



Court of Justice of the European Union

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Judgment in Joined Cases C-457/11 to C-460/11

Verwertungsgesellschaft Wort (VG Wort) v

Kyocera, Epson Deutschland GmbH, Xerox GmbH, Canon Deutschland GmbH
and

Fujitsu Technology Solutions GmbH, Hewlett-Packard GmbH v VG Wort

Press and Information

The levy for the reproduction of protected works can be imposed on the sale of a printer or a computer

Member States enjoy a broad discretion to determine who must pay that levy, the purpose of which is to compensate authors for the reproduction of their work without their authorisation

According to EU law¹, Member States should grant, in principle, to authors and the holders of related rights, the exclusive right to authorise or prohibit reproduction of their protected works or other subject matter. However, Member States may provide for exceptions or limitations to that exclusive right. Accordingly, they may permit, in particular (i) the making of private copies and (ii) reproductions on paper or any similar medium, using any kind of photographic technique or by some other process having similar effects. A Member State which avails itself of this option must, however, provide that the copyright holders receive 'fair compensation'. That compensation is to compensate authors for the reproduction, without their authorisation, of their protected works.

The Bundesgerichtshof (Federal Court of Justice, Germany) is called on to give judgment in proceedings concerning the fair compensation owed for the reproduction of protected works made with the use of a chain of devices, including, in particular, a printer and a personal computer, principally where the two are linked together. In those proceedings, VG Wort, the authorised copyright collecting society representing authors and publishers of literary works in Germany, requests that Canon, Epson, Fujitsu, Hewlett-Packard, Kyocera and Xerox be ordered to provide information to it on the nature and quantity of printers that they have sold since 2001. In addition, VG Wort claims that Kyocera, Epson and Xerox should be ordered to pay it remuneration by way of a levy on personal computers, printers and/or plotters marketed in Germany between 2001 and 2007. In those circumstances, the Bundesgerichtshof has requested the Court of Justice to provide it with an interpretation of the relevant provisions of EU law.

In today's judgment, the Court of Justice, in response, states that the concept of 'reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects' includes reproductions made using a printer or a personal computer where the two are linked together. In this case, it is open to the Member States to put in place a system according to which the fair compensation is paid by the persons in possession of a device contributing, in a non-autonomous manner, to that single reproduction process of the protected work or other subject-matter on the given medium in so far as those persons have the possibility to pass on the cost of the levy to their customers, provided that the overall amount of fair compensation owed as recompense for the harm suffered by the author at the end of that single process must not be substantially different from the fixed amount owed for the reproduction obtained through the use of one single device.

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).

Moreover, the Court finds that an act by which a rightholder may have authorised reproduction of his protected work or other subject-matter has no bearing on the fair compensation owed.

The Court states that, in addition, the non-application of the technological measures designed to prevent or restrict unauthorised reproduction cannot have the effect that no fair compensation is due for private copying. The application, by the rightholders, of such measures is voluntary. Nevertheless, it is open to the Member State concerned to make the actual level of compensation owed to rightholders dependent on whether or not such technological measures are applied, so that those rightholders are encouraged to make use of them and thereby voluntarily contribute to the proper application of the private copying exception.

Lastly, the Court holds that the relevant legislation – a directive which came into force on 22 June 2001 and which the Member States had to transpose into national law by 22 December 2002 at the latest – does not apply to the acts of using protected works or other subject-matter which took place before that 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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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