[ES] Spanish Supreme Court Confirms Private Copying Levy

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Pedro Letai
IE Law School, Instituto de Empresa, Madrid

On 22 June 2012 the Spanish Supreme Court issued a ruling in favor of EGEDA, a collecting society managing the intellectual property rights of audiovisual producers. EGEDA filed a lawsuit against the company Freephone Axarquia, and its sole administrator, for not paying the amounts corresponding to the private copying levy.

The judgment of the Supreme Court recalls that fair compensation for private copying, contained in the EU Directive 2001/29/CE, is an autonomous concept of European Union law which must be interpreted uniformly in all the member states that have established a private copying exception.

The Supreme Court has taken into account the latest judgments of the European Court of Justice in this regard, such as the Padawan case (see IRIS 2010-10/7) or the Thuiskopie case (see IRIS 2011-7/2). In the mentioned cases, the Court ruled that legal individuals who manifestly do not make effective use of hardware and media devices for private copying should be exempted from paying any compensation, and the States that adopt the system of compensation for private copying are themselves are the ones responsible for ensuring that rightsholders receive their compensation.

The plenary assembly of the Tribunal, relying on these judgments of the European Court, highlighted the obligation that public authorities have to ensure fair compensation for private copying to copyright holders. Therefore, the Court held Freephone Anxarquia and its administrator responsible for compensating copyright holders for the private copying of their works in application of the Spanish equitable compensation system. Under this provision, only in force until 31 December 2011, private copying levy was chargeable to those which really copied and had an impact on the rightsholders patrimony.

Hence, the plenary Supreme Court validated the previous system of fair compensation for private copying, without prejudice to being susceptible to future legislative amendments.

Spain will presumably adopt a change of system by placing the barrel in charge of the General State budget. This initiative will offer an alternative that will go beyond the element of nondiscrimination banned by the European Court of

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Justice, and will make all citizens pay for the levy, not taking into consideration if they really did or not make private copies.

Tribunal Supremo, sentencia 321/2011 de 22 de Junio de 2012

http://ibercrea.es/wp-content/uploads/2012/07/2012-07-18-Sentencia-Frephone-Axarquia-5305.pdf

Judgment of the Supreme Court no. 321/2011 of 22 June 2012

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