Court of Justice of the European Union
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Press and Information

Judgment in Case C-271/10
Vereniging van Educatieve en Wetenschappelijke Auteurs (VEWA) v Belgische Staat

The remuneration payable to authors in the event of public lending cannot be calculated exclusively according to the number of borrowers

The amount of remuneration should also take account of the number of works made available to the public, so that large public lending establishments pay a greater amount of remuneration than smaller establishments

According to the directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property[1], authors have an exclusive right to authorise or prohibit the rental and lending of originals and copies of copyright works. However, as regards more particularly public lending, the Member States may derogate from that exclusive right, provided that at least authors obtain remuneration for such lending.

VEWA is a Belgian copyright management society. On 7 July 2004, VEWA brought an action for annulment before the Raad van State (Belgian Council of State) against a royal decree transposing the directive.

VEWA submits in particular that that royal decree, by fixing a flat-rate remuneration of €1 per adult per year and 50 cents per child per year registered with the lending institutions, as long as that person has borrowed once during the reference period, infringes the provisions of the directive which require that 'equitable remuneration' be paid for a loan or a rental.

In that context, the Raad van State decided to make a reference for a preliminary ruling to the Court of Justice. It asks essentially whether the directive precludes a national system under which the remuneration payable to authors in the event of public lending is calculated exclusively in accordance with the number of borrowers registered with public establishments, in particular libraries, on the basis of a flat-rate sum fixed per borrower per year.

The Court points out that the remuneration must enable authors to receive an adequate income. **Its amount cannot therefore be purely symbolic.**

As regards, more specifically, the criteria for determining the amount of the remuneration payable to authors in the event of public lending, it is for the Member States alone to determine, within their own territory, what are the most relevant criteria. In that connection, a wide margin of discretion is reserved to the Member States. The latter may determine the amount of the remuneration payable to authors in the event of public lending in accordance with their own cultural promotion objectives.

However, given that remuneration constitutes consideration for the harm caused to authors by reason of the use of their works without their authorisation, the determination of the amount of that remuneration cannot be completely dissociated from the elements which constitute that harm. As that harm is the result of public lending, that is to say, the making available of protected works by establishments accessible to the public, **the amount of the remuneration payable should take account of the extent to which those works are made available.**

[1] Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61), codified by 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).

Thus, the higher the number of protected works made available by a public lending establishment, the greater will be the prejudice to copyright. It follows that the amount of remuneration to be paid by such an establishment should take account of the number of works made available to the public and, consequently, that large public lending establishments should pay a greater level of remuneration than smaller establishments.

Furthermore, the relevant public, namely the number of borrowers registered with a lending establishment, is also equally relevant. The greater the number of persons having access to the protected works, the greater will be the prejudice to authors' rights. It follows that the amount of remuneration to be paid to authors should be determined by also taking into account the number of borrowers registered with that establishment.

In the present case, it is common ground that the system established by the royal decree takes into account the number of borrowers registered with public lending establishments, but not the number of works made available to the public. Such a taking into account does not therefore have sufficient regard for the extent of the harm suffered by authors, or for the principle that those authors must receive remuneration that is equivalent to an adequate income.

Moreover, the royal decree provides that, where a person is registered with a number of establishments, the remuneration is payable only once in respect of that person. In that connection, VEWA submitted that 80% of the establishments in the French Community in Belgium declare that a large number of their readers are also registered with other lending establishments and, consequently, that those readers are not taken into account for payment of the remuneration of the author concerned.

In those circumstances, that system may have the result that many establishments are, in effect, almost exempted from the obligation to pay any remuneration. Such a de facto exemption is, however, at variance with the directive, as interpreted by the Court, according to which only a limited number of categories of establishments potentially required to pay remuneration are capable of being exempt from that payment.

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