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FACULTAD DE DERECHO

**PRIVATE INTERNATIONAL LAW**

**PAX MOOT COURT 2024**

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5ºE3

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## RESUMEN

El presente trabajo aborda el caso del PAX Moot 2024, una competición en Derecho Internacional Privado. Involucra a una menor con síndrome de Tourette que firma un contrato con una plataforma de contenido en línea, lo que aumenta su popularidad y le genera remuneración por los videos en los que aparece una celebridad casada con el padre de la menor. Esta situación lleva a disputas sobre el incumplimiento del contrato y la validez del mismo debido a la falta de consentimiento parental.

Se presentan dos demandas principales en el Tribunal de Distrito de Ljubljana: una sobre responsabilidad extracontractual que involucra a la Sra. Saro, Giulia, la Sra. Marchetti y MyStream; y otra sobre responsabilidad contractual y responsabilidad parental que involucra al Sr. Zupančič y MyStream. La participación de Estonia, Italia y los Estados Unidos agrega complejidad al caso.

Las preguntas clave incluyen la jurisdicción internacional del tribunal, la ley aplicable a las reclamaciones por daños y la validez o terminación del contrato. El trabajo utiliza legislación, jurisprudencia y doctrina para respaldar su análisis, representando los mejores intereses de ambas partes.

**Palabras clave:** derecho internacional privado, competencia judicial internacional, derecho aplicable, medidas cautelares, demandante, demandado, contrato.

## **ABSTRACT**

This paper addresses the PAX Moot 2024 case, a competition in Private International Law. It involves a minor with Tourette's syndrome who contracts with an online content platform, resulting in increased popularity and remuneration from videos featuring a celebrity married to the minor's father. This situation leads to disputes over breach of contract and the validity of the contract due to lack of parental consent.

Two primary lawsuits are filed in the District Court of Ljubljana: one concerning extracontractual liability involving Ms. Saro, Giulia, Ms. Marchetti, and MyStream; and another on contractual liability and parental responsibility involving Mr. Zupančič and MyStream. The involvement of Estonia, Italy, and the United States adds complexity to the case.

Key questions include the court's international jurisdiction, applicable law for damages claims, and the validity or termination of the contract. The paper uses legislation, case law, and doctrine to support its analysis, representing the best interests of both parties.

**Key words:** private international law, international jurisdiction, applicable law, interim orders, claimant, defendant, contract.

## ABBREVIATIONS LIST

**Brussels I Bis Regulation:** 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.

**Brussels II Ter Regulation:** 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.

**Charter:** Charter of Fundamental Rights of the European Union, 2000/C 364/01.

**CJEU:** Court of Justice of the European Union.

**CRC:** Convention on the Rights of the Child.

**EU:** European Union.

**GDPR:** General Data Protection Regulation.

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

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## CLAIMANT:

### 1. Statement of facts:

- Your Honor, we represent the Claimants, Ms. Lydia Saro, and Mr. Jure Zupančič.
- MyStream is a widely popular social media platform based in Raleigh, North Carolina, with a substantial presence in Europe through its subsidiary, MyStream Europe, located in Tallinn, Estonia. To support its expansion, MyStream established the MyStream Creator Program (MySCP), offering resources and monetization opportunities to content creators. European creators, including minors with parental consent, can join MySCP and enter into partnership agreements with MyStream Europe.
- Giulia, born on 26 April 2006, holds dual Slovenian and Italian nationalities and suffers from Tourette Syndrome. Her parents, Ms. Martina Marchetti and Mr. Jure Zupančič, separated amicably in 2015, with Giulia living primarily with her mother in Ljubljana, Slovenia, until their relocation to Trieste, Italy, in February 2023, which was consented to by her father.
- In March 2022, Giulia created a MyStream account, uploading videos that quickly gained popularity due to her unique condition. MyStream Europe recognized her potential and offered her a contract to join MySCP, which her mother digitally signed on her behalf. This contract included a jurisdiction clause favouring Wake County courts in North Carolina and a choice of law clause favouring North Carolina law.
- Giulia's videos often featured her father, Mr. Zupančič, and his wife, Ms. Saro, a prominent Slovenian athlete and brand ambassador for Feline SE. Many videos showed Ms. Saro wearing non-Feline branded clothing, resulting in Feline SE terminating her sponsorship contract and seeking damages for breach of contract.
- In November 2023, Ms. Saro initiated legal proceedings against Giulia, Ms. Marchetti, and MyStream Europe in the District Court in Ljubljana, seeking damages for the infringement of her personal rights and financial losses due to the contract breach. She

also requested the removal of all videos featuring her and an interim order for their immediate removal.

- Mr. Zupančič separately filed a suit against MyStream Europe, claiming the partner contract was invalid due to the lack of consent from both parents. Alternatively, he seeks the termination of Giulia's contract, citing its harmful impact on her psychological well-being.

## **2. Does the court seized have international jurisdiction to hear the case of Ms. Saro on the damages?**

As the legal counsel representing Ms. Saro, we unequivocally assert the international jurisdiction of the District Court in Ljubljana to hear the case concerning the damages incurred by our client, Ms. Saro. This stance is not merely a position but a rightful claim supported by the indisputable facts of the case, the clear provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012<sup>1</sup> (onwards, Brussels I Bis Regulation), and the precedential force of jurisprudence established by the Court of Justice of the European Union (onwards, CJUE).

Brussels I Bis Regulation is applicable to the present case as its material, temporal and spatial scopes are met.

Firstly, article 1.1 states that the "Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal". The claims at issue should be qualified as non-contractual as the relationship between the claimants and the defendants is not contractual. Therefore, the material scope is met as the requirements of article 1 are satisfied and the case does not fall under any of the exceptions of article 1.2 of the Regulation.

Secondly, regarding the temporal scope, according to article 81 the Brussels I Bis Regulation came into force on the 10th of January 2015. Moreover, article 66 specifies that the Regulation shall apply to legal proceedings instituted on or after 10 January 2015. In this instance, the

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<sup>1</sup> 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.

lawsuit was filed well after this date in November 2023, making the temporal scope of the Regulation fully met.

Thirdly, on the spatial scope, we must refer to articles 4, 5 and 6 of the Regulation which clarify that the domicile of the defendant in the European Union (onwards, EU) is a condition for the effective application of the present Regulation. In the case at hand, the defendants are domiciled in Italy and Estonia, being both Member States, so the spatial scope is met and the Regulation is applicable.

First and foremost, it is beyond argument that the District Court in Ljubljana possesses the international jurisdiction required to hear our case. The legal foundation for this assertion is strongly supported by the Brussels I Bis Regulation; specifically Article 4 and Article 7.2, which directly apply to the circumstances at hand.

Our client, Ms. Saro, has suffered substantial personal and financial damages directly within Slovenia, her domicile and the nucleus of her professional and personal life. Article 4 of the Brussels I Bis Regulation establishes the general jurisdiction by stating that “persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State”. The claimant, Ms. Saro, resides in Ljubljana, Slovenia, which is an EU Member State. Therefore, under Article 4, persons domiciled in a Member State shall be sued in the courts of that Member State, reinforcing our claim for Ljubljana's jurisdiction.

Moreover, the case's nature, rooted in quasi-delict for the infringement of personal rights and resulting in financial losses, invokes Article 7.2 of the Brussels I Bis Regulation. This article deals with matters relating to tort, delict, or quasi-delict, stating that a person may be sued in the courts for “the place where the harmful event occurred or may occur”. This article is critical in determining jurisdiction based on where the harmful event occurred and clearly states that a person may be sued in the courts for “the place where the harmful event occurred or may occur.”

Your honor, I respectfully argue that the harmful event took place in Slovenia based on the fact that Giulia recorded these videos during her visits to her father in Slovenia. The certainty that approximately 50 videos featuring Ms. Saro were recorded and subsequently appeared on the



MySpace platform supports the argument that a substantial amount of content was created with the intent to upload. While the exact moment of the upload is not specified, the presence of all 50 videos on the platform implies that the uploading activity was a significant part of the sequence of events initiated in Slovenia.

The tort is not limited to the mere recording of the video but extends to the uploading of these videos to the MySpace platform. It is the act of uploading that inflicts the damage, as it makes the content accessible to the public, causing widespread dissemination and public repercussions<sup>2</sup>.

Another argument that supports that the damage caused by the dissemination of these videos predominantly occurs in Slovenia is the fact that Ms. Saro resides in Slovenia, and it is where she maintains her personal and professional life. Her public image and reputation, which are critical to her professional engagements, were harmed in Slovenia. Additionally, her sponsorship contract with Feline, which is governed by Slovenian law, was terminated due to the impact of these videos. Therefore, the financial and reputational consequences were most acutely felt in Slovenia.

Our position is further solidified by the landmark judgments of the CJUE, notably “Bier v. Mines de Potasse d’Alsace”<sup>3</sup> and “eDate Advertising and others v. Société MGN LIMITED”<sup>4</sup>.

“Mines de Potasse” is a leading case in which the CJUE examines the interpretation of the harmful event when there is a dissociation between the place of the event causing the damage and the place where the damage materialises. Therefore, it is possible to file a claim either at the place of the event causing the damage or at the place where the damage materialises; either way it is possible to cumulatively claim all the damages in any location. This jurisdictional interpretation unequivocally establishes the right of Ms. Saro to select the jurisdiction most intrinsically connected to the harm she endured. The wrongful acts perpetuated by the

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<sup>2</sup> Svantesson, D. J. B. (2016). *Private international law and the Internet*. (Third edition. ed.) Kluwer Law International.

<sup>3</sup> Judgment of the Court of Justice of 30 November 1976. Bier v. Mines de Potasse d’Alsace. C-21/76. ECLI:EU:C:1976:166.

<sup>4</sup> Judgment of the Court of Justice (Grand Chamber) of 25 October 2011. eDate Advertising GmbH and others v. Société MGN LIMITED. C-509/09. ECLI:EU:C:2011:685

dissemination of content on MyStream, leading to Ms. Saro's reputational harm and financial losses, unequivocally materialised within Slovenia.

The "eDate Advertising" judgment examines situations of violations of personality rights via the internet. The CJUE decision extends the jurisdictional principles to the digital realm, allowing victims of online harm to bring claims in the jurisdiction where the damage is felt, precisely what Ms. Saro seeks to do. This case gives the same alternatives as "Mines de Potasse" stating that the claimant could choose the place of the harmful event or the place where the damage materialises<sup>5</sup>. Additionally the "eDate" judgment provides an exceptional option: one can request all damages in a single Member State if this location is the victim's centre of interest; being the centre of interest the habitual residence of the victim. In this scenario, the centre of interests is unequivocally Slovenia as it is where Ms. Saro resides, where she conducts her primary professional activities, where the initial contract was established and where her sponsor is based.

In conclusion, leveraging the legal framework of the Brussels I Bis Regulation alongside the decisive jurisprudence established by the CJUE in "Bier v. Mines de Potasse d'Alsace" and "eDate Advertising and Others v. Société MGN LIMITED", we assert with absolute conviction that the District Court in Ljubljana possesses the international jurisdiction required to adjudicate the case concerning the damages incurred by Ms. Lydia Saro.

### **3. What is the applicable law on the claim for damages?**

Your Honor, we unequivocally assert that the applicable law on the claim for damages is Slovenian law. We found our argument firmly in the absolute provisions of the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007<sup>6</sup> (onwards, Rome II Regulation).

Rome II Regulation is applicable to the present case as its material, temporal and spatial scopes are met.

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<sup>5</sup> Villamarín López, M. L. (2018). *Competencia judicial internacional en supuestos de responsabilidad extracontractual en internet: nuevos criterios interpretativos en la determinación del lugar de producción del daño*. Cuadernos de Derecho Transnacional, 10(1), 657-661.

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

Regarding the material scope, article 1.1 establishes the Rome II Regulation's broad applicability to non-contractual obligations in civil and commercial matters in situations involving a conflict of laws. This general applicability clause ensures that the regulation covers a wide range of tortious actions, including those of Ms. Saro's case: actions that have led to her personal and financial damages.

Moreover, article 1.2 delineates specific exclusions from the regulation's scope. It is imperative to note that Ms. Saro's claim for damages due to wrongful acts leading to reputational harm and financial loss does not fall within these exclusions. Particularly, while violations of privacy and rights relating to personality, including defamation, are excluded; Ms. Saro's claim primarily concerns financial losses arising from contractual breaches, not directly from defamation or privacy violations. This distinction is crucial in firmly positioning her case within the material scope of the Rome II Regulation, thereby reinforcing the applicability of Slovenian law.

Regarding the temporal and spatial scope, the Rome II Regulation is definitively applicable to Ms. Saro's case. Temporally, the events leading to her claim occurred after the Regulation's effective date of 11 January 2009<sup>7</sup>, ensuring its applicability. Spatially, the case involves EU Member States, specifically Slovenia and Italy where the defendants are domiciled.

The Rome II Regulation clearly dictates in article 4 the general rule that the law applicable to non-contractual obligations arising from a tort shall be the law of the country in which the damage occurred. This is not a matter of interpretation but a matter of legal fact. The Article presents this general rule regardless of the country in which the event giving rise to the damage occurred or the countries in which the indirect consequences of that event occur<sup>8</sup>. The damage suffered by Ms. Saro, resulting from the actions in question, materialised within Slovenia. Therefore, by the direct application of article 4 of the Rome II Regulation, Slovenian law is the indisputable governing law for Ms. Saro's claim for damages. It is not stated in the facts when and where the videos were uploaded, but the damage was felt in Slovenia, where Ms. Saro's public image was predominantly damaged, where she is well-known and lastly, it is the law applicable to the contract that she had with the brand Feline.

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<sup>7</sup> Article 32 Rome II Regulation.

<sup>8</sup> Article 4.1 Rome II Regulation.

Furthermore, article 4.3 of the Rome II Regulation strengthens our position, stating that the law of the country where the tort is manifestly more closely connected to, is the law that shall apply. This provision unequivocally mandates the application of Slovenian law to our case as the country where we find this close link is Slovenia, the country of residence of Ms. Saro.

To conclude, we must take into consideration significant jurisprudence of the CJUE with the landmark case of “Homawoo v GMF Assurances SA”<sup>9</sup>. This case provides critical insight into the interpretation of the Rome II Regulation, particularly regarding the law applicable to non-contractual obligations arising from torts or delicts across borders within the EU. The Court held that, according to the Rome II Regulation, the applicable law for assessing non-contractual obligations arising from torts should be the law of the country where the damage occurs. This ruling emphasizes that the place of the event giving rise to the damage is not as determinative as the place where the damage itself occurred. This jurisprudence directly supports the assertion that Slovenian law applies to Ms. Saro’s claim for damages, as Slovenia is where the damage from the alleged wrongful acts was suffered and materialised.

In conclusion, drawing from the comprehensive framework provided by the Rome II Regulation and reinforced by crucial CJUE jurisprudence in the case of “Homawoo v GMF Assurances SA”, we definitively assert that Slovenian law is applicable for Ms. Saro's claim for damages.

**4. 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, the District Court of Ljubljana unequivocally holds the jurisdiction to order the removal of the videos depicting Ms. Saro and to issue an interim order pending the final judgement, as expressly empowered by Article 35 of the Brussels I Bis Regulation. As we have previously stated, the full scope of the Brussels I Bis Regulation is met and therefore is applicable to the present case; as well as having the District Court of Ljubljana the international jurisdiction to hear over the case of our client on the damages.

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<sup>9</sup> Judgment of the Court of Justice (Fourth Chamber) of 17 November 2011. Deo Antoine Homawoo v GMF Assurances SA. C-412/10. ECLI:EU:C:2011:747.

Article 35 of the Regulation reads as follows: “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”.

In the context of Ms. Saro’s situation, where there is a need to prevent ongoing or imminent harm caused by the videos uploaded by Giulia on MyStream, Article 35 provides the legal basis for the District Court of Ljubljana to order provisional measures. This legal provision enables courts within Member States to grant provisional, including protective, measures regardless of the substantive jurisdiction concerning the matter. These provisional measures could include ordering the immediate removal of the videos to prevent further damage to Ms. Saro’s reputation or privacy, pending the final judgement on the case. Therefore, the application of article 35 is not only pertinent but imperative.

Ms. Saro’s case exemplifies a critical scenario warranting immediate judicial intervention to prevent further damage to her reputation and privacy, demanding immediate commandment of provisional measures. Such action is imperative to ensure Ms. Saro’s protection against the sustained promulgation of harmful content, establishing a protective legal barrier until the complete and extensive judgement of the case.

Moreover, the significance of article 35 lies in its allowance for courts to issue provisional measures without requiring jurisdiction over the main proceedings. Thus, the District Court of Ljubljana’s capacity to enact such measures on behalf of Ms. Saro persists, regardless of which Member State ultimately holds jurisdiction over the dispute. This is critical for offering Ms. Saro immediate protection within Slovenia’s jurisdiction, aligning with the immediacy and severity of her situation<sup>10</sup>.

Your Honor, Ms. Saro faces ongoing and significant harm due to the unauthorized publication of videos on MyStream, which depict her in violation of her exclusive contractual obligations to Feline. The continued presence of these videos is causing substantial reputational damage, financial losses, and severe psychological distress. The reputational harm to Ms. Saro is

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<sup>10</sup> Pretelli, I. (2016). *Provisional and Protective Measures in the European Civil Procedure of the Brussels I System*. V. Lazic’ and S. Stuij.

immediate and irreparable, as her public image and professional relationships are being continuously undermined. This damage cannot be adequately remedied by a future decision or monetary compensation. Furthermore, the financial repercussions of the breached contract with Feline are compounding daily, threatening her career and economic stability.

This situation depicts a real risk of significant harm that cannot be adequately remedied by a decision at a later date, emphasising our argument that the measures are necessary and urgent to prevent potential harm and to preserve the status quo until the main issues can be adjudicated<sup>11</sup>.

To continue to support our line of argument, the CJEU in its “Van Uden Maritime B.V. v Kommanditgesellschaft in Firma Deco-Line and Another”<sup>12</sup> judgment, where the Court discussed the conditions under which provisional measures can be granted under the Brussels Convention. It highlights the need for a “real connecting factor” and for the measures to be “provisional” and “necessary” to prevent imminent harm or ensure effective relief.

The connecting factor of Ms. Saro’s case to Slovenia through her residence, the primary audience of the disputed videos, and the primary impact of the alleged harm within this jurisdiction, firmly establishes the District Court of Ljubljana's authority to issue temporary and necessary protective orders. Additionally, the temporary measures Ms. Saro's pursuits are essential as we unequivocally affirm that allowing the videos to remain online presents a direct and substantial threat to her reputation and privacy; a situation that delayed legal action cannot sufficiently address as the current negative effects on her life and career are potential for further damage if the videos continue to stay online.

Your Honor, in addition to the arguments previously presented, we draw your attention to the judgment in “Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB”<sup>13</sup>, which provides substantial support for our client’s petition for provisional measures under Article 35 of the Brussels I Bis Regulation. This case addressed the application of international

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<sup>11</sup> Garcimartín, F. (2014). *Provisional and protective measures in the Brussels I regulation recast*. Yearbook Private International Law XVI.

<sup>12</sup> Judgment of the Court of Justice of 17 November 1998. Van Uden Maritime B.V. v Kommanditgesellschaft in Firma Deco-Line and Another. C-391/95. ECLI:EU:C:1998:543.

<sup>13</sup> Judgment of the Court of Justice (Grand Chamber) of 17 October 2017. Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB. C-194/16. ECLI:EU:C:2017:766.

jurisdiction concerning the publication of defamatory information between parties from different Member States. The CJUE concluded that courts in Member States where a genuine interest is demonstrated could be seized, emphasising the concept of the “centre of interest”.

Applying this principle to the present case, it is evident that Slovenia, and specifically the District Court of Ljubljana, represents the centre of interest for Ms. Saro. The defamatory nature of the videos, which infringe upon her contractual obligations and personal rights, has a profound impact on her reputation and professional engagements predominantly within Slovenia, where she resides and maintains significant professional and personal ties. The continuous dissemination of these videos on MyStream exacerbates the harm to her reputation and professional relationships within her community and beyond.

Given that the centre of interest is clearly established in Slovenia, it is within this court’s jurisdiction to grant the necessary provisional measures to mitigate further harm. The immediacy and severity of the ongoing damage to Ms. Saro’s reputation, financial standing, and emotional well-being necessitate urgent intervention.

Thus, in alignment with the precedent set by the case law of “Bolagsupplysningen and Ilsjan” and “Van Uden Maritime B.V. v Kommanditgesellschaft in Firma Deco-Line and Another”, as well as the legal framework set in the Brussels I Bis Regulation; we respectfully request that this court orders the removal of the videos and issues an interim order to preserve the status quo until a final judgment is rendered, thereby preventing irreparable harm to Ms. Saro’s interests centred in Slovenia.

**5. Does the court have international jurisdiction to hear the case over the nullity or termination of the contract between Giulia and MyStream Europe?**

Your Honor, we claim that the agreement facilitated by Giulia's mother without Mr. Jure Zupančič consent, adversely affects Giulia’s psychological well-being and interferes with her personal development. Our client, in his capacity as a co-holder of parental responsibility, has initiated legal proceedings seeking either a declaration of nullity of the contract or its immediate termination. It is our affirmation that the District Court of Ljubljana possesses the requisite international jurisdiction to prosecute this matter.

The essence of our argument rests on the Council Regulation (EU) 2019/1111 of 25 June 2019<sup>14</sup> (onwards, Brussels II Ter Regulation). The Brussels II Ter Regulation, although not directly applicable to contractual disputes, underscores a broader principle within EU jurisprudence: the need to protect the best interests of minors within the jurisdiction that most closely aligns with their daily lives and legal protection<sup>15</sup>.

Regarding the material scope of the Brussels II Ter Regulation, it is defined in article 1 and encompasses all civil matters relating to matrimonial proceedings and parental responsibility. The Regulation covers divorce, legal separation, marriage annulment, and disputes regarding a child's custody, access rights, and guardianship. It does not cover issues such as maintenance obligations, property consequences of the marriage, or measures taken as a result of criminal offences committed by children. In the case at hand, the Regulation's relevance lies in its 1.1.b provision for cases of parental responsibility, specifically relating to the validity or termination of a contract affecting a child's well-being.

As to the temporal scope, we must consider the Regulation's entry into force and its specific temporal criteria as outlined in articles 100 and 105. Firstly, article 100 states that the "Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022". Secondly, article 105 asserts that the "Regulation shall apply from 1 August 2022". Given that Mr. Zupančič's legal proceedings were initiated in 2023, after the Brussels II Ter Regulation came into effect and its applicability date, 1 August 2022; the Brussels II Ter Regulation directly governs the proceedings in Mr. Zupančič's case because the legal actions were instituted after the Regulation's application date.

Concerning the spatial scope, the Brussels II Ter Regulation applies to cross-border family law cases within the EU, ensuring that judgments made in one Member State are recognized and enforceable in another without the need for a declaration of enforceability<sup>16</sup>. This is particularly relevant in the case at issue, as it involves parties residing in different Member States, Slovenia

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<sup>14</sup> 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.

<sup>15</sup> European Commission, Directorate-General for Justice and Consumers, Musseva, B. (2023). *Practice guide for the application of the Brussels IIb Regulation*. Publications Office of the European Union.

<sup>16</sup> Kramar, S. A. (2020). *Enforcement of Decisions on Child Residence and Contract Orders concerning the Child in Light of Novelty in Croatian Law and European Law*. Collection Papers Fac. L. Nis, 88.



and Italy, and the matter pertains to parental responsibility, this being a core aspect of the Regulation. Therefore, the full scope of the Brussels II Ter Regulation is met.

To determine the court's international jurisdiction over the nullity or termination of the contract between Giulia and MyStream Europe, we must first assess whether Mr. Zupančič was exercising his parental responsibility when his daughter signed the contract without his approval. This is crucial for evaluating the validity of the jurisdiction clause favouring Wake County.

At the time the contract was signed in March 2022, Giulia was in Slovenia, where the law mandates shared parental responsibility for a child's care and development, regardless of the parents' marital status. When Giulia moved to Italy with her mother, this shared responsibility continued under Italian law for unmarried couples. Giulia's online activities, which began in Slovenia, may have adversely affected her psychological well-being and personal development given Giulia's Tourette syndrome, which significantly influenced her online success. We argue that her fame poses a threat to her development, an issue of shared concern under Slovenian law.

Since Mr. Zupančič did not consent to the contract, this lack of consent leaves the contract invalid due to insufficient representation. The jurisdiction clause favouring Wake County is invalid as it was not properly presented because our client was not adequately informed of the contract's general conditions and the validity of a choice of law clause rests on a clear agreement between the parties involved, as noted by García de Enterría<sup>17</sup>. In summary, the invalidity of the jurisdiction clause in favour of Wake County means that it lacks international jurisdiction to hear the case, thereby potentially establishing the Ljubljana Court's jurisdiction.

As the legal representatives of Mr. Zupančič, we assert that the District Court of Ljubljana holds international jurisdiction over matters of parental responsibility concerning Giulia, based on the provisions of article 10 of the Brussels II Ter Regulation. The Regulation's design is to ensure that jurisdiction in parental responsibility cases is anchored in the child's substantial connections, the agreement of parties on jurisdiction, and, fundamentally, the child's best

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<sup>17</sup> Garcimartín, F. J. (2014). *Derecho Internacional Privado*. Civitas.

interests<sup>18</sup>. In what follows, we will elaborate on how these elements, as manifested in Giulia's situation, unequivocally establish the international jurisdiction of the District Court of Ljubljana, thereby providing a robust foundation for our legal argumentation.

Giulia exhibits a significant connection to Slovenia, satisfying the requirements of article 10.1.a). Firstly, her father, Mr. Zupančič, a holder of parental responsibility, is habitually resident in Slovenia. Secondly, although Giulia now resides in Italy, Slovenia is her former habitual residence where she lived for a significant period of her life. Lastly, as a Slovenian national, her nationality further secures her connection to Slovenia. These factors collectively establish a substantial link to Slovenia, making it an appropriate jurisdiction for matters concerning her parental responsibility.

While the agreement on jurisdiction of article 10. 1. b) focuses on consensus, it's essential to note the unique circumstances surrounding Giulia's contractual relationship with MyStream Europe. The agreement, digitally signed by Ms. Marchetti on Giulia's behalf, included jurisdictional preferences that were not questioned at the time of signing. However, Mr. Zupančič's challenge to the validity of this contract due to lack of dual parental consent brings into question the agreement's validity, underscoring the necessity for jurisdiction under Slovenian courts to evaluate these claims.

Central to our argument is the assertion that adjudication by Slovenian courts aligns with Giulia's best interests, as mandated by Article 10.1 c). The Slovenian courts' familiarity with the social context of Giulia's life provides a meticulous and crucial understanding for decisions impacting her well-being and parental responsibility matters.

Upon thorough examination of Article 10 of the Brussels II Ter Regulation in the context of the case involving our client, it is evident that the requirements set forth by the Regulation are met. The substantial connections of Giulia to Slovenia, her former habitual residence, the nationality she holds, and the habitual residence of Mr. Zupančič, a holder of parental responsibility, in Slovenia; solidify the jurisdiction of the District Court of Ljubljana. The best

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<sup>18</sup> Kramar, S. (2020). *The Voice of the Child: Are the Procedural Rights of the Child Better Protected in the New Brussels II Regulation?*. Open Journal for Legal Studies.

interests of Giulia, a focal point of Article 10, align with having the case heard in Slovenia, where the courts are most familiar with the relevant legal, cultural, and social contexts.

To strengthen our arguments, it is essential to present the judgment of the CJEU in the “UD v XB”<sup>19</sup>. case. This landmark ruling sheds light on the principle that the habitual residence of the child is decisive in determining jurisdiction in matters of parental responsibility, aligning perfectly with the need to prioritize the child’s best interests, as stipulated in Brussels II Ter Regulation.

In the “UD” case, the CJEU emphasized that the physical presence of the child in the Member State is critical to establishing habitual residence. However, it further reinforces the necessity of interpreting the concept of habitual residence with a degree of flexibility. While the judgment was clear in not broadening the notion of habitual residence beyond physical presence, it implicitly supports the argument that the circumstances of the child’s life, which in Giulia’s case are deeply rooted in Slovenia as she just recently relocated to Italy in February 2023, are fundamental in determining the most appropriate forum for legal proceedings.

This principle directly applies to Giulia’s situation, where her significant connections to Slovenia, through residence, social, and familial ties, unequivocally establish Slovenia, and specifically the District Court of Ljubljana, as the rightful jurisdiction competent for hearing the case.

Your Honor, we assert without reservation that the District Court of Ljubljana possesses the international jurisdiction to hear the case over the nullity or termination of the contract between Giulia and MyStream Europe, in accordance with the provisions of Article 10 of the Brussels II Ter Regulation and the CJUE jurisprudence.

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<sup>19</sup> Judgment Court of Justice (First Chamber) of 17 October 2018. UD v XB. C-393/18. ECLI:EU:C:2018:835.

## **6. What is the applicable law to the validity or the termination of the contract?**

Your Honor, as previously mentioned, the jurisdiction clause designating Wake County is invalid due to improper presentation, as our client was not sufficiently informed of the contract's general conditions. Consequently, this invalidity means that Wake County lacks international jurisdiction to hear the case and, therefore, the clause designating the law of North Carolina as the applicable law lacks legitimacy.

As the legal representatives of Mr. Zupančič, we firmly assert that the applicable law governing the validity and termination of the contract in question is Slovenian law. This position is grounded in the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008<sup>20</sup> (onwards, Rome I Regulation).

The Rome I Regulation provides a clear and structured framework for determining the applicable law in cases involving contractual obligations that reach multiple jurisdictions within civil and commercial matters. The material, temporal, and spatial scopes of the Rome I Regulation are met, therefore it applies to the present case and Slovenian law emerges from the text as the applicable law.

Firstly, concerning the material scope of the Rome I Regulation, article 1 states that the Regulation shall apply to contractual obligations in civil and commercial matters involving a conflict of laws. The excluded matters listed in article 1.2 do not surround the case at hand, as the contractual obligations between Giulia and MyStream Europe clearly fall within civil and commercial matters. This unequivocally establishes that the material scope of Rome I Regulation is met.

Regarding the temporal scope, according to article 29 the Rome I Regulation came into force on 17 December 2009. Moreover, article 28 specifies that the Regulation shall apply to contracts concluded after 17 December 2009. In this instance, the partnership agreement between Giulia and MyStream Europe was entered into well after this date in March 2022, making the temporal scope of the Regulation fully met.

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<sup>20</sup> REGULATION (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

On the spatial scope, the Rome I Regulation applies and the scope is met as Slovenia is subject to the Regulation for being a Member State.

We respectfully present our arguments to establish that Slovenian law should be the applicable law in determining the validity or termination of the contract between Giulia and MyStream Europe. This determination hinges on several crucial legal principles and the specific circumstances surrounding this case.

Firstly, Article 10 of the Rome I Regulation offers a distinctive understanding of the contract's validity, emphasizing the importance of consent in contractual agreements. This provision allows for the examination of a party's consent under the law of their habitual residence if it is deemed unreasonable to assess their consent under the initially indicated law. In this instance, Giulia's habitual residence until her relocation to Italy was Slovenia. Given that Giulia is a minor, Slovenian law provides robust protections, requiring the explicit consent of both parents for contracts involving minors. The absence of Mr. Zupančič's consent, especially considering his significant parental rights and responsibilities as recognized by Slovenian law, casts substantial doubt on the contract's validity.

Furthermore, under the Slovenian Family Code, specifically Articles 135 and 151, both parents share equal and joint responsibility for the care, upbringing, and development of their child. These articles mandate mutual agreement on significant decisions affecting the child's development. Given the potential impact of the contract on Giulia's psychological well-being and broader personal development, the absence of Mr. Zupančič's consent is a critical flaw. The contract, signed solely by Giulia's mother, fails to meet the legal requirement of dual parental consent, thereby rendering it invalid under Slovenian law.

Moreover, Article 4.3 of the Rome I Regulation allows for the application of the law of another country if it is manifestly more closely connected to the contract than the law initially indicated. Despite Giulia's current residence in Italy, her habitual residence, cultural ties, and the context of the content she created for MyStream are deeply connected to Slovenia. The focus of her content on Slovenian celebrities and her significant following in Slovenia demonstrate a manifestly closer connection to Slovenia. Therefore, Slovenian law should govern the validity

and implications of the contract. The jurisprudence affirms that in such cases, the law of the more closely connected country should prevail<sup>21</sup>.

Additionally, the Private International Law and Procedure Act<sup>22</sup> stipulates that relations between parents and children are assessed under the law of the country of which they are nationals. In this case, Giulia holds Slovenian nationality, further supporting the application of Slovenian law to this matter.

Moreover, Article 10.2 of the Rome I Regulation provides a unique protection mechanism, allowing a party to challenge the consent based on the law of their habitual residence if it would be unreasonable to determine the effect of their conduct under the law specified by the Regulation. Given the significant relationship between Giulia and her father, and the substantial impact of the contract on Giulia's well-being and Mr. Zupančič's parental rights, it is unreasonable to assess consent under any law other than Slovenian law.

Lastly, to strengthen our arguments we present the law case “Intercontainer Interfrigo SC (ICF) v Balkenende”<sup>23</sup>, where the CJEU clarified that the escape clause of Article 4.3 of the Rome I Regulation could be invoked when the circumstances of the case indicate a more substantial connection to a different legal system. This decision underscores the necessity of assessing all relevant factors, including the habitual residence of the parties and the central operational context of the contract, to determine the most closely connected jurisdiction.

Applying this to our case, despite Giulia's subsequent relocation to Italy, the contract's connections to Slovenia are manifestly stronger. Giulia's habitual residence at the time of signing, the cultural context of her content focused on Slovenian celebrities, and the significant impact on her personal and legal interests, all point to Slovenia as the jurisdiction with the closest connection. Additionally, Slovenian law's requirements for explicit parental consent in contracts involving minors, as well as the protections afforded under the Slovenian Family Code, further strengthen this argument.

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<sup>21</sup> Crawford, E. B., & Carruthers, J. M. (2014). *Connection and coherence between and among European instruments in the Private International Law of obligations*. *International and Comparative Law Quarterly*, 63(1), 1–29.

<sup>22</sup> Act on International Private and Procedure Law, Act No. 5718 (2007).

<sup>23</sup> Judgment of the Court of Justice (Grand Chamber) of 6 October 2009. C-133/08. ECLI:EU:C:2009:617.

In conclusion, we respectfully urge the court to recognize the necessity of applying Slovenian law to protect Giulia's best interests and uphold the integrity of her parental rights; based on the principles established by the CJEU, the legal framework and the specific circumstances of this case.

## **DEFENDANT:**

### **7. Statement of facts:**

- Your Honor, we represent the Defendants, Giulia, Ms. Martina Marchetti, and MyStream Europe.
  
- MyStream is a leading social media platform headquartered in Raleigh, North Carolina, with a growing European presence through MyStream Europe, based in Tallinn, Estonia. To support its expansion, MyStream established the MyStream Creator Program (MySCP), providing resources and monetization tools to content creators. European creators, including minors with parental consent, can join MySCP and enter into partnership agreements with MyStream Europe.
  
- Giulia, born on 26 April 2006, holds dual Slovenian and Italian nationalities and suffers from Tourette Syndrome. Her parents, Ms. Martina Marchetti and Mr. Jure Zupančič, separated amicably in 2015, with Giulia living primarily with her mother in Ljubljana, Slovenia, until their relocation to Trieste, Italy, in February 2023, which was consented to by her father.
  
- In March 2022, Giulia created a MyStream account, uploading videos that quickly gained popularity due to her unique condition. MyStream Europe recognized her potential and offered her a contract to join MySCP, which her mother digitally signed on her behalf. This contract included a jurisdiction clause favouring Wake County courts in North Carolina and a choice of law clause favouring North Carolina law.
  
- Giulia's videos often featured her father, Mr. Zupančič, and his wife, Ms. Saro, a prominent Slovenian athlete and brand ambassador for Feline SE. These candid videos provided authentic content that attracted significant viewership, benefiting both Giulia and MyStream Europe.
  
- Despite the popularity of these videos, Feline SE terminated Ms. Saro's sponsorship contract, alleging breach of contract due to her wearing non-Feline branded clothing.



In November 2023, Ms. Saro filed a lawsuit against Giulia, Ms. Marchetti, and MyStream Europe in the District Court in Ljubljana, seeking damages and the removal of all videos featuring her.

- Mr. Zupančič separately filed a suit against MyStream Europe, challenging the validity of the partner contract due to the absence of his consent. Alternatively, he seeks the termination of Giulia's contract, claiming its negative impact on her well-being.
- The Defendants maintain that the contract with MyStream Europe is valid under North Carolina law, as chosen by the parties, and duly executed with parental consent as required by Slovenian and Italian law. Additionally, the Defendants argue that the content posted by Giulia was created in good faith and did not intend to harm Ms. Saro or breach her contract with Feline SE.

#### **8. Does the court seized have international jurisdiction to hear the case of Ms. Saro on the damages?**

Your Honor, the Defendants request the District Court of Ljubljana to dismiss the proceedings due to a lack of jurisdiction on the basis of non-intervention, state sovereignty and abuse of rights<sup>24</sup> principles collected in Brussels I Bis Regulation. The full scope of the Regulation is met and, therefore, applicable.

Firstly, article 1.1 states that the "Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal". The claims at issue should be qualified as non-contractual as the relationship between the claimants and the defendants is not contractual. Therefore, the material scope is met as the requirements of article 1 are satisfied and the case does not fall under the exceptions of article 1.2 of the Regulation.

Secondly, regarding the temporal scope, according to article 81 the Brussels I Bis Regulation came into force on the 10th of January 2015. Moreover, article 66 specifies that the Regulation shall apply to legal proceedings instituted on or after 10 January 2015. In this instance, the

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<sup>24</sup> Cassese, A. (2005). *International law*. Oxford University Press.

Claimant's lawsuit was filed well after this date in November 2023, making the temporal scope of the Regulation fully met.

Thirdly, on the spatial scope, we must refer to articles 4, 5 and 6 of the Regulation which clarify that the domicile of the defendant in the EU is a condition for the effective application of the present Regulation. In the case at hand, the defendants are domiciled in Italy and Estonia, being both Member States, so the spatial scope is met and the Regulation is applicable.

Given the full scope of the Brussels I Bis Regulation is applicable, we must identify the specific articles within the Regulation that are relevant to our case in order to determine the international jurisdiction of the court. We direct the court's attention to articles 4, 7 and 8 of the Brussels I Bis Regulation.

According to Article 4 of the Brussels I Bis Regulation, the general rule for jurisdiction in the present matter would be the defendant's domicile. Article 4 reads as follows: "persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State". Our clients, Ms. Giulia and her mother are domiciled in Italy, while MyStream Europe is domiciled in Estonia. Therefore, the lawsuit would have to be filed before the Courts of Italy, in regards with Giulia and her mother and Estonia in regards to MyStream Europe.

The fundamental principle of article 4 aims to protect defendants from being sued in jurisdictions that could result in logistical or financial disadvantages, potentially leading to a lack of fairness in the trial. Both individuals and legal entities should have the ability to foresee the jurisdictions in which they could be reasonably expected to defend themselves.<sup>25</sup> The claimant's decision to proceed in Slovenia does not align with this principle, creating an excessive burden on our clients and breaching the Brussels I Bis Regulation intent to prevent judicial helplessness.

Moreover, we must take into consideration article 7.2 of the Brussels I Bis Regulation which reads as follows: "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 or may occur". However, the actions that the claimants are trying to attribute

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<sup>25</sup> Stone, P. (2018). *Stone on private international law in the European Union*. Elgar European Law and Practice series (4th ed.).

to Ms. Giulia and MyStream Europe, do not establish a clear and direct link to Slovenia as the focus of any alleged harm.

Primarily, it was Ms. Saro's duty to ensure the contract with Feline progressed correctly and remained intact. As the facts have shown, Ms. Saro failed to meet the contract's obligations, unlike Giulia, who was unaware of the contract's details. The presence of over 50 videos featuring Ms. Saro demonstrates her lack of commitment, a situation that persisted for months without Ms. Saro taking steps to uphold the contract. Therefore, Ms. Saro bears full responsibility for any contract breaches, with no wrongful actions attributable to my client.

Regarding MyStream Europe, my client merely provides a platform service and assumes no liability for the actions of its content creators. The relationship between Ms. Giulia's actions and MyStream Europe is strictly of intermediation, with MyStream not involved in content creation and allowing creators complete autonomy. Consequently, there's no direct link between any supposed damages and the services provided by MyStream as the platform is an intermediary that is unable to control and limit all the content that is uploaded<sup>26</sup>.

Despite a connection being established between my clients and the apparent damages, this Court would still lack the jurisdiction to conduct the case, given that the recording of the videos spanned a significant duration while Ms. Giulia resided in Italy with her mother. Therefore, it's evident that any supposed damages originated in Italy and that the breach of the contract asserted by the claimants, primarily rests upon Ms. Saro's actions, not having our clients any share joint liability for the damages under discussion.

As previously established, our course of action is primarily grounded in the general rule set forth in Article 4. Through this, we contend that the courts with judicial competence would be those in Italy and Estonia. However, we wish to highlight what is stipulated in Article 8.1, which allows for the possibility of suing multiple defendants in a single jurisdiction if their claims are closely connected: "A person domiciled in a Member State may also be sued where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and

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<sup>26</sup> 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*. Vol 2.

determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings”.

The claims against Giulia, her mother, and MyStream Europe are interconnected. Our purpose in presenting this article is not to confer jurisdiction to the Court of Slovenia but to illustrate the possibility of consolidating the proceedings in a single court, namely the Italian court. This approach is aimed at protecting the minor's interests in the best way possible.

The CJEU's analysis in the “Beverage City & Lifestyle GmbH and Others v Advance Magazine Publishers”<sup>27</sup> case, underscores the importance of article 8.1 in cases involving multiple defendants with closely connected claims. By applying the principles of this case to the matter at hand, it becomes evident that the lawsuit against Giulia, Ms. Marchetti, and MyStream Europe, is more appropriately consolidated in Italy. This aligns with protecting Giulia's interests as a minor by handling the case in her and her mother's country of residence.

On a final note, the principles established by the CJUE in the “Mines de Potasio de Alsacia” case, strengthen our arguments in considering that the District Court of Ljubljana lacks the requisite jurisdiction for the case involving Giulia, Ms. Marchetti, and MyStream Europe. This assertion is grounded on the differentiation between the place where the alleged tortious act occurred and where the damage materialized, as outlined by the aforementioned case.

The pivotal actions that gave rise to the claims, namely the creation and uploading of videos by Giulia, occurred in Italy, where both Giulia and her mother were domiciled. This firmly situates the origin of the alleged damages within Italy, suggesting Italian courts as the appropriate jurisdiction based on the site of the event causing the damage; as well as being the territory where the interests of the minor, Giulia, can be most effectively protected.

In conclusion, given the considerations derived from the jurisprudence and the Brussels I Bis Regulation, we respectfully request that Your Honor reassess the jurisdiction of this claim, adjudicating the case within the Italian jurisdiction. This approach aligns with the Brussels I Bis Regulation's objectives, providing a fair and predictable legal framework for cross-border disputes.

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<sup>27</sup> Judgment of the Court of Justice (Fifth Chamber) of 7 September 2023. Beverage City & Lifestyle GmbH and Others v Advance Magazine Publishers, Inc. C-832/21. ECLI:EU:C:2023:635.

## 9. What is the applicable law on the claim for damages?

Your Honor, we unequivocally assert that the applicable law on the claim for damages is Italian law. We found our argument firmly in the absolute provisions of the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007<sup>28</sup> (onwards, Rome II Regulation).

Rome II Regulation is applicable to the present case as its material, temporal and spatial scopes are met.

Firstly, regarding the material scope, article 1.1 establishes the Rome II Regulation's broad applicability to non-contractual obligations in civil and commercial matters in situations involving a conflict of laws. The claims at issue should be qualified as non-contractual as the relationship between the claimants and the defendants is not contractual. Therefore, the material scope is met as the requirements of article 1 are satisfied and the case does not fall under the exceptions of the Regulation.

Secondly, regarding the temporal scope, according to article 32 the Rome II Regulation came into force on the 11th of January 2009. Moreover, article 28 specifies that the Regulation shall apply when the event causing the damages has occurred after the entry into force of the text, this is, after the 11th of January 2009. In this instance, the Claimant's lawsuit on the case for damages was filed well after this date in November 2023, making the temporal scope of the Regulation fully met.

Thirdly, on the spatial scope, article 3 specifies the universal application of the Regulation as it states that "any law specified by this Regulation shall be applied whether or not it is the law of a Member State".

Given the full scope of the Rome II Regulation is applicable, we direct the court's attention to article 4 of the Rome II Regulation, through which it emerges that the Italian law is the only

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<sup>28</sup> REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

plausible law to apply for the case at hand involving the Defendants Ms. Giulia, Ms. Marchetti, and MyStream.

Rome II Regulation on its Article 4.3, provides for an ‘exception clause’ which allows to apply the law of the country to which the tort or delict is manifestly more closely connected, displacing the general rule of the *lex loci damni* of article 4.1 or the law of the common habitual residence of the parties when the damage occurs of article 4.2<sup>29</sup>.

Article 4.3 offers an escape clause, allowing for a different law to be applied if it is clear that the tort or delict is “manifestly more closely connected” to another country after considering various factors. The factors that are needed to take into account when showing a manifestly closer connection of the tort with a country, are the factors stated on the decisions made by the High Court of England and Wales, on “Winrow v. Hemphill”<sup>30</sup> and “Marshall v. The Motor Insurers’ Bureau & Others”<sup>31</sup>, as a consequence of the absence of interpretation of Article 4.3 by the CJEU.

While the cases of “Winrow v. Hemphill” and “Marshall v The Motor Insurers' Bureau & Ors” do not set out an exhaustive list of factors, they indeed provide valuable guidance on how to assess which country a tort or delict is manifestly more closely connected to, based on the particular circumstances of each case. This nuanced approach is pivotal for applying Article 4.3 of the Rome II Regulation in our situation, where the alleged tortious actions and their impacts have a manifestly closer connection to Italy.

Firstly, the fact that Giulia and her mother, Ms. Marchetti, resided in Italy during the critical period when the videos were created and uploaded to MyStream significantly anchors the case to Italy. This habitual residence is crucial as it ties the defendants' day-to-day lives and decisions directly to the Italian jurisdiction, suggesting that Italy has a more substantial role in the context of the alleged damages.

Secondly, the partnership agreement between Giulia and MyStream, which facilitated the content creation and its monetization, had its operational effects primarily in Italy. This partnership is intertwined with the alleged tort, further embedding the case within the Italian

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<sup>29</sup> Lafuente Sánchez, R. (2016). Applicable Law to Liability Arising From Cross-border Traffic Accidents: the Escape Clause in Article 4.3 of Rome II Regulation in the Light of the English High Court Decisions. Iprolex.

<sup>30</sup> Judgment of the High Court of England and Wales of 6 October 2014. Winrow v Hemphill & Anor.

<sup>31</sup> Judgment of the High Court of England and Wales of 27 November 2015. Marshall v The Motor Insurers' Bureau & Ors.

context. The existing partnership agreement between Giulia and MyStream, while both were engaged in activities within Italy, underscores a pre-established legal and operational relationship. This relationship, directly connected to the events in question, provides a substantial basis for applying Italian law.

Thirdly, the Italian nationality of Giulia and Ms. Marchetti contributes to the overall nexus of the case with Italy. This national affiliation enhances the argument for a manifestly closer connection to Italy, given the broader legal, cultural, and personal ties to the country.

Lastly, the need to consider the best interests of Giulia, a minor, in legal proceedings, supports the case for Italian jurisdiction. The Italian legal system, familiar and geographically proximate to Giulia and Ms. Marchetti is better positioned to account for the minor's welfare and the specificities of her situation.

In conclusion, drawing on the guidance from “Winrow and Marshall”, our argument for applying Italian law under Article 4.3 of the Rome II Regulation is well-founded. Each of these factors presented above, individually and collectively, underscores a manifestly closer connection to Italy. Therefore, we advocate for the application of Italian law to govern the non-contractual obligations arising from this dispute, aligning with the Rome II Regulation.

**10. 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?**

**10.1 Jurisdiction for the removal of the content:**

The District Court of Ljubljana does not hold international jurisdiction to order the removal of the videos depicting Ms. Saro, founding the base of our arguments firmly in the provisions of the Brussels I Bis Regulation that we have previously found applicable to the present case as the full scope is met.

Firstly, article 1.1 states that the “Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal” like the one at hand. Therefore, the material scope is met as the requirements of article 1 are satisfied and the case does not fall under the exceptions of article 1.2 of the Regulation.

Secondly, regarding the temporal scope, according to article 81 the Brussels I Bis Regulation came into force on the 10th of January 2015. Moreover, article 66 specifies that the Regulation shall apply to legal proceedings instituted on or after 10 January 2015. In this instance, the proceedings began well after this date in November 2023, making the temporal scope of the Regulation fully met.

Thirdly, on the spatial scope, we must refer to articles 4, 5 and 6 of the Regulation which clarify that the domicile of the defendant in the EU is a condition for the effective application of the present Regulation. In the case at hand, the defendants are domiciled in Italy and Estonia, being both Member States, so the spatial scope is met and the Regulation is applicable.

Given the full scope of the Brussels I Bis Regulation is applicable, we must identify the specific articles within the Regulation that are relevant to our case. We direct the Court's attention to articles 4, 7 and 35 of the Brussels I Bis Regulation.

As we have already previously stated, by analysing articles 4 and 7 of the Brussels I Bis Regulation, we conclude that the District Court of Trieste is the court competent to hear over this case. We firmly maintain this position in order to answer the question at hand.

Article 35 provides the legal basis for the District Court of Trieste to order provisional measures and reads as follows: “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”.

A landmark decision to strengthen our argument is the CJEU ruling in case “Reichert v. Dresdner Bank”<sup>32</sup>. In this case, the Court held that Article 24 of the Brussels Convention (the precursor to the Brussels I Regulation, which is similarly mirrored in Article 35 of the Brussels I Bis Regulation) allows for the courts of a Member State to order provisional measures, even if the courts of another Member State have jurisdiction over the substance of the matter. The crucial factors are firstly, that the measures trying to be obtained, must be available under the

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<sup>32</sup> Judgment of the Court of Justice (Fifth Chamber) of 26 March 1992. Mario Reichert, Hans-Heinz Reichert and Ingeborg Kockler v Dresdner Bank AG. C-261/90. ECLI:EU:C:1992:149.



national law of the Member State where the measures are being sought and, secondly, that there is a real connecting link to the territory of that Member State.

Foremost, to formulate a real connection of the case to Italy, we would like to make use of another CJEU's ruling. This is the case of “eDate Advertising and Others”<sup>33</sup> as this judgment establishes the principle that in cases of alleged infringement of personality rights through internet publications, the claimant may bring an action in the Member State where they have their “center of interests”. For Ms. Saro, Italy represents this center of interests, where the repercussions of the videos, both reputational and contractual, would have the most significant impact as it is where Giulia and Ms Marchetti are domiciled and where Ms. Saro could claim entirely for the damages that have presumably occurred.

Secondly, we present the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. This General Data Protection Regulation (onwards, GDPR) is the principal data protection legislation in Italy (and the EU) which intends to increase the harmonisation of data protection law across the EU Member States.

The GDPR, as an EU-wide legal instrument, sets forth the rights of individuals over their personal data, including the right to removal, commonly referred to as the “right to be forgotten”<sup>34</sup>. This right allows individuals to request the deletion of their personal data under certain circumstances, such as when the data is no longer necessary for the original purposes it was collected for, or when the individual withdraws consent.

In Italy, the legislative decree known as the “Codice in materia di protezione dei dati personali” (Legislative Decree No. 196/2003) provides the national legal basis for data protection and privacy. This includes the application of the GDPR's principles, such as the right to withdraw within the Italian jurisdiction. Therefore, the GDPR empowers individuals with the right to have their data erased under specific conditions, and this right is operationalized within Italy through its national data protection laws.

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<sup>33</sup> Judgment of the Court of Justice (Grand Chamber) of 25 October 2011. eDate Advertising GmbH and others v. Société MGN LIMITED. C-509/09. ECLI:EU:C:2011:685

<sup>34</sup> GDPR, Article 17.

These CJEU judgments directly support our argument that the Italian court is not only competent to hear the case but also to order provisional measures like the removal of the videos in question, aligning with Article 35 of the Brussels I Bis Regulation. The essence of the eDate Advertising decision allows us to argue that the localized impact of global internet publications justifies jurisdiction based on the center of interests, providing a coherent legal basis for asserting Italian jurisdiction over the entirety of the alleged damages.

Therefore, it's within the scope of Italian jurisdiction to adjudicate this matter and potentially order the removal of the contentious videos from MyStream to mitigate the alleged damages to Ms. Saro, grounded on the violations of her personality and contractual rights as observed within the Italian legal and regulatory context.

## **10.2 Jurisdiction to issue an interim order:**

The District Court of Ljubljana does not hold international jurisdiction to issue an interim order pending the final judgment. Firstly, there is no demonstrated urgency in the matter. It is crucial to note that Ms. Saro never explicitly objected to appearing in the videos posted by Giulia. This lack of immediate objection suggests that the alleged harm is not irreparable. Jurisprudence from the CJEU, particularly in cases such as “Reichert v. Dresdner Bank”, underscores that for interim measures to be justified, there must be a clear and immediate need to prevent irreparable harm. In this case, the absence of such urgency undermines the grounds for issuing an interim order.

Secondly, the principle of freedom of expression must be upheld. Giulia's right to express herself through her videos is protected under Article 11 of the Charter of Fundamental Rights of the EU and Article 10 of the European Convention on Human Rights. Restricting her ability to post videos without a compelling and urgent reason would violate her rights to free speech. The European Court of Human Rights has consistently ruled that any restriction on freedom of expression must be necessary in a democratic society and proportionate to the legitimate aim pursued like illustrated on the “Delfi AS v. Estonia”<sup>35</sup> case. In this instance, the alleged economic impact on Ms. Saro does not justify such a severe restriction on Giulia’s freedom of expression.

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<sup>35</sup> Judgment of 10 October 2023. Delfi AS v Estonia. 64569/09.

Furthermore, the economic impact on Ms. Saro is minimal and proportional. While Ms. Saro claims financial losses due to the breach of her sponsorship contract, the scale of this economic harm must be carefully evaluated. The Court should consider whether the removal of the videos is a proportionate response to the alleged damage. In the “eDate Advertising and Others case”, the CJEU emphasized the need for proportionality in assessing the impact of internet publications on personal rights. Here, the potential financial repercussions for Ms. Saro are not so severe as to warrant an immediate and interim removal of the videos, especially when balanced against Giulia's right to free expression.

Moreover, according to Article 35 of the Brussels I Bis Regulation, while courts can order provisional measures, these must be grounded in the law of the Member State where the measures are being sought, and there must be a real connection to the territory of that Member State. In this case, the stronger connection to Italy, as discussed previously, means that the Slovenian court lacks the appropriate jurisdiction to issue such interim measures.

In conclusion, the District Court of Ljubljana should refrain from issuing an interim order pending the final judgment due to the lack of urgency, the need to respect Giulia's freedom of expression, and the disproportionate nature of the economic impact claimed by Ms. Saro. The legal principles established by the CJEU and the requirements under the Brussels I Bis Regulation support the argument that the jurisdiction for such provisional measures lies with the Italian court, not the Slovenian court.

#### **11. Does the court have international jurisdiction to hear the case over the nullity or termination of the contract between Giulia and MyStream Europe?**

The District Court of Ljubljana does not hold international jurisdiction to hear the case over the nullity or termination of the contract between Giulia and MyStream Europe; founding the base of our arguments firmly in the provisions of the Brussels I Bis Regulation, the Charter of Fundamental Rights of the EU and the Convention on the Rights of the Child.

To determine the court’s international jurisdiction over the nullity or termination of the contract between Giulia and MyStream Europe, we must first assess whether Mr. Zupancic was exercising his parental responsibility when his daughter signed the contract without his

approval. This is crucial for evaluating the validity of the jurisdiction clause favouring Wake County.

When the contract was signed in March 2022, Giulia was living with her mother, Ms. Marchetti, in Slovenia. The parents had agreed upon their separation in 2015 that Giulia would live with her mother, who has taken primary responsibility for Giulia's care and upbringing.

For over 21 months, Mr. Zupančič did not object to Giulia's contractual relationship with MyStream. He was aware of her activities, including her production of more than 50 videos featuring his current wife, Ms. Saro. This indicates that he tacitly accepted and even encouraged Giulia's contractual engagement with MyStream. Under Slovenian law, parental responsibility is shared, meaning Mr. Zupančič had the opportunity to object at any time but chose not to. This tacit consent supports our argument that the contract was validly entered into with the approval of both parents.

In February 2023, when Giulia and her mother moved to Trieste, Italy, Ms. Marchetti continued to exercise her parental responsibility in accordance with Italian law. Unmarried parents in Italy do not automatically acquire joint parental responsibility by operation of law, but Ms. Marchetti's actions demonstrate her ongoing commitment to Giulia's well-being, including supporting her contractual relationship with MyStream.

Given that both parents were effectively exercising their parental responsibilities and had tacitly or explicitly agreed to the terms of the contract, the contract between Giulia and MyStream Europe is valid. Therefore, the jurisdiction clause favouring the courts of Wake County is to be upheld as valid and enforceable.

Brussels I Bis Regulation is applicable to the present case as its material, temporal and spatial scopes are met.

Firstly, article 1.1 states that the "Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal". The claims at issue should be qualified as contractual as the relationship between the claimants and the defendants is contractual. Therefore, the material scope is met as the requirements of article 1 are satisfied and the case

does not fall under the exceptions of article 1.2 of the Regulation, as this is a case of contractual commercial claims.

Secondly, regarding the temporal scope, according to article 81 the Brussels I Bis Regulation came into force on the 10th of January 2015. Moreover, article 66 specifies that the Regulation shall apply to legal proceedings instituted on or after 10 January 2015. In this instance, the lawsuit was filed well after this date in November 2023, making the temporal scope of the Regulation fully met.

Thirdly, on the spatial scope, we must refer to articles 4, 5 and 6 of the Regulation which clarify that the domicile of the defendant in the EU is a condition for the effective application of the present Regulation. In the case at hand, the defendants are domiciled in Italy and Estonia, being both Member States, so the spatial scope is met and the Regulation is applicable.

We direct the Court's attention firstly to article 3 of the Convention on the Rights of the Child (onwards, CRC). The present Convention is a guiding principle for interpreting international rights of children<sup>36</sup> and its article 3 presents the concept of best interest of the child and reads as follows: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

Article 3 CRC forms the base of article 24 of the Charter of Fundamental Rights of the EU (onwards, Charter)<sup>37</sup>, being its paragraph 2 worded as follows: "In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration". This way, we consider that the maintenance of the contract between Giulia and MyStream Europe is not only legally valid but also serves the best interests of the child. This contract has provided Giulia with an unprecedented opportunity to engage in a creative effort, which has not only been financially rewarding but also allowed her to express herself and gain social recognition despite her neurodevelopmental challenges. This approach not only protects Giulia's rights but also supports her ongoing personal development and well-being.

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<sup>36</sup> Van Bueren, G. (1998). *The International Law on the Rights of the Child*. Fordham International Law Journal, 19 (2).

<sup>37</sup> Explanations relating to the Charter of Fundamental Rights (2007/C 303/02). Official Journal of the European Union.

Secondly, we direct the Court’s attention to article 25 of the Brussels I Bis Regulation that reads as follows: “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”.

As we can see, this provision essentially allows parties to agree to the jurisdiction of a specific court within a Member State of the EU for resolving disputes arising from their legal relationship. In the contract between Gialia and MyStream, the jurisdiction clause favors the courts of Wake County, North Carolina, USA, which falls outside the jurisdictional scope of the Brussels I Bis Regulation since it does not pertain to a Member State court.

However, Brussels I Bis Regulation does not directly invalidate this type of clauses agreeing to a jurisdiction outside of a Member State and therefore article 25 should not be interpreted as automatically nullifying jurisdiction agreements favouring non-EU courts. So, Brussels I Bis Regulation facilitates jurisdiction agreements within the EU, but it does not expressly forbid the selection of non-EU jurisdictions in contractual agreements. Hence, the clause should not be deemed null and void solely based on its international scope, especially considering the global nature of digital platforms like MyStream.

Moreover, article 25.2 establishes the formal requirements when the parties agree on a court: “Any communication by electronic means which provides a durable record of the agreement shall be equivalent to ‘writing’”. The formal scope of the jurisdiction clause is also supported by CJEU case law in the judgment “*Tilman v. Unilever*”<sup>38</sup>, where it is stated that a jurisdiction clause is valid if it is included in the general terms and conditions accessible via a hyperlink before the contract is signed. The contract between Giulia and MyStream meets these electronic formal requirements, making the jurisdiction clause formally correct and valid.

Furthermore, article 25.5 states as follows: “An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

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<sup>38</sup> Judgment of the Court of Justice (Seventh Chamber) of 24 November 2022. *Tilman SA v Unilever Supply Chain Company AG*. C-358/21. ECLI:EU:C:2022:923

The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid". Given this legal framework, the attempt by Mr. Zupančič to invalidate the contract between Giulia and MyStream Europe does not undermine the enforceability of the jurisdiction clause within said contract. This is because the provision articulates a crucial principle: the jurisdiction agreement is to be treated as a distinct entity, separate from the other terms of the contract. Consequently, the enforceability of the jurisdiction clause remains unaffected, even if the main contract is deemed void or is subject to termination.

In conclusion, based on the Brussels I Bis Regulation, the Charter of Fundamental Rights of the EU, the Convention on the Rights of the Child, and relevant CJEU jurisprudence, this Court does not have international jurisdiction to hear the case over the nullity or termination of the contract between Giulia and MyStream Europe. The jurisdiction clause in favour of Wake County is valid and enforceable, and maintaining Giulia's contractual relationship with MyStream serves her best interests.

## **12. What is the applicable law to the validity or the termination of the contract?**

Your Honor, as previously mentioned, the jurisdiction clause designating Wake County courts is valid. Consequently, this validity means that Wake County courts have international jurisdiction to hear the case and, therefore, the clause designating the law of North Carolina as the applicable law is legitimate.

As the legal representatives of the Defendants, we firmly assert that the applicable law governing the validity or termination of the contract in question is the law of North Carolina. This position is grounded in the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (onwards, Rome I Regulation).

The Rome I Regulation provides a clear and structured framework for determining the applicable law in cases involving contractual obligations that reach multiple jurisdictions within civil and commercial matters. The material, temporal, and spatial scopes of the Rome I Regulation are met, therefore it applies to the present case and the law of North Carolina emerges from the text as the applicable law.

Firstly, concerning the material scope of the Rome I Regulation, article 1 states that the Regulation shall apply to contractual obligations in civil and commercial matters involving a conflict of laws. The excluded matters listed in article 1.2 do not surround the case at hand, as the contractual obligations between Giulia and MyStream Europe clearly fall within civil and commercial matters. This unequivocally establishes that the material scope of Rome I Regulation is met.

Regarding the temporal scope, according to article 29 the Rome I Regulation came into force on 17 December 2009. Moreover, article 28 specifies that the Regulation shall apply to contracts concluded after 17 December 2009. In this instance, the partnership agreement between Giulia and MyStream Europe was entered into well after this date in March 2022, making the temporal scope of the Regulation fully met.

On the spatial scope, the Rome I Regulation applies and the scope is met as Slovenia is subject to the Regulation for being a Member State.

Focusing on Article 3 of the Rome I Regulation, we emphasize that it explicitly promotes the principle of party autonomy in contractual obligations. Article 3.1 states that “a contract shall be governed by the law chosen by the parties.” This article underscores the fundamental right of parties to freely determine the applicable law to their contractual relationship.

In the present case, both Giulia, through her legal guardian, and MyStream Europe have expressly chosen the law of North Carolina to govern their partnership agreement. The contract includes a clear and unequivocal choice of law clause in favour of North Carolina law. This choice was made freely and is in full compliance with the Rome I Regulation's provisions.

Furthermore, Rome I Regulation stipulates that the choice of law must be “expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.” In this case, the choice of law is explicitly stated within the contract terms, leaving no ambiguity regarding the parties' intentions.



Your Honor, to further substantiate our argument, we draw your attention to the relevant CJEU case law “Ingmar GB Ltd v Eaton Leonard Technologies Inc”<sup>39</sup>. This case is instrumental in illustrating the principle of party autonomy and the enforcement of choice of law clauses within the European Union's jurisdictional framework.

This case law reaffirms the principle that parties to a contract are generally free to choose the applicable law, as long as this choice does not undermine mandatory provisions of EU law. This principle is stipulated in Article 3 of the Rome I Regulation, which allows for the application of a chosen law unless overridden by mandatory rules of the forum state that are of particular significance.

Applying this case law to our case, we can deduce that the principle established in “Ingmar” emphasizes that the parties’ autonomy in choosing the applicable law is to be respected, like Giulia and MyStream Europe explicitly chose North Carolina law to govern their contract. The partnership agreement between Giulia and MyStream Europe does not contravene any mandatory EU law provisions that would necessitate overriding the chosen law of North Carolina. The contract was properly signed with the necessary parental consent and upholding the choice of law clause promotes legal certainty and predictability, which are fundamental principles underlying the Rome I Regulation. By recognizing the validity of the North Carolina choice of law clause, the court will be respecting the parties’ legitimate expectations and their freedom to structure their contractual relations as they see fit.

In conclusion, Your Honor, the Rome I Regulation clearly applies to this case, and Article 3 affirms the parties' autonomy to choose the governing law. Giulia and MyStream Europe explicitly chose North Carolina law for their contract, a choice that is valid and binding. We respectfully request the court to uphold North Carolina law as the applicable law for the validity and termination of the contract, in accordance with the parties’ clear intentions.

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<sup>39</sup> Judgment of the Court of Justice (Fifth Chamber) of 9 November 2000. Ingmar GB Ltd v Eaton Leonard Technologies Inc. C-381/98. ECLI:EU:C:2000:605.

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