



Press and Information

Court of Justice of the European Union
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Judgment in Case C-117/13
Technische Universität Darmstadt v Eugen Ulmer KG

A Member State may authorise libraries to digitise, without the consent of the rightholders, books they hold in their collection so as to make them available at electronic reading points

Member States may, within certain limits and under certain conditions, including the payment of fair compensation to rightholders, permit users to print out on paper or store on a USB stick the books digitised by the library

Pursuant to the Copyright Directive¹, authors have the exclusive right to authorise or to prohibit the reproduction and the communication to the public of their works. However, the directive allows Member States to provide for specific exceptions or limitations to that right. This option exists notably for publically accessible libraries which, for the purpose of research or private study, make works from their collections available to users by dedicated terminals. In the present case, the Bundesgerichtshof (Federal Court of Justice of Germany) is asking the Court of Justice to clarify the scope of this option, of which Germany has made use.

The Bundesgerichtshof is required to rule on a dispute between the Technical University of Darmstadt (Technische Universität Darmstadt) and a German publishing house, Eugen Ulmer KG. The university library digitised a book published by Eugen Ulmer² before making it available on its electronic reading posts. It refused the offer of the publishing house to purchase and use as electronic books ('e-books') the textbooks Eugen Ulmer publishes (the book in question among them). Eugen Ulmer is seeking to prevent the university from digitising the book in question and users of the library from being able, via the electronic reading points, to print out the book or store it on a USB stick and/or take those reproductions out of the library.

In its judgment delivered today, the Court holds, first of all, that, even if the rightholder offers to a library the possibility of concluding licencing agreements for the use of his works on appropriate terms, the library may avail itself of the exception provided for in favour of dedicated terminals; otherwise, the library could not realise its core mission or promote the public interest in promoting research and private study.

Next, the Court finds that the directive does not prevent Member States from granting libraries the right to digitise the books from their collections, if it becomes necessary, for the purpose of research or private study, to make those works available to individuals by dedicated terminals. The right of libraries to communicate, by dedicated terminals, the works they hold in their collections would risk being rendered largely meaningless, or indeed ineffective, if they did not have an ancillary right to digitise the works in question.³

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).

² The book in question is a textbook by Winfried Schulze entitled *Einführung in die neuere Geschichte* (Introduction to Modern History).

³ The Court adds that this ancillary right of digitisation does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the rightholder, given that the German legislation at issue in this case provides that the number of copies of each work available on dedicated terminals must not be greater than that which those libraries have acquired in analogue format.

However, the Court holds that that right of communication which may be held by publicly accessible libraries cannot permit individuals to print out the works on paper or store them on a USB stick from dedicated terminals. The printing out of a work on paper and its storage on a USB sticks are acts of reproduction, in so far as they aim to create a new copy of the digital copy made available to individuals. Such acts of reproduction are not necessary for communicating the work to users by means of dedicated terminals and are therefore not covered by the right of communication by means of dedicated terminals, particularly since they are made by individuals and not by the library itself.

The Court nevertheless adds that Member States may, within the limits and conditions set by the directive, provide for an exception or limitation to the exclusive right of reproduction of rightholders and thus permit the users of a library to print the works out on paper or store them on a USB stick from dedicated terminals. For that, it is necessary in particular that fair compensation be paid to the rightholders.

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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