Court of Justice of the European Union: VEWA v. Belgium

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According to Art. 1 of the Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, authors have an exclusive right to authorise or prohibit the rental and lending of originals and copies of their copyright-protected works. Article 6(1), however, provides member states with the possibility of introducing a derogation from this principle in the case of public lending, provided that the authors at least obtain remuneration for such lending.

The correct interpretation of these provisions was brought into dispute before the Belgian courts. On 7 July 2004, the Belgian copyright management society Vereniging van Educatieve en Wetenschappelijke Auteurs (VEWA) brought an action for annulment before the Raad van State (Belgian Council of State) against the Belgian act transposing the Directive, the Royal Decree of 25 April 2004 on remuneration rights for the public lending of authors, interpreting or performing artists, phonogram producers and producers of the first fixation of films. VEWA submitted that that royal decree, by fixing a flat-rate remuneration of EUR 1 per adult per year and EUR 0.50 per child per year registered with the lending institutions, as long as that person has borrowed once during the reference period, infringes the provisions of the Directive, which require that “equitable remuneration” be paid for a loan or a rental.

The Belgian court, noting that Art. 6 of the Directive 2006/115/EC makes no mention of “equitable remuneration”, but instead of mere “remuneration”, made a reference for a preliminary ruling to the European Court of Justice, asking whether the provisions of the Rental Right Directive preclude the institution of a flat-rate remuneration system of the type in operation in Belgium.

The Luxembourg Court first observed that, under Art. 6 of the Directive, a wide margin of discretion is reserved to the member states to determine, in accordance with their own cultural promotion objectives, the amount of the remuneration payable to authors in the event of public lending. However, the Court also noted that the remuneration must enable authors to receive an adequate income and cannot therefore be purely symbolic. On the contrary, the remuneration is intended to constitute consideration for the harm caused to

authors by reason of the use of their works without their authorisation. The determination, consequently, of the amount of that remuneration cannot be completely dissociated from the elements that constitute that harm. Such relevant elements should not only be limited to the number of borrowers registered with a lending establishment, but should also include the number of works made available to the public. A system that omits to take into account the latter factor cannot be seen as having sufficient regard for the extent of the harm suffered by authors and is therefore incompatible with the Directive.

The Court also noted that, according to the Royal Decree, where a person is registered with a number of establishments, the remuneration is payable only once in respect of that person. According to VEWA, 80% of the establishments in the French Community in Belgium declare that a large number of their readers are also registered with other lending establishments and, consequently, those readers are not taken into account for payment of the remuneration of the author concerned. As a result, many establishments are, in effect, almost exempted from the obligation to pay remuneration. Such a de facto exemption is, however, according to the Court's interpretation, at variance with Art. 6(3) of the Directive, according to which only a limited number of categories of establishments potentially required to pay remuneration may be exempt from payment.

Case C 271/10, Vereniging van Educatieve en Wetenschappelijke Auteurs (VEWA) v. Belgische Staat, 30 June 2011

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