

EUROPEAN UNION / JUDGMENT

IU v BT

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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

24 September 2026 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in civil matters – Law applicable to contractual obligations – Regulation (EC) No 593/2008 (Rome I) – Law applicable to non-contractual obligations – Regulation (EC) No 864/2007 (Rome II) – Non-contractual obligation arising from an infringement, by a third party, of a person's alleged exclusive rights to use works protected by copyright – Challenge by the defendant to the formal validity of the assignment contract between the assignee of those rights and the author – Whether that issue is a contractual matter)

In Case C-176/25 [Steizer], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), made by decision of 24 February 2025, received at the Court on 4 March 2025, in the proceedings

IU

v

BT,

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei (Rapporteur), S. Rodin, N. Piçarra and N. Fenger, Judges,

Advocate General: N. Emiliou,

Registrar: E. Sartori, Administrator,

having regard to the written procedure and further to the hearing on 15 January 2026,

after considering the observations submitted on behalf of:

– IU, by Ch. Klostermann, Rechtsanwalt,

– BT, by G. Hebrant and M. Schork, Rechtsanwältinnen,
– the European Commission, by S. Noë and L. Wildpanner, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 23 April 2026,
gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(1) of 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) (OJ 2007 L 199, p. 40) ('the Rome II Regulation'), and of Articles 4 and 11 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 (Rome I) (OJ 2008 L 177, p. 6) ('the Rome I Regulation').

2 The request has been made in proceedings between IU and BT concerning IU's alleged infringement of exclusive rights of use in respect of photographs which BT relies on under an assignment contract concluded with the author of those photographs.

Legal context

International law

The Berne Convention

3 Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, signed in Berne on 9 September 1886 (Paris Act of 24 July 1971), in the version arising from the amendment of 28 September 1979 ('the Berne Convention'), provides that:

'The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain ... such as ... photographic works to which are assimilated works expressed by a process analogous to photography ...'

4 Article 5 of that convention provides:

'(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union [established by this Convention] other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

- (3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he [or she] is protected under this Convention, he [or she] shall enjoy in that country the same rights as national authors.

...'

5 Article 6 bis (1) of the Berne Convention is worded as follows:

'Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.'

6 According to Article 9(1) of that convention:

'Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner or form.'

The TRIPS Agreement

7 The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994 (OJ L 336, p. 214) ('the TRIPS Agreement') constitutes Annex 1C to the Agreement establishing the World Trade Organization (WTO), which was signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC (of 22 December 1994) concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

8 Article 9 of the TRIPS Agreement, entitled 'Relation to the Berne Convention', provides, in paragraph 1 thereof:

'Members shall comply with Articles 1 through 21 of the Berne Convention ... and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6 bis of that Convention or of the rights derived therefrom.'

WIPO Copyright Treaty

9 The WIPO Copyright Treaty, adopted by the World Intellectual Property Organization in Geneva on 20 December 1996, was approved on behalf of the European Community by Council Decision 2000/278/EC of 16 March 2000 (OJ 2000 L 89, p. 6).

10 Article 1 of that treaty, entitled 'Relation to the Berne Convention', provides, in paragraph 4 thereof:

'Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.'

European Union law

The Brussels I Regulation

11 Article 5 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) ('the Brussels I Regulation') provided:

'A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

...'

12 The Brussels I Regulation was repealed and replaced, with effect from 10 January 2015, by 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 (OJ 2012 L 351, p. 1) ('the Brussels I bis Regulation'). Article 7(1)(a) and (2) of that regulation, which corresponds, in essence, to Article 5(1)(a) and (3) of the Brussels I Regulation, provides:

'A person domiciled in a Member State may be sued in another Member State:

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

...

- (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

...'

The Rome II Regulation

13 Recitals 7 and 26 of the Rome II Regulation state:

'(7) The substantive scope and the provisions of this Regulation should be consistent with [the Brussels I Regulation] and the instruments dealing with the law applicable to contractual obligations.

...

(26) Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of this Regulation, the term “intellectual property rights” should be interpreted as meaning, for instance, copyright, related rights, the *sui generis* right for the protection of databases and industrial property rights.’

14 Article 1(1) of the Rome II Regulation defines the scope of that regulation as follows:

‘This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).’

15 Article 2 of that regulation, entitled ‘Non-contractual obligations’, provides, in paragraph 1 thereof:

‘For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo* .’

16 Article 8 of the Rome II Regulation, entitled ‘Infringement of intellectual property rights’, provides, in paragraph 1 thereof:

‘The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.’

17 Article 27 of the Rome II Regulation governs the relationship between that regulation and other provisions of EU law, while Article 28 thereof governs the relationship with international conventions.

The Rome I Regulation

18 Recitals 6, 7 and 16 of the Rome I Regulation state:

‘(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with [the Brussels I Regulation] and [the Rome II Regulation].

...

(16) To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of-law rules should be highly foreseeable. The courts should, however, retain a degree of discretion to determine the law that is most closely connected to the situation.’

19 As set out in Article 1(1) of the Rome I Regulation:

‘This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

It shall not apply, in particular, to revenue, customs or administrative matters.’

20 Article 3 of that regulation, entitled ‘Freedom of choice’, states, in paragraph 1 thereof:

‘A contract shall be governed by the law chosen by the parties. ...’

21 Article 4 of that regulation, entitled ‘Applicable law in the absence of choice’, provides:

‘1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

...

- (b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;

...

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.
3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.
4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.’

22 Article 11 of the Rome I Regulation, entitled ‘Formal validity’, provides, in paragraphs 1 and 2 thereof:

‘1. A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.

2. A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.’

23 Entitled ‘Scope of the law applicable’, Article 12 of that regulation provides, in point (e) of paragraph 1 thereof:

‘The law applicable to a contract by virtue of this Regulation shall govern in particular:

...

(e) the consequences of nullity of the contract.’

24 Article 23 of the Rome I Regulation governs the relationship between that regulation and other provisions of EU law, while Article 25 thereof governs the relationship with existing international conventions.

German law

25 Paragraph 72 of the Gesetz über Urheberrecht und verwandte Schutzrechte – Urheberrechtsgesetz (Law on Copyright and Related Rights) of 9 September 1965 (BGBl. 1965 I, p. 1273), in the version applicable to the dispute in the main proceedings (‘the UrhG’), provides, in subparagraph 2 thereof, that the right related to the protection of photographs lies with the photographer.

26 Paragraph 97(1) of the UrhG provides that, in the event of an unlawful infringement of copyright or any other right protected under that law, the injured party may apply for an injunction for the immediate cessation of the infringement and, where there is a risk of recurrence, for an injunction prohibiting any further commission thereof.

The dispute in the main proceedings and the questions referred for a preliminary ruling

27 In Cottbus (Germany), BT distributes accessories for motor vehicles, including floor mats, through the internet, in particular through the online sales platform eBay.

28 On several occasions between April 2014 and April 2018, on the basis of oral agreements, BT hired a professional photographer to take photographs of those floor mats, to be used as pictures for her online listings. The photographer is a Polish national who runs a photography studio in Dąbrowa Górnicza (Poland). After each photography session in his studio in Poland, the photographer gave BT’s husband, on the same day, a USB stick containing the relevant photo files. No written agreement was concluded by the parties regarding the use of the photographs thus taken or the assignment to BT of rights of use in respect of those photographs. Nor did they conclude any agreement regarding the law applicable to the services supplied by the photographer and the assignment of those rights of use.

29 In February and March 2018, IU published, on the online sales platform eBay, sales listings displaying floor mats for cars which featured some of the photographs taken for BT. BT took the view that the publication of those photographs by IU constituted an infringement of the exclusive rights of use she considered she held over those photographs and thus brought an action before the German courts seeking, inter alia, the immediate cessation of the alleged infringement.

30 The German court of first instance upheld that action. It held that the photographs in question were protected by copyright under Paragraph 72 of the UrhG, that the photographer had validly assigned the exclusive rights to use the photographs to BT and that IU had infringed those rights by making the photographs available to the public without BT's consent. On the basis of Paragraph 97(1) of the UrhG, that court, inter alia, ordered IU to bring the infringing conduct to an end.

31 IU brought an appeal against that judgment before the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), which is the referring court. She submits that the question whether the assignment contract between BT and the photographer is formally valid is governed by Polish law, which is the law applicable to the contract, pursuant to Article 4(2), read in conjunction with Article 11(1), of the Rome I Regulation. In that regard, IU draws attention to the fact that both the conclusion of the contract and the services which characterise it, namely the taking of photographs and the subsequent assignment of the rights of use, took place in a photography studio located in Poland. IU also submits that Polish law requires that the assignment of exclusive rights of use in respect of works such as photographs be in writing. Since that requirement was not met, she submits that the rights at issue were not validly assigned to BT, who therefore has no standing to bring proceedings, with the result that the first-instance judgment requires alteration.

32 Conversely, BT is of the view that the law governing the formal validity of the assignment contract is to be determined not on the basis of the provisions of the Rome I Regulation, but in accordance with Article 8(1) of the Rome II Regulation, pursuant to which the law applicable to a non-contractual obligation arising from an infringement of an intellectual property right is the law of the country for which protection is claimed (*lex loci protectionis*). In the context of an assignment contract such as that at issue in the main proceedings, the law applicable to the contract governs only the act giving rise to obligations, whereas the *lex loci protectionis* governs the act of disposal of proprietary rights. Since the infringement of the intellectual property rights that BT relies on took place in Germany and the protection she claims in respect of the rights to use the photographs at issue in the main proceedings concerns the German territory, the assignment contract, she submits, is governed by German law under the principle of *lex loci protectionis* . Under German law, the assignment of exclusive rights to use photographs is not subject to any formal requirement in order to be valid and may be done, inter alia, through an oral agreement.

33 The referring court notes that the parties to the main proceedings have opposing views as to which law applies to the formal validity of the assignment agreement. It seeks to determine, in essence, whether that validity must be examined in relation to the law applicable to the contract – determined in accordance with the Rome I Regulation – or in relation to the law of the country for which protection is claimed – pursuant to Article 8(1) of the Rome II Regulation.

34 In those circumstances, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 8(1) of the Rome II Regulation to be interpreted as meaning that the law of the State for which protection is claimed also applies to the question of the (formal) validity of the assignment of exclusive rights to use photographs from the author to the assignee?

(2) If Question 1 is answered in the negative, is the question of the (formal) validity of the assignment of exclusive rights to use photographs from the author to the assignee governed by the *lex loci contractus* and, consequently, are Articles 4 and 11 of [the Rome I Regulation] applicable?’

The questions referred

35 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether the Rome I and Rome II Regulations must be interpreted as meaning that, in an action for infringement by a third party of a person’s alleged exclusive rights to use a work protected by copyright, the issue of the formal validity of the assignment contract concluded between that person and the author of the work as the assignor of those rights must be regarded as a contractual matter or, on the contrary, as a non-contractual matter, with the result that the law applicable to that issue must be determined in accordance with the rules provided for in the Rome I Regulation, in the former case, or in the Rome II Regulation, in the latter.

36 In that regard, it should be stated that, as is clear from Article 1 thereof, the Rome I and Rome II Regulations have harmonised the conflict-of-law rules on the applicable laws in civil and commercial matters relating to contractual obligations and non-contractual obligations respectively. The law applicable to those two categories of obligations must be determined by means of one or other of those regulations, without prejudice to the rules referred to in Articles 23 and 25 of the Rome I Regulation and Articles 27 and 28 of the Rome II Regulation (judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 37).

37 As regards the respective scopes of the Rome I and Rome II Regulations, the definitions of ‘contractual obligation’ and ‘non-contractual obligation’ set out therein must be interpreted independently, by reference to their scheme and purpose. As is clear from recital 7 of each of those regulations, account should be taken not only of the aim of consistency in the reciprocal application of those regulations, but also in the application of the Brussels I Regulation which draws a distinction, in Article 5 thereof, between matters relating to contract and matters relating

to tort, delict and quasi-delict (see, to that effect, judgment of 21 January 2016, ERGO Insurance and Gjensidige Baltic , C-359/14 and C-475/14, EU:C:2016:40, paragraph 43 and the case-law cited). In so far as the Brussels I Regulation was repealed and replaced by the Brussels I bis Regulation, that objective of ensuring consistency also applies to the Brussels I bis Regulation (judgment of 20 October 2022, ROI Land Investments , C-604/20, EU:C:2022:807, paragraph 50 and the case-law cited).

38 It is clear from the case-law of the Court on the Brussels I bis Regulation that only a legal obligation freely consented to by one person towards another and on which the claimant's action is based is a 'matter relating to a contract' within the meaning of Article 7(1)(a) thereof (see, to that effect, judgment of 8 May 2019, Kerr , C-25/18, EU:C:2019:376, paragraph 25). By analogy, and in accordance with the aim of consistency referred to in the preceding paragraph, the concept of 'contractual obligation' within the meaning of Article 1 of the Rome I Regulation designates a legal obligation freely consented to by one person towards another (see, to that effect, judgment of 21 January 2016, ERGO Insurance and Gjensidige Baltic , C-359/14 and C-475/14, EU:C:2016:40, paragraph 44 and the case-law cited).

39 As regards the concept of 'non-contractual obligation', within the meaning of Article 1 of the Rome II Regulation, it must be recalled that the concept of 'matters relating to tort, delict and quasi-delict', within the meaning of Article 7(2) of the Brussels I bis Regulation, covers all actions which seek to establish the liability of a defendant and do not concern 'matters relating to a contract' within the meaning of Article 7(1)(a) of that regulation (judgment of 4 June 2026, TERVE Production , C-791/24, EU:C:2026:444, paragraph 37 and the case-law cited). Furthermore, it must be observed, as appears from Article 2 of the Rome II Regulation, that that regulation applies to obligations ensuing from damage, that is to say, any consequence arising out of tort/delict, unjust enrichment, negotiorum gestio or culpa in contrahendo (judgment of 21 January 2016, ERGO Insurance and Gjensidige Baltic , C-359/14 and C-475/14, EU:C:2016:40, paragraph 45).

40 In the light of the above, 'non-contractual obligation', within the meaning of the Rome II Regulation, must be understood as meaning an obligation which derives from one of the events listed in Article 2 of that regulation (judgment of 21 January 2016, ERGO Insurance and Gjensidige Baltic , C-359/14 and C-475/14, EU:C:2016:40, paragraph 46).

41 In the present case, as is apparent from the order for reference, BT claims to be the holder of exclusive rights of use which were assigned to her, on the basis of successive verbal agreements, by the author of works protected by copyright, namely photographs, so as to enable her to use those photographs for the purposes of her online sales activities in Germany. It is also apparent from the order for reference that, on that basis, BT brought an action against a third party, IU, who allegedly used the same photographs for her own online sales activities in Germany.

42 Such an action brought by a party who considers him- or herself to be the assignee of exclusive rights of use over a work protected by copyright, since it seeks to establish the liability of a defendant arising from that defendant's use of the works concerned without the assignee's consent, must be regarded as relating to a non-contractual obligation. Such use constitutes tort/delict, within the meaning of Article 2 of the Rome II Regulation.

43 Since, in accordance with recital 26 thereof, copyright is one of the intellectual property rights covered by the Rome II Regulation, it should be noted that, pursuant to Article 8(1) of that regulation, the law applicable to a non-contractual obligation arising from an infringement of exclusive rights of use over a work protected by copyright is the law of the country for which protection is claimed, in other words, the *lex loci protectionis*.

44 That being so, in the case in the main proceedings the referring court is also called upon to rule on the issue of the formal validity of the contract assigning the exclusive rights of use allegedly infringed. That court is therefore uncertain whether, in that context, that issue is also governed by the *lex loci protectionis* – as the law governing the non-contractual obligation arising from the alleged infringement of those rights – or, if that is not the case, by the law applicable to the contract pursuant to the provisions of the Rome I Regulation.

45 As the Advocate General stated in points 52 and 53 of his Opinion, that issue of the formal validity of the contract assigning exclusive rights of use is independent of and distinct from the liability in tort, delict or quasi-delict of the person who allegedly infringed those rights. That issue therefore cannot relate to non-contractual matters, with the result that the law applicable to the formal validity of a contract assigning exclusive rights of use must not be determined in the light of the Rome II Regulation.

46 The issue of the formal validity of such a contract is a contractual matter within the meaning of the Rome I Regulation. As the Advocate General observes in points 58 to 61 of his Opinion and as is apparent in essence from the Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris I (OJ 1980 C 282, p. 1), which was replaced, as for the Member States, by the Rome I Regulation, the requirements as to form are in principle designed, irrespective of the subject matter of the contract and the party alleging their infringement, to set out, in the interest of legal certainty and the protection of parties, the expression of the parties' will to be bound by a legal obligation freely consented to, that is to say, in accordance with the case-law referred to in paragraph 38 of the present judgment, by a contractual obligation, within the meaning of the Rome I Regulation.

47 In addition, that interpretation is in keeping with the objective pursued by the Rome I Regulation which, as is apparent from recitals 6 and 16 thereof, seeks, *inter alia*, to ensure legal certainty in the European judicial area through highly foreseeable conflict-of-law rules (judgment of 4 December 2025, *Liechtensteinische Landesbank*, C-279/24, EU:C:2025:942, paragraph 33 and the case-law cited). As the Advocate General observed in essence in point 68 of his Opinion, treating the formal validity of a contract assigning exclusive rights of use as a

contractual matter grants the assignor and the assignee certainty as to the validity of their contract and the effectiveness of that assignment provided that that contract meets the requirements established by the applicable law under the Rome I Regulation, even if the exclusive rights of use assigned are enforceable in a number of Member States, a circumstance which, in the event of an infringement taking place in more than one of those States, may lead to the application of multiple national laws under the principle of the *lex loci protectionis* provided for in Article 8(1) of the Rome II Regulation. Treating that formal validity as a contractual matter thus provides legal certainty and a degree of predictability which it would not be possible to achieve were that aspect treated as a non-contractual matter.

48 The European Commission, however, stated in its written observations and at the hearing that, in a case such as that in the main proceedings, challenging the formal validity of the assignment contract amounts to calling into question the relevant party's status as an assignee and, consequently, as the holder of the rights of exclusive use assigned to him or her by the author. In those circumstances, the Commission submits that, since the requirement as to form is connected to it, the issue of whether the assignee is the holder of those rights – which is separate from the issue of the validity of the contract – should be regarded as related to proprietary rights or copyright and not as a contractual matter.

49 Nevertheless, as the Advocate General explained, in essence, in points 56, 57 and 65 of his Opinion, the issue of the formal validity of a contract assigning exclusive rights of use over a work protected by copyright, although closely related to the issue of whether the assignee holds those rights, is not a matter relating to the substance itself of the copyright or its intrinsic characteristics, nor is it a matter relating to the right of ownership over the protected work, with the result that it cannot be regarded as being related to proprietary rights or copyright.

50 That issue does not concern any aspects of copyright or the holding thereof, such as the classification of a work as protected, authorship of the work or of the content and the extent of copyright protection, which are referred to in Articles 2, 5, 6 bis and 9 of the Berne Convention, which the European Union is required to comply with under Article 1(4) of the WIPO Copyright Treaty and/or Article 9 of the TRIPS Agreement (see, to that effect, judgment of 24 October 2024, *Kwantum Nederland and Kwantum België*, C-227/23, EU:C:2024:914, paragraph 40 and the case-law cited).

51 It follows that where a third party such as IU challenges the validity of the assignment contract in respect of a formal requirement, that party is not calling into question aspects pertaining to proprietary rights or to copyright as such but rather the very existence of a contractual relationship between the assignee and the author.

52 The fact that contracts assigning exclusive rights of use over a work protected by copyright may be subject to different formal requirements as compared with other types of assignment contracts is not capable of calling that distinction into question. Even if the formal requirement is imposed in connection with copyright as such or is part of a rule of national law governing copyright, this does not alter its main function which is, as is apparent from paragraph 46 of the

present judgment, to guarantee the informed expression of the parties' will to be bound by a contractual obligation.

53 The interpretation according to which the issue of the formal validity of a contract assigning exclusive rights of use must be regarded as being a contractual matter and not a matter related to proprietary rights or copyright, even though it may have consequences as regards the transfer or ownership of those rights, is supported by Article 12 of the Rome I Regulation, which provides that the law applicable to a contract by virtue of that regulation is to govern, *inter alia*, the consequences of nullity of the contract. Thus, it is the law applicable to the contract which determines whether or not the assignee of a formally invalid contract must be considered to be the holder of the rights concerned, since that question is a consequence of the primary issue of the formal validity of the contract.

54 Lastly, to treat the issue of the formal validity of a contract such as that at issue in the main proceedings as a contractual matter in no way interferes with the principle of territoriality, reflected in Article 5(1) to (3) of the Berne Convention, according to which copyright is protected by the national laws of each Member State (judgment of 3 October 2013, *Pinckney*, C-170/12, EU:C:2013:635, paragraph 39). The fact that the formal validity of such a contract must be assessed in the light of the law applicable to the contract pursuant to the rules established by the Rome I Regulation does not prevent those national laws from continuing to apply to the protection of copyright.

55 In the same vein, nor does that treatment prevent the application of the rules provided for by the Rome II Regulation concerning the law applicable to non-contractual obligations. In particular, as is apparent from paragraph 42 above, if the referring court were to find, at the end of its analysis, that the assignment contract at issue in the main proceedings is formally valid in the light of the law applicable to that contract or that BT may be regarded as holding the exclusive rights of use concerned in Germany, the infringement of those rights would need to be assessed in the light of the law established by Article 8(1) of the Rome II Regulation.

56 In the light of the foregoing, the answer to the questions referred is that the Rome I and Rome II Regulations must be interpreted as meaning that, in an action for infringement by a third party of a person's alleged exclusive rights to use a work protected by copyright, the issue of the formal validity of the assignment contract concluded between that person and the author of the work as the assignor of those rights is a contractual matter, with the result that the law applicable to that issue must be determined pursuant to the rules provided for in the Rome I Regulation.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

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) and 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)

must be interpreted as meaning that, in an action for infringement by a third party of a person's alleged exclusive rights to use a work protected by copyright, the issue of the formal validity of the assignment contract concluded between that person and the author of the work as the assignor of those rights is a contractual matter, with the result that the law applicable to that issue must be determined pursuant to the rules provided for in Regulation No 593/2008.

[Signatures]

* Language of the case: German.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

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