[FR] Council of State Revokes Application of Private Copying Levy to Products Acquired for Professional Purposes

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In a decision of 17 June 2011, the Conseil d'Etat (Council of State) revoked the application of private copying levies to products acquired for professional purposes. Under Article L. 311-1 of the Intellectual Property Code, which transposes Directive 2001/29/EC, the authors, performers and producers of works fixed on phonograms or videograms are entitled to compensation for the reproduction of their works for private copying purposes. Authors and producers of works fixed on any other media for their reproduction for private copying purposes on a digital recording device are also entitled to the compensation. Article L. 311-5 of the Code entrusts a committee (known as the "Private Copying Committee") with the task of determining the types of equipment, rates of compensation (which depend on the type of equipment and the maximum length of recording) and how the compensation should be paid.

A number of companies and professional associations of equipment manufacturers and retailers asked the Conseil d'Etat to revoke the decision of 17 December 2008 in which the Private Copying Committee had extended the compensation scheme to include certain "new" media and fixed the relevant levies. The applicants disputed the inclusion in the scheme of products acquired by professionals for purposes other than private copying. In its decision, the Conseil d'Etat set out the principles governing compensation for private copying. It then pointed out that, in its Padawan judgement of 21 October 2010, the Court of Justice of the European Union, ruling on a preliminary question, said that the indiscriminate application of the private copying levy, particularly to equipment, devices and digital reproduction media that were not sold to private users but clearly intended for uses other than copying for private use, was incompatible with Directive 2001/29/EC. The Conseil d'Etat therefore revoked the disputed decision of the Private Copying Committee to apply the levy to all equipment without the possibility of exempting devices acquired, particularly for professional purposes, "whose conditions of use do not suggest that they are to be used for private copying purposes". The fact that the committee had calculated the rate of remuneration for certain equipment depending on the extent to which it was used for professional purposes was deemed irrelevant by the Conseil d'Etat.

In principle, when an administrative act is revoked, it is considered never to have existed. However, it is thought that, if this act was revoked retroactively, both

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rightsholders and companies which had paid the levy would face considerable uncertainty, with the risk of requests for reimbursement or additional payments so numerous that the future of the whole private copying compensation system could be seriously affected. For this reason, the Conseil d'Etat ruled that the decision should be revoked after a period of six months. This delay should enable the committee to set out new remuneration scales, taking this decision into account. The rightsholders, for their part, believe that "it is now up to the public authorities and the Private Copying Committee to make the necessary adjustments to the private copying remuneration mechanism, while safeguarding the fair compensation of rightsholders."

Conseil d'Etat (10e et 9e sous-sect. réunies), 17 juin 2011 - Canal + Distribution, Motorola, Nokia et a.

http://www.conseil-etat.fr/cde/node.php?articleid=2363

Council of State (10th and 9th sections combined), 17 June 2011 - Canal + Distribution, Motorola, Nokia et a.

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