[NL] Lawsuit on the Current Private Copying Levies

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On 20 July 2005, manufacturers of blank DVDs and CDs initiated legal proceedings suing the Stichting de Thuiskopie (Foundation for the Private Copy) and the Stichting Onderhandelingen Thuiskopievergoeding (Foundation which negotiates the levies - SONT) over the amount of the private copying levy on blank DVDs and CDs.

The manufacturers claim that the levies for private copying are too high and that the current levies do not take into account technological developments. The manufacturers -amongst which are Fuji, Imation, Maxell, Mmore, Nashua, Sony, Verbatim and Philips- request the judge to order a "0 levy"; alternatively to determine the amount of the levy; or as a second alternative, to order that negotiations between the manufacturers and SONT be continued.

The manufacturers' arguments point to a necessary judicial interpretation as to the exact scope of Article 16c of the Dutch Copyright Act which deals with reproductions intended for personal use and the levy on equipment enabling users to do so. The manufacturers also argue that fair compensation to rightsholders, based on Article 5(2)(b) of the European copyright directive, should not only take into account rightholders' actual application of technological protection measures but also of the availability of TPMs. Other circumstances that do not justify the current amount of the levies are the disproportion with regard to the price of a blank tape as well as the disproportion compared to the levies in other countries.

The Foundation for the Private Copy claims that technological developments and the European Copyright directive have been taken into account in determining the levies. It has also informed SONT of its views not only on the developments in the field of private copying but also on relevant technological developments. The Foundation states that the current levies do not suffice, in all cases, to properly compensate for the financial losses suffered as a result of private copying. It stresses that during the decision-making process leading to the establishment of the levy, all pertinent aspects have been taken into account which involved studying legal developments as well as the market itself.

Overall, this case touches on interesting questions and the Court may follow the recommendation made by the manufacturers to put prejudicial questions to the European Court of Justice about the meaning of Article 5(2)(b) and recitals 35 and

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39 of the European copyright directive in relation to the emerging availability and use of TPMs.

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http://www.boek9.nl/weblog2/images/dagvaardingthuiskopie.pdf

Summons presented by the manufacturers

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http://www.cedar.nl/thuiskopie/

Stichting Thuiskopie's (Foundation for the private copy) statement

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