The Court of Justice clarifies the scope of the private copying exception under the InfoSoc Directive

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On 16 April 2026, the Court of Justice of the European Union delivered its judgment in Case C-496/24 *Stichting de Thuiskopie*, which concerns the interpretation of Article 5(2)(b) of 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 (InfoSoc Directive). In this judgment, the Court of Justice clarified the scope of the private copying exception in relation to offline streaming copies provided in the context of an on-demand streaming service for musical or audiovisual works.

The request for a preliminary ruling was made by the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) in the context of two domestic disputes which concerned a private copying fee claimed by two foundations -the *Stichting Onderhandelingen Thuiskopievergoeding* (SONT) and the *Stichting de Thuiskopie* (SdT) - from the producers of computer equipment HP and Dell in the context of offline streaming copies provided in connection with an on-demand internet streaming service. An offline streaming copy is a piece of content temporarily made available by the streaming service provider on a part of the user's memory and stored by means of an encryption method, which prevents the user from accessing it outside the streaming app.

The District Court of The Hague dismissed an action brought by HP and Dell against SdT and SONT in relation to the fee sought. However, the District Court's judgment was overruled by the Court of Appeal in The Hague, which considered that offline streaming copies could not be considered 'private copying' within the meaning of Article 5(2)(b) of Directive 2001/29 and Article 16c of the the Law on copyright (*Auteurswet*) and could not be covered by the relevant exception to the reproduction right. When SdT and SONT appealed against the Court of Appeal's judgement to the Supreme Court of the Netherlands, the latter decided to stay the proceedings and refer three questions to the CJEU relating to: (1) whether an offline streaming copy falls within the scope of Article 5(2)(b) of Directive 2001/29 in light of the requirements for the exceptions and limitations under Article 5(5) of that directive; (2) whether the objectives of Directive 2001/29 preclude the exclusion of offline streaming copies from private copying exception under domestic law; and (3) whether the manner in which the rightholders receive compensation is relevant.

The Court of Justice addressed the first two questions jointly, clarifying that making a protected work available by means of an offline streaming copy falls outside the scope of the private copying exception. The Court commenced its analysis by noting that the scope of the private copying exception under Article 5(2)(b) of Directive 2001/29 is limited solely to acts of reproduction within the meaning of Article 2 and excludes acts which fall within the scope of communication to the public under Article 3(1) of the same directive. In this regard, it first established that making a protected work available by means of an offline streaming copy must be regarded as communication of that work to the public, since any interested person can subscribe to a streaming platform and access an offline streaming copy at any place or time. However, should the referring court determine that the act in question constituted a reproduction, that court would have to ascertain whether the conditions laid down in Article 5(2)(b) of Directive 2001/29 are satisfied, namely that the reproduction must be made by a natural person for private use and for ends that are neither directly nor indirectly commercial. The Court of Justice stated that, in the context of a streaming service, an offline streaming copy cannot be regarded as having been made by the user themselves, since the source of the copy is held by the provider of that service. In addition, it found that a copy subject to such technological measures which preclude or restrict the acts not authorised by the rightholder within the meaning of Article 6(3) of Directive 2001/29 cannot, in principle, be classified as "private copying".

With respect to the third question, the Court of Justice determined that the application of the private copying exception is not affected by the fact that copying or using the work concerned for offline streaming was the subject of a payment to the copyright holder under a licence, provided that this copyright holder has not implemented any technological measures and has been unable to provide authorisation for such an act. As suggested by the referring court, copyright holders potentially receive remuneration by means of a license fee, in part calculated according to the number of times an offline streaming copy is played. In view of these circumstances, the Court established that authorising offline streaming copies falls within the scope of normal exploitation by the copyright holders. However, where natural persons have control over a copy of the protected work, any remuneration received by copyright holders in exchange for that authorised access has no basis, since the private copying exception under Article 5(2)(b) of Directive 2001/29 only covers fair compensation.

Court of Justice of the European Union, Stichting de Thuiskopie, Case C-496/24

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