Court of Justice of the European Union: Advocate General's opinion on private copying compensation and general state budgets

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Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

On 19 January 2016, Advocate General Szpunar delivered his opinion in Case C-470/14, EGEDA v. Administración del Estado, which was a reference from the Spanish Supreme Court seeking a preliminary ruling on questions relating to Article 5(2)(b) of Directive 2001/29 (the "InfoSoc Directive").

Article 5(2)(b) provides that member states may provide for exceptions or limitations to the reproduction right "in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation".

The first question was whether a scheme for fair compensation for private copying is compatible with Article 5(2)(b) of the Directive, where the scheme, while taking as a basis an estimate of the harm actually caused, is financed from the General State Budget, as it thus not possible to ensure that the cost of that compensation is borne by the users of private copies. The second question was whether, if the first question is answered in the affirmative, the scheme is compatible with Article 5(2)(b) where the total amount allocated by the General State Budget to fair compensation for private copying, although calculated on the basis of the harm actually caused, has to be set within the budgetary limits established for each financial year.

On the first question, the Advocate General considered that the financing of the compensation by the general budget of the State is not contrary to the principles established by the Court in the Padawan case (see IRIS 2010-10/7). This was because it does not expand the scope of the levy to all taxpayers, but is a funding system based on a different logic. There is no link between the taxes paid by taxpayers, including those who, like corporations, cannot benefit from the exception for private copying, on the one hand, and the financing of compensation under this exception from the general budget of the State, on the other.

In relation to the second question, the Advocate General held that compensation cannot a priori be capped at a level that does not sufficiently take into account

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the amount of damage suffered by the rights holders, as estimated according to the rules applicable in the internal law of the Member State concerned. As such, Article 5(2)(b) of the Directive must be interpreted as providing that the amount of compensation referred to therein is fixed in the established budget limits a priori for each financial year and is taken into account for the purposes of this fixation, the estimated amount of damage suffered by the rights holders.

The Advocate General's opinion is not binding on the EU Court of Justice, and the Court will now consider the opinion, in addition to the parties' submissions, and deliver its judgment at a later date.

Conclusions de l'avocat général Szpunar, affaire C-470/14 « EGEDA c. Administración del Estado », 19 janvier 2016

http://curia.europa.eu/juris/document/document.jsf?text=&docid=173583&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=399535

Opinion of Advocate General Szpunar, Case C-470/14 EGEDA v. Administración del Estado, 19 January 2016

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