[ES] Private Copying Levy Order Annulled

IRIS 2011-5:1/20

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On 22 March 2011, the Spanish private copying levy received another serious judicial setback, as the National Court (Audiencia Nacional) declared the nullity of the 2008 Order which set out the fees, the devices and the equipment which are subject to payment of a fair compensation for private copying.

The Court analysed the administrative Order that set the fees in 2008 and concluded that it is incomprehensible that, while the standard fixed fee for analogue devices took the form of an Order, with all the prescribed procedures that this entails, the standard set with regard to the digital levy was a simple administrative act, which does not need to comply with the same procedural requirements.

The levy itself remains in force, but the Order that regulated its application has now been declared null, as the Court concluded that is a mandatory provision that has been developed and launched without meeting several requirements, especially the compulsory report from the State Council (Consejo de Estado) and the financial report. The fees that will be applicable from now on will be those from 2006, which do not specifically address some new devices such as MP3s, MP4s or certain mobile phones with multimedia faculties. Devices and equipment such as CD recorders, DVD, CD-R, CD-RW, DVD-R, DVD-RW, multifunction printers and multifunction inkjet and laser scanners remain taxed by the private copying levy, but in accordance with the old fees.

Regarding the amounts already collected by the collecting entities, although the decision does not contain any provision about an automatic refund to the plaintiffs, it seems logical that individuals will turn to the courts to claim back money paid on equipment or devices not regulated under the 2006 fees.

Meanwhile, the Spanish Government is forced to proceed with the adoption of a new regulatory framework for the private copying levy after a decision of the ECJ which 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 (see IRIS 2010-10/7).

Audiencia Nacional, Sala de lo Contencioso-Administrativo, sección tercera, 22 de Marzo de 2011

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http://estaticos.elmundo.es/documentos/2011/03/24/canon.pdf

Judgment of the Audiencia Nacional, Chamber of Administrative Jurisdiction, Third Section, 22 March 2011

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