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Press and Information

Advocate General's Opinion in Case C-174/15
Vereniging Openbare Bibliotheken v Stichting Leenrecht

In the view of Advocate General Szpunar, the lending of electronic books is comparable to the lending of traditional books

It follows that the general regime of the lending right, which provides in particular for fair remuneration for authors under the public lending exception, is applicable

A 2006 EU directive concerning, among other things, the rental and lending rights in respect of books provides that the exclusive right to authorise or prohibit such rentals and loans belongs to the author of the work. Member States may, however, derogate from that exclusive right in respect of public lending, provided that authors obtain, at least, fair remuneration.[1]

In the Netherlands, the lending of electronic books does not come within that regime. However, the Vereniging Openbare Bibliotheken ('VOB'), an association to which every public library in the Netherlands belongs, takes the view that that regime should also apply to digital lending. Within that context, it brought an action against Stichting Leenrecht, a foundation entrusted with collecting the remuneration due to authors, seeking a declaratory judgment to that effect. VOB's action concerns lending under the 'one copy one user' model: an electronic book at a library's disposal may be downloaded by a user for the lending period, on the understanding that it is not accessible to other library users during that entire period. At the end of that period, the book in question will automatically become unusable for the borrower in question and may then be borrowed by another user.

Seised of the dispute, the Rechtbank Den Haag (District Court, The Hague, Netherlands) considered that its response to VOB's application depends upon the interpretation of provisions of EU law and it has referred several questions to the Court of Justice for a preliminary ruling.

In today's Opinion, Advocate General **Maciej Szpunar takes the view that the making available to the public, for a limited period of time, of electronic books by public libraries may indeed come within the scope of the directive on rental and lending rights.**

The Advocate General considers that the EU legislature did not contemplate the inclusion of the lending of electronic books within the directive's concept of 'lending' because the technology relating to commercially viable electronic books was at that time only in its infancy.

He thus suggests that a 'dynamic' or 'evolving' interpretation of the directive should be applied, arguing, inter alia, that the lending of electronic books is the modern equivalent of the lending of printed books. According to the Advocate General, such an interpretation alone will be capable of ensuring the effectiveness of the legislation in question in a sector experiencing rapid technological and economic development.

The Advocate General also points out that the main purpose of copyright is to protect the interests of authors. At present, libraries do indeed lend books in electronic form under licensing agreements concluded between libraries and publishers, which is principally of benefit to publishers or other intermediaries in the electronic book trade, whereas no adequate remuneration

[1] Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28).

is received by authors. If, by contrast, digital lending were regarded as coming within the scope of the directive, authors would as a result receive fair remuneration, in addition to that generated by the sale of books and independently of agreements concluded with publishers.

The Advocate General also concludes that an interpretation of the concept of lending which includes the lending of electronic books is contrary to neither the objective nor the wording of the directive. Moreover, such an interpretation is in no way incompatible or inconsistent with the various provisions of EU law in the field of copyright or with the EU's international obligations.

Lastly, the Advocate General expresses the view that, when introducing the exception for the public lending of electronic books, Member States may require that those books should first have been made available to the public by the rightholder or with his consent and that they are obtained from lawful sources. By contrast, according to the Advocate General, the mechanism of exhaustion of the distribution right bears no relation to the lending right.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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