[AT] Vienna Commercial Court in Wien rules on blank cassette levy

IRIS 2015-10:1/7

Gianna Iacino
Legal expert

On 26 August 2015, the Vienna Commercial Court ruled that the Austrian legislation imposing a levy on blank cassettes is incompatible with the Copyright Directive and the case law of the Court of Justice of the European Union (CJEU).

The collecting society Austro-Mechana claimed payment of the so-called Leerkassettenvergütung (blank cassette levy) under section 42 of the Urheberrechtsgesetz (Copyright Act) for all storage media sold by Amazon. The collecting society won its case at trial and on appeal, but the Oberster Gerichtshof (Supreme Court) stayed the proceedings to refer several questions to the CJEU for a preliminary ruling concerning the interpretation of the Copyright Directive 2001/29/EC. According to the Copyright Directive, copyright holders have the exclusive right to prohibit or permit the copying of their works. However, it provides for an exception to this right, namely the right to make private copies, but these are only legal when copyright holders receive “fair compensation”. In Austria, this fair compensation is given to copyright holders via the aforementioned blank cassette levy, that is to say a levy on the first sale of recording media suitable for copying.

In its judgment of 11 July 2013 (Case C-521/11), the CJEU established that charging the blank cassette levy is not compatible with the Directive if the recording medium concerned is obviously not to be used to make private copies. However, the rules may be compatible with the Directive if they provide for the reimbursement of the levy paid if no private copies are made. Whether the Austrian provisions on the blank cassette levy meet these requirements and whether the reimbursement of the levy is not excessively difficult, and is accordingly compatible with the Directive must, however, be examined by the Supreme Court. The Supreme Court then set aside the judgments of the lower courts and referred the dispute back to the Vienna Commercial Court. The latter has now ruled that the Austrian provisions on the blank cassette levy do not meet the requirements laid down by the CJEU since the possibility of reimbursing the levy afforded by these provisions is unlikely to correct any imbalances they create. Most market players in Austria are, it said, unaware of the possibility of reimbursement so it is for that reason alone incapable of ensuring sufficient compensation. Furthermore, private final consumers are completely excluded from the possible reimbursement of the levy.

© European Audiovisual Observatory (Council of Europe) 2026

Urteil des Handelsgerichts Wien vom 26. August 2015

https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbnx3YXJuaW5nc2Zvcmlwb3duZXJzfGd4OjZlN2EwMjE2YzQ2MDZjYg

Judgment of the Vienna Commercial Court of 26 August 2015

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026