

# Court of Justice of the European Union: Exploitation Rights of Film Directors

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On 9 February 2012, the Court of Justice of the European Union (ECJ) issued a preliminary ruling on request of the Handelsgericht Wien (Commercial Court of Vienna) concerning the exploitation rights of the director and of the producer of a film.

At national level, the case involves the director and producer of a documentary film on German war photography during WWII ("Fotos von der Front"). The two parties had concluded an agreement acknowledging their respective roles and assigning all copyright and related rights to the film producer, with the exception of certain methods of exploitation (such as transmission to closed circles of users and pay-TV), that were subject to a separate payment. The contract was silent as to the statutory rights to remuneration (i.e., the "blank cassette remuneration" or levy on material recordings). The dispute arose when the film producer made the movie available online and assigned the rights to an online movie platform for video-on-demand download. The film director considered that this method of exploitation had been reserved to him by contract and that therefore the contract and his copyright had been breached. The film producer disagreed and argued that all exclusive exploitation rights were assigned to him. In addition, he claimed to be entitled in full to the statutory rights to remuneration. The national court considered that under Austrian copyright law, as interpreted by the Supreme Court, exploitation rights were directly and originally vested in the film producer. Any agreements having a contrary effect were void. The law provided that the statutory rights to remuneration were shared equally between the film producer and the film director; however they could be waived and the parties could have agreed differently. The national court had doubts concerning the compatibility and consistency of the relevant provisions of the Austrian law with EU law and referred a series of questions for a preliminary judgment to the ECJ.

The first question sought to determine whether a national law that exclusively granted the exploitation rights in a cinematographic work to a film producer would be compatible with EU law (namely Articles 1 and 2 of the Cable and Satellite Directive; Articles 2 and 3 of the Information Society Directive and Article 2 of the Term of Protection Directive). According to the ECJ, a film director should be regarded as "having fully acquired under European Union law, the right to own the intellectual property in [a cinematographic] work". Denying him the

exploitation rights “would be tantamount to depriving him of his lawfully acquired intellectual property right”. As a consequence, the EU provisions should be interpreted as “precluding national legislations which allocates (...) exploitation rights by operation of law exclusively to the producer of the work”.

The second question related to the transfer of the rental right to the film producer. The ECJ ruled that EU law allows member states to establish a presumption of transfer of exploitation rights in favour of the film producer, under the condition that the presumption is not irrebuttable and the film director can agree otherwise (opt-out).

The third and fourth questions concerned the right of fair compensation. The ECJ had to determine whether a film director in his capacity as author or co-author would be entitled to fair compensation (under private copying) and whether the right of fair compensation could be subject to an automatic presumption of transfer. The Court ruled that under EU law, a film director should be directly and originally entitled to fair compensation. However, this right of fair compensation cannot be the subject of an automatic presumption of transfer in favour of the film producer, whether the presumption is rebuttable or not.

In conclusion, according to the ECJ, EU law requires that member states grant to a film director exploitation rights in a cinematographic work together with the right to fair compensation. National laws can establish a presumption of transfer of the exploitation rights to the film producer provided the film director can agree otherwise. However, fair compensation cannot be the subject of a presumption of transfer.

*Court of Justice of the European Union, C-277/10, Martin Luksan v. Petrus van der Let, 9 February 2012*

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