[BE] Private Copying and Computer Equipment

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In Belgium, Auvibel is responsible for collecting and redistributing payments due for making private copies of sound and audiovisual works.

The company Hewlett Packard sells CD Recorders or CD Writers in Belgium; these make it possible to store information on a blank CD (CD-recordable).

Auvibel considered that this recording equipment and the blank CDs was subject to payment for private copying as provided for in Article 55 of the Copyright and Neighbouring Rights Act of 30 June 1994 ("the Act"). According to Auvibel, by refusing to make the due payment, Hewlett Packard was infringing the copyright protection of the originators, artistes or performers and producers of phonograms and audiovisual works.

Auvibel therefore applied to the Presiding Judge of the Regional Court (Tribunal de Première Instance) for an order to put an immediate stop to making the equipment and blank CDs available, on pain of a fine. The Presiding Judge declared the application unfounded, for the following reasons: The Presiding Judge considered that Hewlett Packard was right in referring to the Minister for Justice's report to the King prior to the Royal Decree of 28 March 1996 concerning remuneration for private copying. The report sets out the reasons which led the King, after consulting representatives of the sectors concerned, to set the remuneration applicable to computer media and equipment which could be used in particular for the private copying of sound and audiovisual works at specifically 0% of the sale price. According to the report, this type of equipment was not being used for this purpose to a significant extent. Although this equipment also made it possible to copy sound and audiovisual works, it was mainly used professionally for data storage. The Presiding Judge did not uphold Auvibel's argument that the rate provided for in the Royal Decree could not be applied by the Court as the King had overstepped the powers vested in him by law by in fact exempting this type of computer equipment and media from payment. The Court decided that zero rating in no way infringed the principle of entitlement to payment.

The Presiding Judge also recalled the existence of a consultative committee for this sector, which had been set up specifically to enable it to adapt regulations to technical and market developments without delay. According to the Presiding

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Judge, it was up to Auvibel to apply to this committee and request that the rate of payment for this type of equipment and media be changed in line with the present situation. According to the present state of legislation, therefore, the Presiding Judge found that Auvibel's submission was unfounded.

An appeal has been lodged against the decision.

Jugement du Président du Tribunal de Première Instance de Bruxelles (97/6126/A), 6 novembre 1997, Auvibel S.C.R.L. contre Hewlett Packard Belgium S.A.

Judgment by the Presiding Judge of the Court of first instance of Brussels (97/6126/A), 6 November 1997, in the case of Auvibel S.C.R.L. v. Hewlett Packard Belgium S.A.

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