



Press and Information

Court of Justice of the European Union

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Judgment in Case C-467/08

Padawan v SGAE

The application of the ‘private copying levy’ to reproduction media acquired by undertakings and professionals for purposes other than private copying is not compatible with European Union law

Such a levy may be applied to such media when they are liable to be used by natural persons for their private use

According to the Copyright Directive¹, the exclusive right to reproduce sound, visual or audiovisual material belongs to authors, performers and producers. However, Member States may authorise private copying on condition that the rightholders receive ‘fair compensation’. Fair compensation must help to ensure that rightholders receive appropriate remuneration for the use of their works or other protected subject-matter.

The Spanish legislation transposing the directive permitted the reproduction of works already circulated where a natural person reproduces for his private use works that he has accessed legally. In that context a flat rate payment, determined for each method of reproduction, in the form of a ‘private copying levy’ must be paid by the manufacturers, importers or distributors to the bodies responsible for the collective management of intellectual property rights.

The Sociedad General de Autores y Editores (SGAE), a body responsible for the collective management of intellectual property rights in Spain, claimed payment from PADAWAN, a company which markets CD-R, CD-RW, DVD-R and MP3 devices, of the ‘private copying levy’ for digital media marketed between 2002 and 2004. PADAWAN refused, taking the view that the application of that levy, irrespective of the private, professional or commercial use for which those media were intended, was contrary to that directive. At first instance, PADAWAN was ordered to pay €16 759.25.

The Audiencia Provincial de Barcelona (Provincial Court, Barcelona), to which PADAWAN appealed, has asked the Court of Justice essentially which are the criteria to be taken into consideration in order to determine the amount of and the collection system for ‘fair compensation’.

In its judgment delivered today, the Court observes that ‘fair compensation’ must be regarded as recompense for the harm suffered by the author as a result of the unauthorised reproduction of his work. Therefore, that harm constitutes the basic criterion for the calculation of its amount. Furthermore, the Court states that the directive requires a ‘fair balance’ to be maintained between rightholders and users of the protected subject-matter. Therefore, it is in principle for the person who did the copying for his own private use to make good the harm by financing the compensation to be paid to the rightholder.

It is true that the harm resulting from each private use considered separately may be minimal so that no obligation for payment arises and that there may be practical difficulties in identifying private users and making them pay compensation to rightholders. In those circumstances, it is open to Member States to institute a ‘private copying levy’ payable by persons who have digital reproduction equipment, devices and media. The making available to private users of reproduction

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)

equipment, devices and media or the copying services they provide constitutes the factual precondition for natural persons to obtain private copies. Furthermore, there is nothing to stop the amount of the levy from being passed on in the price for the reproduction or the copying service, so that ultimately the private users bear the burden and the 'fair balance' requirement is respected.

Next, the Court finds that a **'private copying levy' is compatible with the requirement of 'fair balance' only where the reproduction equipment, devices and media concerned are liable to be used for private copying** and, therefore, are likely to cause harm to the author of the protected work. The Court considers that there is a necessary link between the application of the private copying levy and use for private copying.

Consequently, the indiscriminate application of the private copying levy to all types of digital reproduction equipment, devices and media, including cases in which such equipment is acquired by **persons other than natural persons** for purposes clearly unrelated to private copying, is incompatible with the directive.

On the other hand, where the equipment at issue has been made available to **natural persons for private purposes** it is unnecessary to show that they have in fact made private copies and have therefore actually caused harm to the author of the protected work. Those natural persons are rightly presumed to benefit fully from the making available of that equipment, that is to say that they are deemed to take full advantage of the functions associated with that equipment², including copying. Thus the fact that the equipment or devices are able to make copies is sufficient in itself to justify the application of the private copying levy provided that the equipment or devices have been made available to natural persons as private users.

Finally, the Court recalls that it is for the national court to determine, in the light of the answers given, whether the Spanish 'private copying levy' is compatible with the directive.

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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² The Court ruled to that effect concerning the making available of television sets in hotel rooms (Case [C-306/05](#) SGAE; see also Press Release [95/06](#)).