[FR] Private Copies: Apple Ordered to Pay EUR 5 Million in Fees to Copie France

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In a judgment of 30 May 2013, the Tribunal de grande instance de Paris (Paris Regional Court) ordered Apple to pay, with immediate effect, to the collecting society Copie France, which is in charge of collecting private copying levies, the sum of 5 million euros in respect of the remuneration due for private copies made on on iPads sold by Apple in 2011.

It should be recalled that the so-called Private Copying Committee tasked under Article L. 311-5 of the Code de la propriété intellectuelle (Intellectual Property Code) with setting the scales of private copying levies, adopted Decision No. 13 on 12 January 2011 subjecting multimedia touch screen tablets to this payment on a scale provisionally applying until 31 December that year. The scale adopted is identical to the one in force for mobile telephones, which was the subject of Decision No. 11, and the committee will have to continue its work in order to adopt a definitive scale. However, Decision No. 11 was set aside by the Conseil d'Etat (Council of State) because it did not meet the requirement to exempt uses other than making private copies, in accordance with the CJEU's Padawan judgment (see IRIS 2011-7/20). Although Apple, in execution of Decision No. 13, made stock withdrawal declarations and Copie France issued debit notes, the validity of which Apple contests, Apple called on the court to declare the debt claimed by Copie France unlawful and unfounded. It considers it unfounded because it also includes payment for professional use and for unlawful copies, whereas Decision No. 13, on which it is based and which is currently the subject of an appeal before the Council of State, was adopted by analogy with multimedia mobile telephones even though Decision No. 11 had been set aside.

The court pointed out that it was not up to the ordinary court to rule on the legality of an administrative act, but the plaintiff's arguments, which were based on earlier Council of State annulment decisions, were sufficiently serious for a stay of proceedings to be issued pending the judgment of the administrative court already examining the question. Copie France nonetheless requested the allocation of an advance on the debt. The court pointed out that the possible setting aside by the Council of State of the Private Copying Committee's Decision No. 13 did not affect the validity of Article L331-1 of theIntellectual Property Code, which laid down the very principle of remuneration for private copying and of which that payment was simply its implementation. Copie France was accordingly

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entitled to invoke the principle of remuneration for private copying in order to request payment in order to compensate for the loss it had incurred because of the current difficulties in recovering the sums due in this connection. Since the law obliged manufacturers and importers of recording devices to register the payment of fair compensation, it was up to them to pass the charge on to the final consumer who benefited from the private copying exception. The court held that Apple, which collected the amount of the remuneration for private copying from final consumers, was indeed responsible for indemnifying Copie France. Referring to the scale provided for by Decision No. 14 of the Private Copying Committee the court ordered Apple to pay Copie France copying levies amounting to 5 million euros and ordered the provisional execution of its judgment in order to ensure prompt redress for the harm suffered by the latter.

It is now up to the Council of State to rule on the legality of the scale applied and up to the authorities to follow, or not to follow, the recommendations of the Lescure mission (see IRIS 2013-2/25). While endorsing the justification for remuneration for private copying ("there is no reason to question the foundations of the current system"), the mission proposes laying down the corresponding scales by decree.

TGI de Paris (3e ch. 4e sect.), 30 mai 2013 - Apple c. Copie France

Paris Regional Court (3rd Chamber, 4th section), 30 May 2013 - Apple v. Copie France

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