this case, Giulia and her mother, reside in Italy, consequently there are domiciled in that country, as well as MyStream Europe is stablished in Stonia, which are both Member States.

Given that all the requirements are met, is safe to assume that, in order to determine the international jurisdiction of the court, we irremediably have to resort to the Regulation known as Brussels I Bis.

The application of the Brussels 2 ter Regulation is also essential for this case. This regulation focuses on jurisdiction, the recognition and enforcement of decisions in the matters of parental responsibility. In its memorandum 19 it states: "*The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure*".

12.3 Jurisdiction

Your Honor, the Court of Ljubliana does not have international jurisdiction to hear over the parental responsibility case that Mr. Zupancic claims. We support our claim in the best interest of the minor affected, in art. 24 of the Charter of Fundamental Rights of the EU and in art. 25 of the Brussels I bis Regulation.

Art. 24.2 of the Charter of Fundamental Rights of the EU states: *" In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration"*. Your Honor, we should remind that Giulia has put a lot of effort into the content that se has been uploading over the course of almost two years, not only bringing her personal development, but also a source of income that she could very well use in the future. Her influence and number of followers create a huge opportunity for Giulia´s future. The contractual relationship between Giulia and MyStream does not oppose a threat, but an ideal position for her future.

Following art. 25 of the Brussels I bis Regulation, it states: "*If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that*

Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise". For the reasons we have stipulated before, the contract is not, by any means, null.

Mimoso (2024) addressed this subject saying: "In fact, the existence of a written document, with constitutive or confirmatory content, that enshrines the agreement of wills in the conclusion of a pact attributing jurisdiction, in the precise terms set out in point a), paragraph 1 of article 25, constitutes a formality ad substantiam. On the other hand, the absence of a written agreement cannot be overcome by resorting to tacit acceptance"[23].

However, it is important to highlight that, based on art. 25.5 the eventual nullity of the contract is not a reason to contest the attribution of jurisdiction in a contract: "*an agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract*. *The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.* Consequently, Mr. Zupancic´s consent could not entirely defy the clause of jurisdiction, making it clearer that the rightful jurisdiction belongs to Wake County (USA).

The formal scope is also met as stated on art. 25.2: "A*ny communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'*". Therefore, the clause of jurisdiction is valid in its form of electronic communication.

Our statement is validated by the present case-law. In Tilman vs. Unilever (C-358/21)[24] is stated that "*a jurisdiction clause is validly concluded where it is contained in the general terms and conditions to which the contract concluded in writing refers by the inclusion of a hypertext link to a website, access to which allows those general terms and conditions to be viewed, downloaded and printed prior to that contract being signed, without the party against whom that clause operates having been formally asked to accept*

[23] **Mimoso, M. J. (2024).** International Contracts in the EU Conflictus Iurisdictionum et Conflictuum Legum. What Future?. International Investment Law Journal, 4(1), 111-127. Pag 6

[24] **Tilman v Unilever NV (Case C-358/21),** Court of Justice of the European Union, 24 November 2022. Tilman SA v Unilever Supply Chain Company AG

those general terms and conditions by ticking a box on that website". The general terms and conditions stablished in the contract between Giulia and MyStream were totally available in a hyperlink. As the clause met all the requirements, it is formally correct.

Given that the jurisdiction clause in favor of the Wake County is valid, we strongly encourage this Court not to apply its jurisdiction to the case in order to preserve the contractual relationship that benefits both MyStream and the minor involved. Our arguments are strongly supported by Brussels I bis, Brussels II ter regulation and the established case-law.

13. WHAT IS THE APPLICABLE LAW TO THE VALIDITY OR THE TERMINATION OF THE CONTRACT?

Your Honor, as it has been already stated that Mr. Zupancic consented to the contractual relationship between Giulia and MyStream, the choice of law in favour of North Carolina is valid. Therefore, the applicable law for the validity or termination of the contract is the Law of North Carolina

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008, commonly known as Rome I Regulation, on the law applicable to contractual obligations, must be considered in order to address the applicable law concerning the validity or termination of the contract. As we have done with every other Regulation, we verify that all the requirements for its correct applicability are met.

Slovenia is bound to Rome I Regulation because it is a Member State that has recognized it.

As for the material scope, it involves private law, specifically contractual obligations in civil matters. The contractual relationship between Giulia, her mother and MyStream is a clear example of this category, as they voluntarily agreed to establish it. This relationship does not fall under any of the exceptions described on art. 2 of the Regulation. Consequently, the material scope is met.

In terms of temporal scope, Rome I is applicable for any contractual relationship started after December 17, 2009. Giulia´s contract with MyStream was signed in March 2022, therefore it is subject to Rome I Regulation.

Finally, as for the geographic scope, all Member States, except Denmark, have admitted the Rome I Regulation. In the present case, Slovenia is also subject to it.

13.1 Applicability

Your Honor, we assure that Noth Carolina´s Law is the applicable law to the case at hand based on art.3 of the Rome I Regulation.

Party autonomy acts as the main principle of the Regulation. Parties to a contract can choose the law that will govern their contract, either for its entirety or for specific parts.

Art. 3 of the Rome I Regulation states: "*A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract*".

Okoli & Arise (2012)[25] analyzed this concept of the choice of law and its connection with the mentioned article. They stated that a court can imply a choice of law if there is enough evidence and certainty from the circumstances of the case at study and the terms of the contract. But a court could never infer the existence of a choice of law without these requirements being met. Consequently, a court could refer to an arbitration clause or a choice of law in the terms of the contract.

It is clear that the clause of choice of law in favor of the law of North Carolina is valid, as it is expressly demonstrated in the terms of the contract signed by Giulia in March 2022. Giulia and her mother, in exercise of her parental responsibility, freely agreed to the use of the North Carolina law for the entirety of the contract. The consent was totally valid, as it was clearly stated, in a totally accessible digital support and the parties were not under any invalidating circumstances of any kind.

[25] **Okoli, C. S. A., & Arishe, G. O. (2012).** The operation of the escape clauses in the Rome Convention, Rome I Regulation and Rome II Regulation. Journal of Private International Law, 8(3), 513-545. Pag 12

There are various case-law that support our position. They are a demonstration that the respect of the clause of choice of law aligns with the jurisprudence of the European Court of Justice.

In Tilman vs. Unilever (C-358/21) is stated that "*a jurisdiction clause is validly concluded where it is contained in the general terms and conditions to which the contract concluded in writing refers by the inclusion of a hypertext link to a website, access to which allows those general terms and conditions to be viewed, downloaded and printed prior to that contract being signed, without the party against whom that clause operates having been formally asked to accept those general terms and conditions by ticking a box on that website*". The general terms and conditions established in the contract between Giulia and MyStream were totally available in a hyperlink. As the clause met all the requirements, it is formally correct.

Therefore, based on art. 3 of the Rome I Regulation and the presented case-law, we strongly encourage Your Honor not to consider Slovenian law applicable for the case at hand.

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