Court of Justice of the European Union: Amazon v. Austro-Mechana

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On 11 July 2013, the Court of Justice of the European Union (CJEU) issued its decision in a case concerning the payment of equitable remuneration on recording devices. The case was initiated when the Austrian collecting society Austro-Mechana brought an action before the Handelsgericht Wien against Amazon for the payment of equitable remuneration on recording devices sold during the 2002-2004 period. The tribunal granted an interim order to produce accounts for the fair determination of the due amount while it reserved its decision on the claim for payment. The order was upheld on appeal, as a consequence of which Amazon brought the case before the Oberster Gerichtshof, the court of final resort. The Oberster Gerichtshof stayed proceedings and referred four questions to the CJEU concerning the Directive 2001/29/EC (Copyright Directive).

The first of these questions asked whether Article 5(2)(b) precludes the indiscriminate application by a member state of a private copying levy on the first placing on the market in its territory, for commercial purposes and for consideration, of recording media suitable for reproduction, while providing for a right to reimbursement of the levies paid in the event that the final use of those media does not meet the required criteria. The CJEU held that such indiscriminate application is not precluded, provided that practical difficulties justify it, and the right to reimbursement is effective and does not make repayment of the levies paid excessively difficult. On the contrary, such a levy would not reflect the ‘fair balance’ to be struck between the interests of the rightsholders and those of the users.

The second question posed by the referring Court was whether Article 5(2)(b) precludes the establishment of a rebuttable presumption of private use of recording media in the case of the marketing of such media to natural persons. The Court again answered in the negative, subject to a number of conditions: i.e. a) the media must be marketed to natural persons; b) the practical difficulties of determining whether the purpose of the use of the media in question is private justify the establishment of such a presumption, and; c) the presumption established does not result in the imposition of the private copying levy in cases where the final use of those media clearly does not fall within the case referred to in that provision.

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In its third question, the referring Court asked whether the right to compensation should be excluded if half of the funds received are paid to social and cultural institutions set up for the benefit of those entitled. The Court stated that such a right to compensation cannot be excluded under the present conditions, provided that the social and cultural institutions actually benefit those entitled, and the arrangements for their operations are not discriminatory.

Finally, the fourth question was whether the obligation to pay a private copy levy can be excluded when a comparable levy has already been paid in another member state. The Court held that such an obligation may not be excluded, yet, a person who has previously paid that levy in a member state that does not have territorial competence may request its repayment in accordance with its national law.

Case C 521/11, Amazon v. Austro-Mechana, 11 July 2013

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