[FR] Reform of Private Copying Levies

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Amélie Blocman
Légipresse

On 20 December 2011, the French parliament adopted a new act on private copying levies. This followed a ruling of the Conseil d'Etat (Council of State) of 17 June 2011 which, particularly in view of the ECJ's Padawan judgement (see IRIS 2010-10/7), revoked a decision of the Commission « copie privée » (Private Copying Committee), which is responsible for determining the types of equipment and the rates and methods of remuneration for private copying due to rightsholders under Articles 311-1 et seq. of the Intellectual Property Code. The decision had been revoked on the grounds that all equipment had been subject to remuneration, without the possibility of exempting devices acquired, particularly for professional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" (see IRIS 2011-7/20). It was decided that the decision should only be revoked after a period of six months in order to allow the public authorities to adjust the private copying levy mechanism. Previously, on 11 July 2008, the Conseil d'Etat had ruled that the private copying levy should only apply to copies made from a legitimately acquired source. Taking note of these decisions, the Ministry of Culture therefore tabled a bill designed to incorporate their provisions into the Intellectual Property Code. Having been the subject of an expedited procedure due to the deadline set by the Conseil d'Etat, the bill was therefore debated and adopted by both chambers, before being published in the Official Gazette on 21 December 2011. The text therefore excludes copies made from illicit sources from the private copying levy system and the basis of remuneration. Article 2 of the act concerns the use of usage surveys to determine the level of the private copying levy. A duty to inform consumers is also established, whereby the size of the levy applicable to each recording device must be communicated to buyers when they are offered for sale. As the highlight of the text, the act provides for the possibility of exempting from private copying levies "recording devices acquired, particularly for professional purposes, whose conditions of use do not suggest that they are to be used for private copying purposes". In practice, the act offers the beneficiaries the possibility to conclude an exemption agreement. In the absence of such an agreement, these people are entitled to reimbursement of the levy on production of a receipt, as described in a decree of 20 December 2011. Requests for reimbursement apply to recording equipment acquired before the law was promulgated.

Although all rightsholders have welcomed the adoption of the text, the Minister of Culture pointed out that it was "a first step before a complete review" of private

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copying.

Loi n° 2011-1898 du 20 décembre 2011 relative à la rémunération pour copie privée, JO du 21 décembre 2011

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=?cidTexte=JORFTEXT000025001493

Act no. 2011-1898 of 20 December 2011 concerning private copying levies, Official Gazette of 21 December 2011

Arrêté du 20 décembre 2011 relatif au remboursement de la rémunération pour copie privée, JO du 23 décembre 2011

http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025016499

Decree of 20 December 2011 concerning the reimbursement of the private copying levy, Official Gazette of 23 December 2011

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