Court of Justice of the European Union: Private Copying Levy in the Eye of the Storm

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On 21 October 2010 the European Court of Justice rendered its judgement in case C-467/08 Padawan v SGAE, calling the current application of Spanish private copying levy into question.

The judgment maintains that the Spanish private copying levy is abusive and that it does not meet with what Directive 2001/29/EC establishes. The Court ruled that the levy should only be charged on individuals, but not legal entities, companies or national authorities, which should be exempted.

Firstly it should be clarified, as opposed to what has been implied in the media, that the ruling of the European Court of Justice does not prohibit the existence of a private copying levy in Spain, as the application of a fee to compensate the rightsholders for private copying is recognised under Directive 2001/29/EC.

What the ruling of the European Court of Justice actually prohibits is the indiscriminate application of the private copying levy to each and every one of the equipment and devices that can store works protected under copyright, regardless of the intended use that such equipment or devices would eventually receive.

The purpose of the levy is to compensate rightsholders for damage suffered by the private copying of protected works. The indiscriminate application of a levy on all types of equipment and devices, including those that will be used for purposes clearly unrelated to private copying (e.g. when acquired by a company, a professional or a public administration that will not use them for private copying purposes), does not respect the need for a direct correspondence between the fair compensation of rightsholders and the private copying exception.

The ruling will not mean the elimination of the levy in Spain. In fact, it confirms the validity of systems of private copy compensation, including the system under Spanish law, but will probably lead, in the short term, to a modification of the Spanish legislation forbidding the indiscriminate application of the private copying levy to all equipment and devices regardless of the purpose for which they will be used.

Moreover, the decision opens the door to possible claims for repayment of the amounts unduly paid to collecting societies, although it is not clear yet how

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events will develop in practice.

Case C-467/08 Padawan v SGAE, 21 October 2010

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