

Jurius

Violation of Copyright Directive

ECJ – The copyright directive precludes fair compensation due to authors for private copying of their works from being financed by a budgetary scheme such as that established in Spain. Such a scheme does not guarantee that the cost of that fair compensation is ultimately borne solely by the users of private copies. (Judgement C-470/14)

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[Rz 1] An EU directive¹ established, from 2001, a harmonised legal framework on copyright and related rights based on a high level of protection for rightholders. To that end, Member States must guarantee, inter alia, the exclusive right to authorise or prohibit the reproduction of their works to authors. They may however establish exceptions to that exclusive right of reproduction, in particular in relation to reproductions made by a natural person for private use and for non-commercial ends («the private copying exception»). In that case, the right holders should receive fair compensation.

[Rz 2] Since 2012, the fair compensation for private copying in Spain has been financed by the General State Budget. Under that scheme, the amount of that compensation is determined annually within the budgetary limits established for each financial year.

[Rz 3] In February 2013, a number of intellectual property rights collecting societies, entitled to collect that fair compensation, brought an action for annulment of the Spanish legislation at issue before the Tribunal Supremo (Supreme Court, Spain).

[Rz 4] In that context, the Tribunal Supremo (Supreme Court) asks the Court of Justice whether the directive precludes a scheme for fair compensation for private copying financed from the General State Budget which does not make it possible, as is the case in Spain, to guarantee that the cost of the fair compensation is ultimately borne by the users of private copies.

[Rz 5] By judgment of 9 June 2016, the Court holds that the directive precludes such a scheme in so far as the scheme does not guarantee that the cost of the fair compensation is ultimately borne by the users of private copies.

[Rz 6] Even though the most commonly chosen scheme for financing the fair compensation to date is that of a levy, the Court emphasises that the directive does not, in principle, preclude Member States which have decided to introduce the private copying exception from opting to finance it from their budget (a solution which has also been adopted in Estonia, Finland and Norway). Indeed, provided that such an alternative scheme guarantees the payment of fair compensation to rightholders, on the one hand, and that its detailed arrangements guarantee actual recovery on the other, it must be regarded as being, in principle, compatible with the objective of ensuring a high level of intellectual property protection.

[Rz 7] Nevertheless, the Court notes that the private copying exception is intended exclusively for natural persons who make, or have the capacity to make, reproductions of protected works or subject matter for private use and for non-commercial ends. It is those persons who cause harm to the rightholders and who are, in principle, required to finance, in return, the fair compensation payable to those rightholders. For their part, legal persons are excluded from benefiting from that exception.

[Rz 8] In that context, although Member States are indeed free to establish a scheme under which legal persons are, under certain conditions and for practical reasons, required to finance the fair compensation, such legal persons should not be the persons ultimately liable for payment of that burden. That requirement applies in all situations in which a Member State has introduced the private copying exception, regardless of whether it establishes a fair compensation scheme financed by a levy or by its budget.

¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

[Rz 9] In the present case, the Tribunal Supremo (Supreme Court) states in the order for reference that the scheme for financing the fair compensation from the Spanish budget does not guarantee that the cost of the compensation is ultimately borne solely by the users of private copies. Indeed, due to the lack of definite allocation of revenue – such as revenue from a specific levy – to particular expenditure, the budgetary item intended for the payment of the fair compensation must be regarded as being financed from all the budget resources of the State budget and, consequently, from all taxpayers, including legal persons. Moreover, it has not been established that there is a particular measure in Spain allowing legal persons to request to be exempted from contributing to the financing of that compensation or, at least, to seek reimbursement.

Judgement of the ECJ C-470/14 of 9 June 2016 in the case *Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA) and Others vs. Administración del Estado and Others*

Source: Press release of the ECJ Nr. 60/16 of 9 June 2016