[ES] Private Copying Levy Will not be Applied to Blank Media Acquired by Companies

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On 2 March 2011, the Audiencia Provincial de Barcelona (Barcelona Provincial Court) acquitted Padawan, a company which owns a computer store and which had been sued by the Spanish collecting society Sociedad General de Autores y Editores (General Society of Authors and Publishers - SGAE) for not paying the private copying levy in respect of CD-R, CD-RW, DVD-R and MP3 players marketed by it. The Court stated that, in this case, it had not been able to determine which equipment and devices were sold to companies and which were sold to individuals.

This is the first case challenging the private copying levy to come before the courts in Spain. The Barcelona Provincial Court vindicated the defendant and found that the levy may not be applied indiscriminately, but should only be applied in cases where the device is clearly intended for private copying. Furthermore, the ultimate recipient of the copying device must be a private individual.

Thus, in order to earn the fair compensation for private copying, although it is not necessary to prove the effective use of the copy device affected by the levy, it must be credible that the device would be able to serve that goal. Therefore the judge, having found that many of the defendant’s customers were companies, reasoned that the levy would, if permitted in this case, be applied indiscriminately, even to situations where it is clearly not going to be for private copying. In fact, according to European Law and to the Spanish Copyright Law, private copying may be performed only by individuals, entitling collecting societies to apply a levy, thus achieving a fair balance of interests affected, only over equipment and devices sold to individuals, not to companies or professionals.

The new ruling is in line with the response of the Court of Justice of the European Union on this issue, published last October (see IRIS 2010-10/7), to a question raised at the request of Padawan in this case. The Court of Justice considered that the indiscriminate application of the levy in relation to any equipment or device, including those purchased by persons other than individuals for purposes clearly unrelated to private copying is not in conformity with the European Copyright Directive.

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Along those lines, the Barcelona Provincial Court ruled that it was not able to distinguish in this case which devices were sold to private individuals and which to companies. Accordingly, the defendants' appeal was upheld. The costs for the first instance proceedings were imposed on SGAE.

Sentencia n. 89/2011 de la Audiencia Provincial de Barcelona, 2 de Marzo de 2011

http://estaticos.elmundo.es/documentos/2011/03/sentencia_canon_digital.pdf

Judgement n. 89/2011 of the Barcelona Provincial Court, Case Padawan v SGAE, 2 March 2011

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