



Court of Justice of the European Union

PRESS RELEASE No 45/10

Luxembourg, 11 May 2010

Press and Information

Advocate General's Opinion in Case C-467/08
Sociedad General de Autores y Editores (SGAE) v PADAWAN S.L.

According to Advocate General Trstenjak a levy on private copies may be imposed on digital equipment, devices and media only where it may be presumed that they are to be used for private copying

Such a levy in favour of authors, artists and producers may not be applied indiscriminately to undertakings and professional persons who clearly acquire the equipment and data media for other purposes

According to the Directive on copyright and related rights in the information society¹, the reproduction right for audio, visual and audio-visual material is enjoyed by authors, performers and producers. It however permits the Member States to allow private copying as long as they ensure that there is 'fair compensation' for rightholders. The purpose of that compensation is to compensate rightholders adequately for the use made of their protected works or other subject-matter.

Spain has decided to permit works which have already been circulated to be reproduced without the rightholder's permission for private use. It has provided for lump-sum compensation of rightholders by means of a levy on private copies applied indiscriminately to digital reproduction equipment, devices and media. That levy is to be paid by manufacturers, importers or retailers to intellectual property rights management societies.

SGAE is a Spanish intellectual property rights management society. It is claiming payment by the firm PADAWAN, which markets electronic storage media, inter alia in the form of CD-Rs, CD-RWs, DVD-Rs and MP3 players, of compensation for private copying of €16 759.25 in respect of the storage media marketed by it between September 2002 and September 2004. The Audiencia Provincial de Barcelona, before which the case was brought on appeal, raises the question whether the Spanish levy rule is compatible with the directive, and would therefore like to know from the Court how the 'fair compensation' required by the directive should be organised. The Court's answer will determine whether SGAE may claim the levy in respect of all the storage media sold by PADAWAN or only in respect of those which it may be presumed have been used for private copying.

According to Advocate General Verica Trstenjak, the concept of 'fair compensation' used in the directive is an autonomous Community law concept which must be interpreted uniformly in all the Member States and transposed by each Member State; it is however for each Member State to determine, for its own territory, the most appropriate criteria for ensuring, within the limits imposed by Community law and the directive in particular, compliance with that Community concept.

Thus the directive confers a wide discretion on the Member States as to how their respective national systems implement such fair compensation. Regardless of the system used by each Member State to calculate fair compensation, the Member States are obliged to ensure a fair balance between the persons affected – the intellectual property rightholders affected by the private copying exception, to whom the compensation is owed, on the one hand, and the persons directly or indirectly liable to pay the compensation, on the other. The concept of 'fair

¹ Directive 2001/29 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).

compensation' must be understood as a payment to the rightholder which, taking into account all the circumstances of the permitted private copying, constitutes an appropriate reward for the use of his protected work or other subject-matter.

Advocate General Trstenjak is of the opinion that there must be a sufficiently close link between the use of the right and the corresponding financial compensation for private copying. Where a Member State, such as Spain, opts for a system of compensation in the form of a levy on digital reproduction equipment, devices and media, such a charge can be regarded as a compensation scheme for private copying which is compatible with the directive only where it may be presumed that those equipment, devices and media are to be used for making private copies. Remuneration which is granted to rightholders as a result of the indiscriminate application of such a levy to undertakings and professional persons, who from experience purchase digital reproduction devices and media for purposes other than private use, is not 'fair compensation' within the meaning of the directive.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355