[NL] Dutch Minister Prolongs Private Copy Levy System and Lowers Levy in Response to CJEU Ruling

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On 10 April 2014, the Court of Justice of the European Union ruled in the Stichting Thuiskopie case that Article 5(2)(b) of the Copyright Directive does not apply to private copying from an illegal source (see IRIS 2014-6/4). Article 5(2) (b) allows Member States to create a private copying exception, provided that the rightholders receive a fair compensation. In the Netherlands, a levy for private copying was previously intended to cover both copying from a legal, as well as from an illegal source. As it has become clear that that system was not in accordance with European law, the Dutch Minister of Justice has issued a new decision lowering the levy by 30% and in this way keeping the system in force.

Based on the Copyright Directive, a Member State can create an exception for private copying, provided that the rightholders will receive a fair compensation for this. The Netherlands has such an exception. With every purchase of certain copying devices, the consumer pays a levy, which is then distributed to the rightholders. The Stichting Thuiskopie organisation is assigned by the Minister of Justice to administer the private copying system. In reaction to the CJEU's ruling the Minister of Justice ordered a report from Stichting Thuiskopie calculating a new levy based only on private copying from a legal source. This organisation offered its advice on 7 October 2014, suggesting lowering the fees by 30%. The advice further suggests adding e-readers to the list of copying devices.

Based on this advice, the Minister issued a decision on 28 October 2014. This decision extends the private copy levy system for another three years. The Minister further follows the advice of the Stichting Thuiskopie and lowered the levy by 30%. This is not only based on the new method of calculation, but also on the ascertainment that there is less evasion of the system and fewer requests for restitution.

In the explanatory note the Minister stated that the new amounts are in conformity with European law, since the CJEU has stated that it is for the Member States to determine what a fair compensation is. It is estimated that EUR 30,000,000 in levies will be collected in the forthcoming year. According to the Minister, this amount is similar to that in other countries.

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Besluit van 28 oktober 2014, houdende wijziging van het Besluit van 23 oktober 2012 tot aanwijzing van de voorwerpen, bedoeld in artikel 16c van de Auteurswet, en tot vaststelling van nadere regels over de hoogte en de verschuldigdheid van de vergoeding, bedoeld in artikel 16c van de Auteurswet

https://zoek.officielebekendmakingen.nl/dossier/29838/stb-2014-410.html

Decision of 28 October 2014, amending the Decree of 23 October 2012 designating the objects referred to in Article 16c of the Copyright Act and laying down detailed rules on the amount and chargeability of the allowance referred to in Article 16c of the Copyright Act

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