DIGNITY KNOWS NO BOUNDS – TRANSNATIONAL DEFAMATION ACTIONS

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Abstract: The scope of international business and technology mean that, increasingly, litigation has a transnational dimension. This article examines some of the main features of the law engaged in transnational defamation actions brought against defendants who are located in the European Union, including Regulation [2015/2012] and the case law of the Court of Justice of the European Union. Recent Irish case law is analysed in the context of jurisdictional issues in what is now commonly referred to as 'libel tourism'.[1]

Introduction

The starting point for the development of common rules governing civil and commercial matters is the Brussels Convention, 1968.[2] The Convention hinged on four main principles: the mutual recognition and enforcement of judgments, the protection of the rights of the defence, the principle of legal certainty and the principle that disputes should be decided upon by the appropriate court. These principles were carried through into Regulation (EC) No. 44/2001 ('the Brussels I Regulation'), which set out the jurisdictional rules applicable to transnational civil and commercial actions in the European Union.[3] The Brussels I Regulation was superseded by Regulation (EU) No. 1215/2012 ('the Recast Regulation'),[4] which currently applies in all Member States.[5]

The preamble to the Brussels Convention emphasises that the Convention was enacted 'to strengthen in the Community the legal protection of persons therein established.'[6] While the Recast Regulation provides for some exceptions, the fundamental principles set out in the Brussels Convention remain unchanged. The purpose of the Regulation is to strengthen the legal protection of persons established in the European Union by enabling a plaintiff to easily identify the court in which he may sue and a well-informed defendant to reasonably foresee in which court he may be sued.[7] In the past few years, American celebrities such as Justin Timberlake, Jessica Biel and more recently, Anthony Robbins, have all sought relief in the

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[1] The term 'libel tourism' was famously coined by Geoffrey Robertson QC to describe the practice of forum shopping in libel actions.

[2] 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters.

[3] Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] L 12/1.

[4] Regulation (EU) 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 [2012] L 351/1.

[5] By letter dated 20 December 2012, Denmark notified the Commission of its decision to implement the contents of Regulation (EU) 1215/2012 (the Recast Regulation). This means that the provisions of Regulation (EU) 1215/2012 are applied to relations between the Union and Denmark.

[6] Article 2 of the 1968 Convention states that 'subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.' It goes on to state that 'persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.'

[7] Case C-800/19 *Mittelbayerischer Verlag KG v SM* [2021] ECLI–489, para 25. See also Case C-337/17 *Feniks Sp. z o.o. v Azteca Products & Services SL* [2018] ECLI–805, para 34.

High Court of Ireland for reputational damage sustained via the medium of the internet.[8] Yet, none of these individuals were domiciled in any EU Member State, nor were any of the defendants in those cases domiciled in Ireland. These are some examples of what appears to be an emerging trend, whereby individuals domiciled outside the EU, have issued proceedings in the Irish courts, seeking damages for transnational defamation. A recent study published by the Council of Europe points out that forum shopping does not necessarily involve abuse of procedural rights, nor malicious intent on the part of the plaintiff. [9] However, the authors commented that the tendency of plaintiffs to actively choose a forum in which to litigate their transnational defamation cases had become more frequent and more inventive relatively recently.[10]

The Recitals

It is worth noting the contents of Recitals 15 and 16 of the Recast Regulation, before proceeding to analyse the special jurisdiction rules. Those Recitals are particularly instructive when conducting an examination as to jurisdiction in transnational defamation actions coming within the scope of the Recast Regulation and they are almost always cited in the judgments of the CJEU. Recital 15 of the Recast Regulation provides that the rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile ('the Domicile Principle'). It goes on to state that jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously in order to make the common rules more transparent and avoid conflicts of jurisdiction. Recital 16 of the Recast Regulation provides that 'in addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action, or in order to facilitate the sound administration of justice.' This is almost identical to the wording in Recital 12 of the Brussels I Regulation. However, recital 16 of the Recast Regulation goes on to state that:

> The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

The references to privacy rights, personality rights and defamation did not appear in the text of the Brussels I Regulation.

Article 4 and the Domicile Principle

The core principle of the Recast Regulation is set out in Article 4, which provides that:

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[8] Kate Beioley, 'BuzzFeed Legal Case Shows Dublin's Draw for Foreign Libel Claimants' *The Irish Times* (December 5 2019) <https://www.irishtimes.com/business/media-and-marketing/buzzfeed-legal-case-shows-dublin-s-draw-for-foreign-libel-claimants-1.4105676> accessed January 26 2022.

[9] Council of Europe, 'Expert Committee on human rights dimensions of automated data processing and different forms of artificial intelligence. Study on forms of liability and jurisdictional issues in the application of civil and administrative defamation laws in Council of Europe member states' (MSI-AUT), DGI(2019)04, 7.

[10] See also Anthony Fitzsimmons, 'Forum Shopping: A Practitioner's Perspective' (2006) 31 The Geneva Papers (2006) 314 – 322 <https://link.springer.com/content/pdf/10.1057%2Fpalgrave.gpp.2510076.pdf> accessed 27 September 2021.

> 1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
> 2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.
> If a defendant is not domiciled in a Member State, domicile is determined in accordance with the applicable national law.[11]

In Ireland, domicile is determined by reference to the European Union (Civil and Commercial Judgments) Regulations 2015. Article 10(1) provides that:

> (a) a person is domiciled in the State or another state (not being a Member State) if he or she is ordinarily resident in the State or that other state,
> (b) a person is domiciled in a place in the State only if he or she is domiciled in the State and is ordinarily resident or carries on any profession, business or occupation in that place, and
> (c) a trust is domiciled in the State only if the law of the State is the system of law with which the trust has its closest and most real connection.
> A company, or other legal person, or association of natural or legal persons, is domiciled at the place in which it has its statutory seat, its central administration, or its principal place of business.[12]

The Special Jurisdiction Rules

Articles 7 – 9 of the Recast Regulation set out the rules whereby a defendant may be sued in a place other than the place of his domicile. These are known as the special jurisdiction rules. Article 7(2) of the Recast Regulation governs jurisdiction in causes of action founded in tort. It provides that a person domiciled in a Member State may be sued in another Member State 'in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.' The meaning of the words 'the place where the harmful event occurred' may be difficult to establish, depending on the nature of the tort. The definition of those words was considered by the CJEU in *Handelskwekerij GJ Bier NV v SA Mines de Potasse d'Alsace* ('*the Bier case*').[13] In that case, the defendant was a French company which discharged effluent into the River Rhine. The effluent poisoned the water used to irrigate the crop of a Dutch market gardener and his crop was destroyed. The Dutch plaintiff issued proceedings in the Dutch courts against the French defendant. The court decided that the place that the harmful event (material damage) had occurred, was in the Netherlands and thus, the Dutch courts had jurisdiction to hear and determine the action. The CJEU agreed and held that both the place where the damage occurred and the place of the event giving rise to the damage were both likely to be competent in terms of jurisdiction. It stated that Article 5(3) of the Brussels I Regulation 'must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it.'[14] This meant that a defendant could be sued, at the option of the plaintiff, in the courts for either of those places.

Applying these Principles to Transnational Defamation Actions

[11] Subject to Article 18(1), Article 21(2) and Articles 24 and 25.
[12] Article 63.
[13] Case C-21/76, [1976] ECR 1735.
[14] Now Article 7(2) of the Recast Regulation.

Shevill v Presse Alliance was the first important judgment of the CJEU relating to jurisdiction in a transnational defamation action governed by the Brussels I Regulation.[15] In that case, the Plaintiff brought a libel action against the French publisher of the newspaper France-Soir.[16] The newspaper had published an article about an operation carried out by drug squad officers from the French police at a bureaux de change operated in Paris by Chequepoint SARL. The article linked the Plaintiff with 'Chequepoint' and the Plaintiff claimed it had suggested that she was part of a drug-trafficking network, which was also involved in money laundering. She issued proceedings in the High Court of England and Wales, seeking damages for libel. The defendant challenged the jurisdiction of the English courts and the House of Lords referred the matter to the Court of Justice for a preliminary ruling.[17] In its judgment, the CJEU extended the *Bier* criteria to include actions for non-material damage, as well as actions relating to material damage. Thus, after *Shevill*, a plaintiff in an EU cross-border defamation action could issue proceedings against the publisher either:

- before the courts of the place where the publisher was domiciled, or
- before the courts where the publication was made and the plaintiff sustained damage to his or her reputation;[18]

A limitation of the *Shevill* test, however, is that it was crafted to deal with 'hard-copy' publication and not the more diffuse circumstances of electronic publication.[19] The CJEU noted that France-Soir was a newspaper with a very small circulation in the United Kingdom, effected through independent distributors. It was estimated that circa 237,000 copies of the issue in question were sold in France, approximately 15,500 copies distributed in the other European countries, of which 230 were sold in England and Wales and only 5 in Yorkshire, where the Plaintiff resided. Thus, tracking the publication and readership was relatively straightforward. The CJEU held that the criteria for assessing whether the event in question is harmful and the evidence required of the existence and extent of the harm were not governed by the Convention, but by the substantive law determined by the national conflict of laws rules of the court seised. Under English law, there was a presumption that the publication of a defamatory statement was harmful to the person defamed without specific proof thereof. The House of Lords subsequently held that this was sufficient to engage the provisions of Article 5(3) of the Convention and the plaintiff could proceed with her action.[20] AG Hogan highlighted a second difficulty with the 'mosaic approach' in *Gtflix Tv v DR* (*the 'Gtflix' case*).[21] In his Opinion, he stated that:

> … the problem posed by the mosaic principle appears to be in reality mostly related to the existence of a risk of judicial harassment. The multiplication of competent jurisdictions creates a fertile ground for strategies of judicial harassment and, in particular, for strategic lawsuits against public participation (SLAPP, recours bâillon in French). Since any lawsuit obliges

[15] Case C-68/93 [1995] ECR I-415.
[16] Fiona Shevill, from Yorkshire, England.
[17] *Shevill v Presse Alliance SA* (Reference to ECJ) [1993] 3 WLUK 8 - 1 March 1993.
[18] Sometimes referred to as the Mosaic approach.
[19] For an examination of the mosaic approach and the difficulties in maintaining this test for internet-related tortious claims, see Case C-194/16 *Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB* [2017] ECLI–554, Opinion of AG Bobek. See also Tereza Kyselovská, 'Critical Analysis of the "Mosaic Principle" Under Art. 7 Para 2 Brussels Ibis Regulation for Disputes Arising out of Non-Contractual Obligations on the Internet' (2019) Prawo Mediów Elektronicznych. Wroclaw: Wydawnictwo C.H.Beck Sp. z o.o., 36-44.
[20] [1996] AC 959, [1996] 3 WLR 420, [1996] 3 All ER 929, [26/07/1996] TLR 1, [1996] 1 AC 959.
[21] Case C-251/20 *Gtflix Tv v DR*, ECLI–745, Opinion of AG Hogan.

> the defendant to devote energy and resources to it, regardless of the merits of the claim, by multiplying legal actions, or simply by threatening them, a person can inflict damage (or, for a company, a competitive disadvantage, by wasting management time and resources) on another.[22]

The advent of the internet has made the determination of jurisdiction in transnational defamation actions more complicated. In *eDate Advertising GmbH v X and Olivier Martinez and Robert Martinez v MGN Limited* (*the 'eDate' case*'),[23] the Advocate General noted that the emergence and development of the internet had caused a profound change in the methods and technologies for distributing and receiving information. The result is that there were now:

> ... many legal categories the conception and scope of which require a reconsideration where they affect social and commercial relationships occurring on the internet. Furthermore, in the present proceedings, those uncertainties arise in the sphere of international jurisdiction, since the replies furnished by the Court's case-law to date may not be adapted to the universal and free nature of the information disseminated on the internet without some qualification, or possibly rather more.[24]

He outlined the need for further refinement of the *Shevill* test and stated that:

> The Shevill judgment was given in the years immediately preceding the expansion of the internet. The circumstances in which the instant cases have arisen are clearly different from what occurred in the case of Fiona Shevill, which impedes the practical application of the solution reached by the Court in 1995. For example, the court identified as having jurisdiction by reference to the place where the holder of personality rights is known may hear an action only in relation to damage which actually occurred in that State. The practical application of this rule was viable at the time when the Shevill judgment was given, having regard, for example, to the number of copies distributed in each Member State, information which was easy to verify because it was part of the commercial policy of the media outlet and was the result of voluntary business decisions. However, as those who participated in the hearing in these proceedings acknowledged, there are no reliable criteria for measuring the degree of distribution of a media outlet as such (or of its content) on the internet. While it is true that the number and origin of 'hits' on a website may be indicative of a particular territorial impact, they are, in any event, sources which do not provide sufficient guarantees for the purposes of establishing conclusively and definitively that unlawful damage has occurred.[25]

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[22] ibid [62]. See also Shane Phelan, 'Cabinet Will Consider Long-Overdue "Anti-SLAPP" Defamation Reform Bill' *Independent* (February 20 2022) <https://www.independent.ie/irish-news/courts/cabinet-will-consider-long-overdue-anti-slapp-defamation-reform-bill-41364426.html> accessed February 20 2022.; and Mark Tighe, 'Ireland Ready to Slapp Laws on Defamation' *The Times* (February 20 2022) <https://www.thetimes.co.uk/article/7663f546-91d8-11ec-ba83-35d92f80c266?shareToken=6c4fe27276d64908c4d3787d82ae4f12> accessed February 20 2022.

[23] Joined Cases C-509/09 and C-161/10, *eDate Advertising GmbH v X and Olivier Martinez and Robert Martinez v MGN Limited*, ECLI–192, Opinion of AG Villalón.

[24] ibid [31].

[25] ibid [50]. Readers will be aware that a Plaintiff suing in the Irish courts bears the burden of proving that damage has occurred to his or her reputation, on the balance of probabilities.

The *eDate case* had been referred to the CJEU by way of two joined cases from the Bundesgerichtshof in Germany and the Tribunal de Grande Instance de Paris (France).[26] One of the cases involved French actor Olivier Martinez and his father, Robert Martinez, who brought an action against the Sunday Mirror, alleging interference with their private lives. The Sunday Mirror had placed a posting on the internet site *www.sundaymirror.co.uk* under the heading 'Kylie Minogue is back with Olivier Martinez' with further details set out in the article. Martinez issued proceedings against Mirror Group Newspapers ('MGN'), the publisher of the website and a corporate entity governed by English law. MGN claimed that the French courts lacked jurisdiction to hear the action. It argued that there was no sufficient connecting link between the act of placing the relevant text and images online and the alleged damage on French territory.

In the second case, X and his brother were sentenced by a German Court, to life imprisonment for the murder of a well-known actor. X was subsequently released on parole in 2008. eDate Advertising was an Austrian based company, which operated an internet portal with a section dedicated to 'old news.' It published an old report which stated that the brothers had lodged an appeal against conviction, provided a description of the crime that they had committed in 1990 and quoted the men's lawyer as saying that they intended to prove that several of the main witnesses for the prosecution had not told the truth at the trial. X called upon eDate to desist from reporting the foregoing and to give an undertaking that it would refrain from making any future publication of the report. eDate failed to respond and simply removed the report from its website. X then issued proceedings before the German courts, seeking orders preventing eDate from publishing his full name when publishing material in relation to the crime. In its defence, eDate contended that the German courts did not have jurisdiction to hear and determine the proceedings. X was successful in the lower courts in Germany and the matter was appealed to the Bundesgerichtshof (German Federal Court of Justice), which then referred the issue of jurisdiction and applicable law, to the CJEU for a preliminary ruling. In his Opinion,[27] AG Villalón suggested a reformulation of the *Shevill* test, adding a 'centre of gravity' test: ie the State where the holder of personality rights will suffer the most extensive and serious harm as a result of the defamatory publication. The proposed test comprised two elements. The first element is the determination of the place of the 'centre of gravity of the dispute.' This is located in the place where the plaintiff has his centre of interests ('COI'), which is the place where the person carries out his day-to-day activities. The second element, related to the nature of the information which has been published. There must be a sufficient connection to the State, such that the information encourages readers in that State to access it. The fact that information or statements are accessible in a Member State does not necessarily mean that the courts of that State have jurisdiction to hear the action. The derogations to Article 4 are to be interpreted strictly. If accessibility was sufficient to ground jurisdiction, it would lead to forum shopping, as material published online might be accessible in Member States where the plaintiff has no presence, or connection.

In its judgment, the CJEU agreed that the court best placed to hear and determine the action was the court of the place where the plaintiff had his COI.[28] That jurisdiction would, in most

[26] References for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany) (C-509/09) and the Tribunal de grande instance de Paris (France) (C-161/10), made by decisions of 10 November 2009 and 29 March 2010.
[27] *eDate* (n 23).
[28] Joined Cases C-509/09 and C-161/10 *eDate Advertising GmbH and Others v X and Société MGN Limited* [2011] EU–685.

cases, be the place where the plaintiff has his, or her habitual residence. If they do not reside in the Member State in question, but engage in professional activity there, the plaintiff must establish the existence of a particularly close link with that State, in order to ground jurisdiction under Article 7(2).[29] The COI test is designed to ensure predictability. It permits a plaintiff to identify where he may sue for defamation and a defendant to know where he may be sued.[30] The Court held that where a plaintiff brings an action seeking relief on foot of alleged infringement of personality rights by means of content placed online on an internet website, the plaintiff has the option of bringing an action seeking relief for 'all the damage' caused, either:

- before the courts of the Member State in which the publisher of that content is established, or
- before the courts of the Member State in which the 'centre of his interests' is based.[31]

The Court held that a plaintiff may, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each Member State in the territory of which content placed online is, or has been accessible. If he chooses the latter, the national court only has jurisdiction in respect of the damage caused in the territory of the Member State of the court seised.[32]

Refinement of *eDate* and the Centre of Interests Test

The difficulty with the second leg of the test in *eDate*, was that a literal interpretation could result in a plaintiff having the option of bringing territorial proceedings in any or all Member States in the European Union. Thus, in *Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB* (*the 'Svensk Handel' case*),[33] the Grand Chamber of the CJEU took the opportunity to refine the *eDate* test. The first named plaintiff in the action was a company incorporated in Estonia, but trading mainly in Sweden. The second named plaintiff was an employee of that company (Ms Ilsjan) and her place of work was in Estonia. The plaintiffs issued proceedings in Estonia seeking, inter alia, rectification of material published on the defendant's website, the deletion of certain comments and damages. The plaintiffs claimed that the defendant's website had placed the plaintiff company on a blacklist and claimed that the company had carried out acts of fraud and deceit. They contended that there were approximately 1,000 comments on the defendant's discussion forum, a number of which constituted direct calls to commit acts of violence against Bolagsupplysningen and its employees, including Ms. Ilsjan. The defendant refused to remove Bolagsupplysningen from the list and also refused to remove the comments. The Swedish courts had jurisdiction to hear the cases under the 'domicile principle',[34] and it was common case that Sweden was also the place giving rise to the damage. Thus, the issue was whether the Estonian courts also had jurisdiction to hear the action on the ground that Estonia was the place 'where the damage occurred.' If the answer to that question was in the affirmative, the plaintiffs could elect to sue either in Sweden, or Estonia. Bolagsupplysningen contended that the damage occurred in Estonia, being the place where the publication was distributed and where the victims suffered injury to their reputation. The plaintiffs were, however, unsuccessful when the matter first came before the Harju Maakohus (Harju Court of First Instance) in Estonia, which held that the

[29] *eDate* (n 28) para 49.
[30] ibid para 50.
[31] ibid para 52.
[32] ibid para 52.
[33] Case C-194/16 *Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB,* ECLI–766.
[34] The defendant company was domiciled in Sweden.

action was inadmissible.[35] The court pointed out that the information and comments had been published in Swedish and were incomprehensible to persons residing in Estonia. It also held that the mere fact that the website was accessible in Estonia did not automatically confer jurisdiction on the Estonian courts. The plaintiffs appealed to the Tallinna Ringkonnakohus (Tallinn Court of Appeal, Estonia), where they were also unsuccessful and the matter was ultimately referred to the CJEU by the Riigikohus (Supreme Court, Estonia).[36]

In its judgment, the CJEU noted the principles enunciated in *Shevill* and *eDate* and reaffirmed that they applied whether the damage alleged was material, or non-material. It went on to confirm that the courts of the Member State in which the COI of the person affected is located, are best placed to assess the impact of such content on the rights of that person. Moreover, the CJEU emphasised that the criterion of the centre of interests accords with the aim of predictability of the rules governing jurisdiction, as it allows both the plaintiff to easily identify the court in which he may sue and the defendant to reasonably foresee before which court he may be sued.[37] The Court held that where a plaintiff is carrying out an 'economic activity,' the COI of such a person must reflect the place where its commercial reputation is most firmly established. The COI must, therefore, be determined by reference to the place where the plaintiff carries out the main part of its economic activities. This may be the place where it has its registered office, but the location of the office is not determinative. If a plaintiff carries out its economic activities mainly in a Member State other than the state in which it has its registered office, its commercial reputation is likely to be greater in that state and it can bring proceedings there under Article 7(2).[38] The definition also applies to a natural person. Thus, a person may have his or her habitual residence in one Member State, but carry out his business, or economic activity in another Member State and accordingly, have a reputation there. In a defamation action pursuant to the provisions of Article 7(2), their COI would be in the latter State, rather than their place of residence.[39]

The Court then modified the second leg of the *eDate* test. It held that Article 7(2) of the Recast Regulation must be interpreted as meaning that a person who alleges that his personality rights have been infringed on the internet, cannot bring an action for rectification and removal of those comments before the courts of each State in which the information published on the internet is, or was accessible. It held that an application for rectification and removal of defamatory material, is a single and indivisible application, which can only be made to the court having jurisdiction to hear the claim in respect of the entirety of the damage.[40] Interestingly, the court did not engage further with the issue of the COI of the plaintiff company, nor the issue of jurisdiction as it relates to co-plaintiffs and the possibility of irreconcilable actions if the courts of different States were seised in respect of the company and the employee. But, as Hartley has commented, the most important issue in transnational defamation actions, is the need to have a clear, easily ascertainable rule; the need to have a rule that cannot be manipulated by one of the parties to the disadvantage of the other; and the need to provide for the expeditious resolution of disputes, if possible by giving the same

[35] *Svensk Handel* (n 33) para 11.
[36] Request for a preliminary ruling under Article 267 TFEU from the Riigikohus (Supreme Court, Estonia), made by decision of 23 March 2016.
[37] *Svensk Handel* (n 33) 35. See also *eDate* (n 28) para 50.
[38] *Svensk Handel* (n 33) para 42.
[39] ibid para 40.
[40] ibid para 49.

court jurisdiction over all claims arising from the set of facts.[41] The refinement of the *eDate* test in *Svensk Handel* appears to achieve this by encouraging a plaintiff to issue proceedings in the State where he has his centre of main interest. For it is only there, that a plaintiff may seek damages for the entirety of his claim.

Having provided clarity in *Svensk Handel*, the CJEU has received some criticism following the delivery of the court's recent judgment in *the 'Gtflix' case*.'[42] That case involved an action seeking rectification, removal and compensation for an act of unfair competition consisting of the dissemination of disparaging statements on the internet. The plaintiff was a company having its registered office and COI in the Czech Republic. Its business involved the production and distribution of adult audiovisual content, through its website. The defendant was domiciled in Hungary and engaged in the direction, production and distribution of the same type of films, which were marketed on websites hosted in Hungary. The plaintiff contended that the defendant made certain comments about the plaintiff company on a number of websites and fora. It ultimately issued proceedings in the French courts, rather than the Czech Republic, or Hungary. One of the reliefs sought by the plaintiff, was the payment of compensation in the form of a symbolic sum of €1 for economic damage and €1 for non-material, or reputational damage.[43] The defendant argued that the French courts did not have jurisdiction to hear and determine the application and the Cour de cassation (Court of Cassation, France) referred to the CJEU for a preliminary ruling.[44] Applying the *Svensk Handel* test, the French courts did not have jurisdiction to hear an application for the rectification and removal of the comments in question. The referring court asked whether the plaintiff could bring an application for compensation only, before the courts of a Member State, on the ground that the comments in question, were accessible in that State. A distinguishing feature of this case was that the comments complained of related to acts of dénigrement (disparagement), rather than defamation. In his Opinion,[45] AG Hogan noted that according to the case-law of the French Court of Cassation, disparagement consists of the disclosure of information likely to discredit a competitor. Under French law, disparagement falls within the scope of unfair competition rules, rather than the infringement of personality rights. This civil wrong, which is distinct from defamation, is governed by the French rules on civil liability.[46]

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[41] Trevor C Hartley, 'Jurisdiction in tort claims for non-physical harm under Brussels 2012, Article 7(2)' (2018) International and Comparative Law Quarterly.

[42] Case C-251/20 *Gtflix Tv v DR* [2021] ECLI–1036. See Marco Buzzoni, 'CJEU Adds a New Piece to the "Mosaic' in Gtflix Tv" (*EAPIL,* January 13, 2022) <https://eapil.org/2022/01/13/cjeu-adds-a-new-piece-to-the-mosaic-in-gtflix-tv/> accessed February 10, 2022 and Geert van Calster, 'Ask Me No Questions, and I'll Tell You No Lies. The CJEU on Internet (Libel) Jurisdiction in Gtflix.' (*gavc law - geert van calster,* December 23 2021) <https://gavclaw.com/2021/12/23/ask-me-no-questions-and-ill-tell-you-no-lies-the-cjeu-on-internet-libel-jurisdiction-in-gtflix/> accessed February 10 2022.

[43] (n 42) para 13.

[44] Case C-251/20: Request for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 13 May 2020, received at the Court on 10 June 2020.

[45] (n 21).

[46] *Gtflix* (n 21) para 16. Under French law, disparagement is found when a rival spreads information intended to discredit its competitor, unless the information in question relates to a matter of general interest, has a sufficient factual basis and, subject to the proviso, is expressed with a certain degree of restraint. See, J.P. Griel, 'Entreprises – Le dénigrement en droit des affaires La mesure d'une libre critique', JCP ed. G, No 19-20, 8 May 2017, doctr. 543, and Cass. Com., 9 January. 2019, n°17-18350. Under French law, disparagement may also constitute an abuse of a dominant position. Cour d'appel de Paris (Court of Appeal, Paris, France), judgment No 177 of 18 December 2014, *Sanofi e.a. c. Autorité de la concurrence* (RG No 2013/12370) footnote 94, Opinion of AG Hogan.

AG Hogan held that that a claimant who relied on an act of unfair competition of that nature and who seeks both the rectification of the data and the deletion of certain content and compensation for the non-material and economic damage resulting therefrom, may bring an action or claim before the courts of each Member State in the territory of which content published online is or was accessible, for compensation only for the damage caused in the territory of that Member State. However, he held that in order for those courts to have the requisite jurisdiction, it is necessary that the claimant can demonstrate that it has an appreciable number of consumers in that jurisdiction who are likely to have access to and have understood the publication in question.[47]
The CJEU did not fully engage with the Advocate General's detailed analysis of the case law as it relates to transnational defamation. In its judgment, the court noted that unlike an application for rectification of information and removal of content, which is a single and indivisible application, in an application for compensation, a plaintiff may seek either full, or partial compensation.[48] It reaffirmed that an application for rectification of information and removal of content can only be brought before the court having jurisdiction to rule on the entirety of the claim. However, it went on to state that where a plaintiff seeks compensation for damage sustained as a result of the publication of disparaging comments on the internet, a plaintiff could seek damages in the courts of each Member State in which those comments are, or were, accessible. If the court in question does not have jurisdiction to rule on the entirety of the claim, the plaintiff's claim is limited to compensation for damage sustained in the state in which the application has been brought. Thus, in this case, the French courts had jurisdiction to hear the plaintiff's claim only insofar as it related to compensation for damage sustained by the plaintiff in France.

Critics of the judgment point out that the CJEU appears to have ignored the fact that the comments complained of related to an alleged interference with economic rights, rather than defamation under French law.[49] It is also difficult to reconcile the judgment with the principles of certainty and predictability. As AG Hogan pointed out, one of the objectives in the Recast Regulation, is minimising the possibility of concurrent proceedings (in order to ensure a close link between those courts and the dispute or to facilitate the proper administration of justice).[50] He had emphasised that it flows from Recital 15, that the rules of jurisdiction should ensure legal certainty. Further, according to Recital 16, if alternative grounds of jurisdiction to the fora of the defendant's place of residence exist, it is either because those fora have a closer connection with the action or in order facilitate the proper administration of justice.[51] The judgment delivered by the Grand Chamber does not sit easily with those principles, nor with other recent decisions dealing with Art. 7(2) of the Recast Regulation.[52] It has been suggested that the more logical rule is that the court, having jurisdiction to hear the entirety of the plaintiff's claim, also has jurisdiction to rule on the entirety of damages.[53] For the moment, the judgment delivered by the CJEU in the *Gtflix case* appears to be an outlier and the court may need to revisit the issue of damages for transnational defamation over the internet.

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[47] *Gtflix* (n 21) para 105.
[48] *Gtflix* (n 42) para 35.
[49] (n 42).
[50] *Gtflix* (n 21) para 75.
[51] *Gtflix* (n 21) para 53.
[52] Case C-709/19 *Vereniging van Effectenbezitters (VEB) v British Petroleum PLC (BP) plc*., [2021] ECLI–377; C-800/19 *Mittelbayerischer Verlag KG v SM*, [2021] ECLI–489.
[53] Marion Ho-Dac, 'Forum Delicti in Case of Online Defamation: French Preliminary Reference to the CJEU' (EAPIL July 29 2020) <https://eapil.org/2020/07/29/forum-delicti-under-brussels-i-bis-regulation-in-case-of-online-defamation-french-preliminary-reference-to-the-cjeu> accessed February 12 2022.

Contesting Jurisdiction

A defendant who is sued in the Irish courts may enter a conditional appearance for the purpose of contesting jurisdiction.[54] RSC Ord 12, r.26 provides that a defendant before appearing:

> … shall be at liberty to serve notice of motion to set aside the service upon him of the summons or of notice of the summons, or to discharge the order authorising such service.

On hearing the motion, the Court may confine itself to an examination as to jurisdiction and admissibility and decline to examine the substance of the claim. The Supreme Court has acknowledged, though, that there may well be some cases where an Irish court will be required to enter into some consideration of contested facts in order to determine whether it has jurisdiction under the Regulation.[55] However, in such cases, the court should only examine such limited facts as are necessary to decide the issue of jurisdiction. The plaintiff bears the burden of putting such information before the Court, to facilitate the examination as to jurisdiction.

Recent Irish case law

Two competing views have been expressed regarding the onus of proof in an examination on the issues of publication and accessibility. In *Grovit v Jansen*,[56] the Court was not persuaded that it is a requirement of Irish law that, to establish publication in respect of an internet publication, it is necessary to establish that the material has actually been accessed in Ireland.[57] Having considered the decision in *eDate*, the Court also took the view that there was no scope for adding an additional requirement of proof of access, or hits by users in Ireland.[58] In contrast, Hogan J. held in *Ryanair v Fleming* that these were essential proofs in any application where jurisdiction was contested.[59] Although the provisions of the Recast Regulation were not expressly engaged in *Ryanair v Fleming*, the Court first emphasised that the fundamental principle of our conflict of laws rules is that, absent special circumstances, a defendant should normally be sued in the place where he or she is domiciled.[60] Hogan J pointed out that it would be manifestly unfair if a defendant were forced to defend in a foreign jurisdiction in circumstances where he could not reasonably have foreseen that his conduct would expose him to the real risk that he might properly be sued in that foreign jurisdiction. He noted that:

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[54] Where a defendant wishes to enter an appearance to contest the jurisdiction of the Court for the purposes of Article 26(1) of Regulation No. 1215 2012 or Article 24 of the Lugano Convention, he may do so by entering an appearance in Form No. 6 in Appendix A, Part II of the RSC.
[55] *Ryanair v Unister* [2013] IESC 14 [8.6]. See also *Ryanair v On the Beach* [2015] IESC 11.
[56] *Grovit v Jansen* [2020] IEHC 501.
[57] ibid [47] – [48].
[58] ibid [52].
[59] *Ryanair v Fleming* [2016] IECA 265, [2016] 2 IR 254 [24].
[60] ibid. At [17], Hogan J stated that the basis for this principle is obvious, since a defendant should not be forced to defend in a foreign jurisdiction – and be thereby deprived of the legal system with which he or she is most familiar, not to speak of the attendant costs and expense of defending proceedings in a foreign jurisdiction – unless there are some special circumstances which justify the attribution of jurisdiction to the courts of the forum selected by the plaintiff.

> these principles may be said to form the basis of the entire Brussels Regulation (and, indeed, the wider Lugano Convention) system which has been the mainstay of the European Union's jurisdiction allocating rules for the best part of 50 years. It is true, of course, that the present jurisdictional dispute falls completely outside the scope of the Brussels/Lugano system and is governed by our own national conflict of law rules. The point, however, is that conflict of laws rules reflecting the principal allocation of jurisdiction as between competing fora must, in general, at least, in order to be fair, reflect these considerations of foreseeability and the orderly administration of international justice.[61]

Publication and Accessibility

Hogan J went on to analyse the issue of jurisdiction in the context of publication and accessibility of material published on the internet. An examination of both requires an Irish court to consider the provisions of the Defamation Act, 2009, irrespective of whether the action falls in, or outside the scope of the Recast Regulation.[62] Section 6(2) of the 2009 Act requires a plaintiff to prove publication of the alleged defamatory statement. He held that in internet defamation cases, it was not sufficient to infer that material had been accessed via the internet. A plaintiff was still required to prove that the material was accessed or downloaded by a Third Party in this jurisdiction. He noted that in the case before him, although the website in question could have been accessed by anyone with access to the internet anywhere in the world, the plaintiff had not identified any third party who had come forward to say that they had accessed or downloaded the particular post in this jurisdiction. This is consistent with the views expressed by the Advocate General in *eDate*, who noted that a connecting factor based on the mere accessibility of information, would justify an automatic connection with all Member States, since, in practice, the offending material is accessible in all of them. He noted that all parties involved in the case were in agreement that this would immediately give rise to the phenomenon known as forum shopping.[63] Hogan J went on to refer to the decision of Gray J in *Al Amoudi v. Brisard*.[64] In that case, the plaintiff was an Ethiopian businessman who was based in Saudi Arabia, but also spent two months every year in the United Kingdom. He issued defamation proceedings in the English High Court against a Swiss based financial website, which had alleged that the plaintiff was a financier of international terrorism. In the course of an application to strike out part of the defendant's claim, the plaintiff had argued that the very existence of a publicly accessible website itself gave rise to a presumption of publication. The Court disagreed and held that the issue of publication was a matter of fact for the jury. Gray J stated that in an action alleging internet libel, 'it would be for the claimant to prove that the material in question was accessed and downloaded.'[65]

Hogan J also referred to *Coleman v. MGN Ltd* as a decision of some importance.[66] In that case, the Supreme Court struck out the plaintiff's claim for want of jurisdiction in circumstances where no evidence at all was put before the court regarding the place where the harmful event occurred. The plaintiff had alleged that he was defamed by MGN, which

[61] ibid [18].
[62] Personality rights and defamation actions are specifically excluded from the Rome II Regulation, which sets out the rules governing the applicable law in transnational EU civil and commercial litigation.
[63] *Ryanair v Fleming* (n 59) [56].
[64] [2006] EWHC 1062 (QB), [2007] 1 W.L.R. 113.
[65] ibid [27].
[66] *Coleman v MGN Ltd* [2012] IESC 20.

published an article in its Daily Mirror newspaper under a heading 'Yob War - Boozy: Lads on a typical night out in Britain', which contained a photograph of the plaintiff, and an article underneath. Charlton J refused to strike out the action in the High Court, but the defendant appealed to the Supreme Court. One of the deficiencies in the plaintiff's case was an absence of evidence that the article in question was in fact published and accessed in Ireland. Delivering judgment, Denham CJ noted that:

> …there is a need for evidence of publication to establish the tort of defamation. There is no evidence before the Court that the Daily Mirror was published on line in 2003. There is no evidence that the daily edition of the Daily Mirror was on the world wide web in 2003. Thirdly, there is no evidence of any hits on any such site in this jurisdiction.[67]

Hogan J addressed the issue of accessibility again in his Opinion in the *Gtflix case*.[68] Whilst acknowledging that concept of accessibility remains unclear in the case law of the CJEU, he stated that not all the courts of all the Member States will be competent to hear and determine an action for defamation over the internet. Moreover, he emphasised that even when several courts will have jurisdiction, that does not necessarily mean that damage will be found to have occurred on the territory of each of the Member States concerned. He observed that the degree of notoriety of the natural or legal person allegedly defamed, language used to draft the publication in question, the presentation, the context, the references used to formulate the message, and the number of visitors from the Member States at issue who accessed this publication[69] are all elements that may lead the courts to find that the person concerned has not suffered any damage in the territory for which they are geographically competent.[70]

Robbins v Buzzfeed

The most recent case to come before the High Court by way of an application to set aside service of a plenary summons in a transnational defamation action was *Robbins v Buzzfeed UK Ltd*.[71] Anthony Robbins was described in his plenary summons as an entrepreneur, author, philanthropist and a life and business strategist. He is a citizen of the United States of America and he is resident and domiciled there. He issued defamation proceedings in Ireland against a background of online publication of articles, which he contended were defamatory. The authors of the articles, Jane Bradley and Katie J. Baker, were employed by BuzzFeed UK Ltd. It was accepted that they had written the articles in question, which were then published on the American online news site *BuzzFeedNews.com* in May, June and November 2019. It was alleged in the posts that the plaintiff had subjected certain employees and attendees at his events, between the 1980's and 2009 (in the United States and in Canada), to sexual misconduct, bullying and harassment. The plaintiff sought damages for defamation, malicious falsehood, misrepresentation, breach of privacy and intentional infliction of emotional distress, together with an injunction pursuant to s. 33 of the Defamation Act, 2009, restraining the defendant from publishing or causing to be published the material in question, or any similar defamatory statements. The plaintiff pleaded that the Irish courts

[67] The Supreme Court held that the plaintiff's failures were insurmountable and that the Irish courts did not have jurisdiction to hear the action.
[68] (n 21).
[69] Referring to the decision of the Supreme Court in *Coleman v. MGN* (n 66).
[70](n 21) para 61.
[71]*Robbins v Buzzfeed UK Ltd* [2021] IEHC 433.

had jurisdiction to hear and determine the action pursuant to Article 7(2) of the recast Regulation and further pleaded that he was limiting his claim to damage suffered within this jurisdiction. The defendant entered a conditional appearance and issued a motion, pursuant to RSC Ord 11, r.26, seeking an order setting aside service on the English defendant, on the ground that the Irish Courts did not have jurisdiction to hear the action. The defendant contended that the United States was the appropriate forum in which to litigate the action and averred that the issuing of proceedings in Ireland was 'a cynical exercise in forum shopping.' [72] The motion came before Heslin J, who delivered a very detailed and comprehensive judgment. The court noted that the defendant had confirmed in correspondence, that at the date the proceedings were issued, the articles in question had been viewed online 13,382 times by users geo-located in Ireland. On the same date, the articles had been viewed online, globally, 3,554,271 times. Therefore, users geo-located in Ireland represented approximately 0.38% of the total global audience in respect of the articles as at the date proceedings issued. By contrast, users geo-located in the US had viewed the articles 2,939,579 times, which represented 82.71% of the total global audience, in respect of these particular posts. The defendant contended that the readership figures in respect of the articles in Ireland as a percentage of the total global audience were negligible, whereas the vast majority of the access figures related to users geo-located in the US.[73] Referring to the judgment in *Shevill*, Heslin J stated that the case was not authority for the proposition that in order to successfully invoke jurisdiction pursuant to Article 7(2), a plaintiff has an obligation to prove publication or that, having regard to the facts in the case before the court, a plaintiff must prove that articles which he says were defamatory and which were in fact available to readers in this jurisdiction, were downloaded, or read by specific numbers of persons in this jurisdiction.[74] He distinguished the case from the facts in Coleman and noted that the plaintiff was a well-known individual, who had averred that he had a significant following in Ireland.

Referring to the decision in *Ryanair v Fleming*, the Court said that it failed to see how the findings of Hogan J in Ryanair constituted authority for the proposition that where jurisdiction has been established pursuant to Art. 7(2) of Brussels Recast, in the sense explained in Martinez as regards online content, the Irish courts must refuse such jurisdiction absent proof that the online content was 'accessed or downloaded by a third party' in this jurisdiction.[75] The judge was of the view that, in an application examining jurisdiction, any requirement to prove that material was actually accessed, would run contrary to the principles set out by the CJEU in *Shevill*.[76] He agreed with the decision in *Grovit v Jansen* as it relates to accessibility and found that, on a motion to set aside service, it was not necessary for a plaintiff to prove that the purported defamatory material had been accessed. The Court rejected a submission made by the defendant that the rule of special jurisdiction for which Article 7(2) provides is based on the existence 'of a particularly close linking factor between the dispute and the courts of the place where the harmful event occurred.'[77] The court held that an examination as to jurisdiction under Article 7(2) did not require a plaintiff to satisfy such additional test. It further rejected any suggestion that the Court of Appeal's comments

[72] *Robbins v Buzzfeed* (n 71) [20]
[73] *Robbins v Buzzfeed* (n 71) [19].
[74] *Robbins v Buzzfeed* (n 71) [36].
[75] It should be noted, however, that Heslin J made a finding of fact that publication was established in any event and that the articles had been accessed by over 13,000 people.
[76] *Robbins v Buzzfeed* (n 71) [55].
[77] The defendant had relied on the judgment of the CJEU in Case C-360/12 *Coty Germany GmbH v First Note Perfumes NV,* [2014] ECLI–1318.

in *Ryanair v Fleming* regarding the reasonable foreseeability of an individual being exposed to litigation were applicable to the case before it, on the ground that it was dealing with a different set of international rules, namely the jurisdictional rules set out in the Recast Regulation.[78] The Court held that jurisdiction had been established pursuant to Article 7(2) of the Recast Regulation and refused the relief sought by the defendant.

One of the threads running through both *Grovit v Jansen* and the *Buzzfeed* judgments is the reliance placed on *Shevill* and the judgment of the CJEU in *eDate*. It is worth noting that the *eDate* reference was made prior to the Recast Regulation coming into force and judgment was delivered in 2011. Thus, the wording in the judgment of the CJEU Court refers to Article 5(3) of the Brussels I Regulation and the case law relating thereto. Whilst the defendant in *Robbins v Buzzfeed* referred to the 'particularly close linking factor'[79] referred to by the CJEU in *Coty Germany GmbH v First Note Perfumes NV*,[80] it does not appear that the parties involved in either *Grovit v Jansen*, or *Buzzfeed*, addressed either Judge in relation to Recitals 15 and 16 of the Recast Regulation, or the COI formulated in *eDate*. More significantly, the parties do not appear to have referred in their submissions to the 2017 judgment of the CJEU in *Bolagsupplysningen v. Svensk Handel* and thus, neither judge had the opportunity of considering the most recent judgment of the CJEU.

Whilst *Grovit v Jansen* turned on its own particularly complicated set of facts, the facts in *Buzzfeed* were relatively straightforward. The defendant was a company, domiciled in the United Kingdom and under the domicile principle, the Courts of England and Wales had jurisdiction to hear the action. However, as the plaintiff sought to rely on the special jurisdiction rules in the Recast Regulation, he bore the burden of satisfying the Court that the Irish courts had jurisdiction to hear and determine his defamation proceedings. It is not sufficient for a plaintiff simply to plead in his plenary summons that the Irish Courts have jurisdiction pursuant to Article 7(2). He must go further and place sufficient information before the Court to satisfy it that the Irish courts have jurisdiction to hear his action. While the plaintiff's commercial activities and his reputation have an international dimension, the United States is the place where his commercial reputation is most firmly established and thus the plaintiff's COI must be in the United States. Thus, applying the tests in *eDate* and *Svensk Handel*, the courts in the United States are best placed to determine the plaintiff's case and his claim for 'all the damage caused.' As mentioned above, the plaintiff had pleaded that he was limiting his claim to damage suffered within Ireland. Yet, if the plaintiff wished to issue territorial proceedings, he was obliged to establish the existence of a particularly close connection with the State (Ireland) in order to ground jurisdiction under Article 7(2).[81] The close connection requirement is expressly mentioned in Recital 16, to ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. As Hogan J commented in *Ryanair v Fleming*, this forms the basis for the entire Brussels Regulation system.

It is unlikely that Buzzfeed UK Ltd could have foreseen that it would be sued in Ireland by an American national, who carries out his main commercial activities in California, on foot of articles published via an American online news site. Thus, two possible situations arise. Either the Irish courts had jurisdiction to hear territorial proceedings only, or the Court should have declined jurisdiction altogether on the ground that the Recast Regulation simply

[78] *Robbins v Buzzfeed* (n 71) [52].
[79] ibid [32]
[80] *Coty Germany GmbH* (n 77).
[81] Recital 12 of the Brussels I Regulation referred to a 'close link' between the court and the action.

does not apply to the facts of the case. If the Irish courts have territorial jurisdiction, the Court may only determine the claim as it relates to damage sustained to the plaintiff's reputation in Ireland. Further, the trial judge is precluded from granting relief directing the rectification and removal of any defamatory material, as this relief may only be granted by the court having jurisdiction to hear the claim in respect of the entirety of the damage. It could, of course, be argued that the Irish courts did not have jurisdiction to hear the Robbins action at all. The Recast Regulation and the special jurisdiction rules are not engaged merely because the plaintiff so pleads. And, as AG Hogan pointed out, it is true that the internet increases the potential audience of a message. But in terms of reputation, this does not mean that the person defamed is necessarily known throughout Europe.[82] And as mentioned at the beginning of this article, the Brussels Convention was enacted to strengthen in the Community, the legal protection of persons therein established, rather than persons resident or established outside of the EU. Thus, it was open to the Court to decide that the special rules were simply not engaged and that jurisdiction under the Regulation should be declined. That does not mean that the plaintiff is deprived of proceeding with his action in this jurisdiction. Heslin J was correct in stating that the Forum Non Conveniens principle did not survive the Brussels regime. But if the plaintiff's claim under the Recast Regulation fell away and his plenary summons had contained a plea in the alternative, it might still be open to the Court to consider whether Ireland is the proper forum to hear the dispute.

Conclusion

Transnational defamation actions, by their very nature, require the plaintiff to consider his or her choice of jurisdiction. And it is natural for the plaintiff to choose the jurisdiction which he perceives to be the most favourable to his case. Following Brexit, Ireland is now the only English-speaking country in the EU and there appears to be a perception that Ireland is a 'plaintiff-friendly' jurisdiction for transnational defamation actions.[83] But for a defendant, litigating in another Member State usually results in additional costs and inconvenience. And failure to defend an action could mean that the plaintiff obtains judgment by default. Once damages are assessed, the plaintiff's judgment is automatically enforceable throughout the European Union. In an application to set aside service of a summons, an Irish Judge effectively acts as a gatekeeper. Accordingly, it is important that the relevant jurisdictional rules be interpreted in a manner that protects both the rights of the plaintiff and the defendant. The most up to date case law of the CJEU has not yet been considered in this jurisdiction, thus it remains to be seen whether the Irish courts will follow the refined test set out in *Svensk Handel*. The Irish judiciary has yet to decide.

[82] (n 21) See footnote 52, Opinion of AG Hogan.

[83] Some commentators have even suggested that Ireland has emerged as the new 'global hub' for defamation cases (n 9).