All tablet computers to be taxed at same rate for private copying

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Private copying constitutes a well-known exception to copyright under Article L 122-5-2 of the Intellectual Property Code (which regulates authors' rights) and Article L 211-3-2 (which regulates neighbouring rights). Authors of works that are copied in a non-commercial and non-professional context are entitled to compensatory remuneration, which is paid at source and collected directly from manufacturers and importers of digital media and recording devices used for copying. These companies add the tax to the purchase price paid by consumers. The Private Copying Committee, created under Article L 311-5 of the Intellectual Property Code, is responsible for deciding which types of medium are subject to private copying remuneration, the rates of remuneration for each type of medium, and the conditions regarding the payment of such remuneration.

In the case at hand, a digital tablet manufacturer had asked the *Conseil d'État* to annul, on the grounds of abuse of power, Article 2 of the Private Copying Committee's decision of 5 September 2018, by which the committee had extended the remuneration for private copying that already applied to "built-in memories and hard disks in multimedia tablet computers with a media player function, with or without a detachable keyboard (but not attached)" to all such tablets – including those equipped with Windows 8.1 operating systems and later versions (which had previously been exempt). It had also requested the annulment, on the grounds of abuse of power, of Article 6 of the said decision, which had created a single rate of remuneration for all such tablets.

Previously, the committee had distinguished between tablets with an operating system for mobile devices or with their own operating system (known as "media tablets"), which were subject to private copying remuneration, and those with Windows 8.1 operating systems or later versions (known as "PC tablets"), which were exempt. In its disputed decision, the committee considered that this distinction had become obsolete because of technical advances in the respective types of operating systems. Furthermore, a user survey had shown that the number of private copies made on these devices was high and virtually the same for both types of tablet. Finally, the *Conseil d'État* ruled that the committee had been right, when evaluating the number of copies made, to hold that the practice of copying, for private use, content that was being streamed live did not, in itself, constitute a form of piracy that would justify omitting it from the calculation of

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remuneration due. The application was therefore rejected.

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https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000039426793

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