[FR] Conseil d’État confirms two decisions by Private Copy Committee

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Two judgments, delivered by the Conseil d’État on 19 November, have confirmed recent decisions on private copying remuneration adopted by the responsible committee and which had been contested by representatives of industrialists and distributors of electronic equipment and a number of manufacturers. These were Decision 15, which laid down the remuneration for most media, and Decision 14, which reinstated the remuneration for tablets following the annulment by the Conseil d'État of the committee’s previous decision on the topic. The applicants had challenged a number of points, including not only the committee’s competence, its composition and the procedure for adopting the disputed decisions, but also the basis used for calculating the remuneration, its amount, and its refund.

The Conseil d’État began by recalling the principle according to which private copying remuneration should be fixed at a level that makes it possible to produce revenue to be shared among the rightsholders that is broadly similar to the sum that would be raised by the payment of a fee by each person who makes a copy for private use, if it were possible to establish and collect such a fee. It was also recalled that the remuneration referred to in the disputed decisions could not be considered a tax: the applicants were not justified in claiming that the committee had exceeded its remit by introducing a compulsory levy of a fiscal nature. Moreover, the fact that five of the six organisations representing the manufacturers and importers of recording media had announced in November 2012 that they no longer wished to take part in the work of the committee and had therefore not been present one month later when the contested Decision 15 was adopted could not be regarded as invalidating the committee’s composition. The court also validated the surveys which provided information on the use made of equipment on the basis of which the contested remuneration had been determined. It was also found that, contrary to the claims made by Canal Plus, the committee had not made an error of appreciation when it considered, in the light of the results of a multi-media survey and another survey on “video recorders with integrated memory”, that decoder recorders fell within this latter category, in view of their potential use for the purpose of making a copy for private use. Moreover, it was not important whether the decoder recorders were the subject of technical protective measures restricting the possibilities of making copies for private use, since such measures did not prevent the making of copies from a

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lawful source on the decoder recorders, but only their further copying or transfer onto other media. It was also found that the fact that 25% of the yield of the remuneration for making a copy for private use resulting from application of the disputed decision was, in application of Article L. 321-9 of the Intellectual Property Code, to be allocated to “support for the creation and broadcasting of live shows and training for performers” was not counter to the provisions of Article 5-2 b) of Directive 200129/EC, as interpreted by the judgment of the CJEU delivered on 11 July 2013 in the Amazon case.

The Minister for Culture has reacted to the announcement of these decisions. “This consolidates the remuneration for making copies for private use, with clarified methods of calculation validated by the Conseil d’État and new scales that are valid for an indefinite period of time”. The rightsholders also expressed their satisfaction with these decisions, as they felt they “consolidated an important section of the financing of cultural action in our country”. The remuneration for making copies for private use yielded EUR 50 million in 2013.

Conseil d’Etat (10e et 9e sous-sect.), 19 novembre 2014 - Canal Plus distribution et a.

http://www.scpp.fr/SCPP/Portals/0/DownLoads/Actualit%C3%A9s/D15.pdf

Conseil d’Etat (10e et 9e sous-sect.), 19 November 2014 - Canal Plus distribution and other

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http://www.scpp.fr/SCPP/Portals/0/DownLoads/Actualit%C3%A9s/D14.pdf

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