



Press and Information

Court of Justice of the European Union

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Luxembourg, 10 April 2014

Judgment in Case C-435/12

ACI Adam BV and Others v Stichting de ThuisKopie, Stichting  
Onderhandelingen ThuisKopie vergoeding

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## **The amount of the levy payable for making private copies of a protected work may not take unlawful reproductions into account**

*The fact that no applicable technological measure to combat the making of unlawful private copies exists is not capable of calling that finding into question*

The Copyright Directive<sup>1</sup> permits Member States to lay down an exception to the exclusive reproduction right of holders of copyright and related rights so that private copies may be made (the private copying exception). It also provides that Member States which decide to introduce such an exception into their national law are required to provide for the payment of 'fair compensation' to copyright holders in order to compensate them adequately for the use of their protected works or other subject-matter.

ACI Adam and Others are importers and/or manufacturers of blank data media such as CDs and CD-Rs. Under Netherlands law, those companies are required to pay a private copying levy to a foundation, Stichting de ThuisKopie. The amount of that levy is determined by another foundation, 'SONT'.

ACI Adam and Others take the view that, when determining the amount of the levy, SONT should not have taken into account the harm which may be suffered by copyright holders as a result of copies made from unlawful sources.

Against that background, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to seek a preliminary ruling from the Court of Justice.

In its judgment delivered today, the Court points out that if Member States were free to adopt legislation permitting, inter alia, reproductions for private use to be made from an unlawful source, the result of that would clearly be detrimental to the proper functioning of the internal market.

Similarly, the objective of proper support for the dissemination of culture may not be achieved by sacrificing strict protection of copyright or by tolerating illegal forms of distribution of counterfeited or pirated works.

Consequently, the Court holds that national legislation which makes no distinction between private copies made from lawful sources and those made from counterfeited or pirated sources cannot be tolerated.

First, to accept that such private reproductions may be made from an unlawful source would encourage the circulation of counterfeited or pirated works, which would inevitably reduce the volume of sales or of lawful transactions relating to the protected works and would consequently have an adverse effect on normal exploitation of those works. Secondly, the application of such national legislation may unreasonably prejudice copyright holders.

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<sup>1</sup> 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).

Furthermore, the Court states that it is for the Member State which has authorised the making of private copies to ensure the proper application thereof and to restrict acts which are not authorised by the rightholders.

National legislation which does not distinguish between lawful and unlawful private reproductions is not capable of ensuring a proper application of the private copying exception. The fact that no applicable technological measure exists to combat the making of unlawful private copies is not capable of calling that finding into question.

Furthermore, the levy system must ensure that a fair balance is maintained between the rights and interests of authors (as the recipients of the fair compensation) and those of users of protected subject-matter.

A private copying levy system, which does not, as regards the calculation of the fair compensation payable to its recipients, distinguish between the lawful or unlawful nature of the source from which a private reproduction has been made, does not respect that fair balance.

Under such a system, the harm caused, and therefore the amount of the fair compensation payable to the recipients, is calculated, according to the Court, on the basis of the criterion of the harm caused to authors both by private reproductions which are made from a lawful source and by reproductions made from an unlawful source. The sum thus calculated is then, ultimately, passed on in the price paid by users of protected subject-matter at the time when equipment, devices and media which make it possible to create private copies are made available to them.

Thus, all users are indirectly penalised since they necessarily contribute towards the compensation payable for the harm caused by private reproductions made from an unlawful source. Users consequently find themselves required to bear an additional, non-negligible cost in order to be able to make private copies.

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**NOTE:** A request 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.

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

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