

Jurius

## Infringement of Copyright by Selling a Multimedia Player

---

ECJ – The sale of a multimedia player which enables films that are available illegally on the internet to be viewed easily and for free on a television screen could constitute an infringement of copyright. The temporary reproduction on a multimedia player of a copyright-protected work obtained by streaming is not exempt from the right of reproduction. (Judgement C-527/15)

---

Category: News

Region: EU

Field of law: IP Law

Citation: Jurius, Infringement of Copyright by Selling a Multimedia Player, in: Jusletter IT 18 May 2017

[Rz 1] Mr Wullems sells, over the internet, various models of a multimedia player under the name «filmspeler». That device acts as a medium between a source of audiovisual data and a television screen. On that player, Mr Wullems installed an open source software that enabled files to be played through a user-friendly interface, via structured menus. In addition, integrated into the player were add-ons available on the internet whose function is to retrieve the desired content from streaming websites and make it start playing, on a simple click, on the multimedia player connected to a television. Some of those internet sites give access to digital content with the consent of the right holders, whilst others give access without their consent. According to the advertising, the multimedia player made it possible, in particular, to watch on a television screen, easily and for free, audiovisual material available on the internet without the consent of the copyright holders.

[Rz 2] Stichting Brein, a Netherlands foundation for the protection of the interests of copyright holders, asked the Rechtbank Midden-Nederland (District Court of Midden-Nederland, Netherlands) to order Mr Wullems to cease selling multimedia players or offers of hyperlinks that illegally give users access to protected works. Stichting Brein submitted that, by marketing that multimedia player, Mr Wullems had made a «communication to the public» in breach of the Netherlands law on copyright which transposed 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), Article 3 in particular. The Rechtbank Midden Nederland decided to refer a question to the Court of Justice on that subject.

[Rz 3] In its judgment, the Court of Justice holds that the sale of a multimedia player, such as the one in question, is a «communication to the public», within the meaning of the directive.

[Rz 4] The Court recalls, in that regard, its case-law according to which the aim of the directive is to establish a high level of protection for authors. The concept of «communication to the public» must therefore be interpreted broadly. In addition, the Court has already held that the availability, on a website, of clickable links to protected works published without any access restrictions on another website offers users of the first website direct access to those works (Case C-466/12 Svensson and Others see also Press Release No. 20/14; Case C-348/13 BestWater International and Case C-160/15 GS Media see also Press Release No 92/16). That is also the case in respect of a sale of the multimedia player in question.

[Rz 5] In the same way, Mr Wullems, in full knowledge of the consequences of his conduct, preinstalls, on the multimedia player add-ons that make it possible to have access to protected works and to watch those works on a television screen. Such actions are not to be confused with the mere provision of physical facilities, referred to in the directive. In that regard, it is clear from the observations submitted to the Court that streaming websites are not readily identifiable by the public and the majority of them change frequently.

[Rz 6] The Court also observes that, according to the referring court, the multimedia player has been purchased by a fairly large number of people. Furthermore, the communication at issue covers all persons who could potentially acquire that media player and have an internet connection. Thus, that communication is aimed at an indeterminate number of potential recipients and involves a large number of persons. In addition, the provision of the multimedia player is made with a view to making a profit, the price for the multimedia player being paid in particular to obtain direct access to protected works available on streaming websites without the consent of the copyright holders.

[Rz 7] The Court also finds that temporary acts of reproduction, on that multimedia player, of a copyright protected work obtained by streaming on a website belonging to a third party offering that work without the consent of the copyright holder, cannot be exempted from the right of reproduction.

[Rz 8] Under Article 5(1) of the Directive, an act of reproduction is only exempt from the right of reproduction if it satisfies five conditions, namely (1) the act is temporary, (2) it is transient or incidental, (3) it is an integral and technical part of a technological process, (4) the sole purpose of that process is to enable a transmission in a network between third parties by an intermediary or a lawful use of a work or subject matter, and (5) that act does not have any independent economic significance. Those conditions are cumulative in the sense that non-compliance with one of them will lead to the act of reproduction not being exempted. Furthermore, the exemption is to be applied only in certain special cases which do not impair the normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

[Rz 9] In the present case and having regard, in particular, to the content of the advertising of the multimedia player and to the fact that the main attraction of that player for potential purchasers is the pre-installation of the add-ons concerned, the Court finds that the purchaser of such a player accesses a free and unauthorised offer of protected works deliberately and in full knowledge of the circumstances.

[Rz 10] Furthermore, acts of temporary reproduction, on the multimedia player in question, of copyright-protected works adversely affects the normal exploitation of those works and causes unreasonable prejudice to the legitimate interests of the copyright holders because it usually results in a diminution of the lawful transactions relating to those protected works.

Judgement of the ECJ C-527/15 of 26 April 2017 in case Stichting Brein vs. Jack Frederik Wullems  
Source: Press release of the ECJ Nr. 40/17 of 26 April 2017