[ES] Supreme Court decision on private copying

IRIS 2017-1:1/11

Sophie Valais
European Audiovisual Observatory

By judgment of 10 November 2016, the Spanish Supreme Court cancelled Royal Decree 1657/2012, which regulates the procedure of compensating rightsholders for acts of private copying. This Decree was itself a continuation of the derogation by Royal Decree Law 20/2011 of the private copying levy and the introduction of a new system whereby fair compensation for acts of private copying is paid to rightsholders from the state budget (see IRIS 2012-8/19, IRIS 2011-5/20, IRIS 2011-4/23 and IRIS 2010-10/7).

The Supreme Court decision follows the judgment delivered on 9 June 2016 by the Court of Justice of the European Union (CJEU) in Case C-470/14, EGEDA v. Administracion del Estado, following a request for a preliminary ruling on the interpretation of Article 5(2)(b) of Directive 2001/29/EU (the "InfoSoc Directive") referred by the Spanish Supreme Court (see IRIS 2016-7/3). 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 CJEU considered that, in the Spanish scheme, the payment of the fair compensation is financed from all the budget resources of the general state budget, and therefore also from all taxpayers. According to the CJEU, such a scheme was not a guarantee that the cost of that compensation is ultimately borne solely by the users of private copies. The Court concluded that Article 5(2)(b) of the InfoSoc Directive precludes a fair compensation scheme financed from the general state budget in such a way that it is not possible to ensure that the cost of that compensation is borne by the users of private copies.

Based on this preliminary ruling, the Supreme Court considers, in its judgment of 10 November 2016, that the Spanish regulation on private copying compensation is incompatible with the judgment of the CJEU and with EU law. The Supreme Court also rejects the request of the State Attorney to suspend the procedure until the Constitutional Court pronounces itself on the appeal presented against Article 1 of the Intellectual Property Law as revised in 2014, when it incorporated the Royal Decree Law 20/2011 which introduces the new system of private copying compensation. The Supreme Court establishes that when a national legal provision is contrary to EU law, it must be declared as inapplicable, independently from it being declared also as unconstitutional, due to the primacy of EU law over

© European Audiovisual Observatory (Council of Europe) 2026

national law. The Supreme Court considers that, as the Intellectual Property Law 21/2014, as well as the Royal Decree Law 20/2011 are inapplicable in accordance with the CJEU judgment of June 2016, the Royal Decree of 2012, which regulates the procedure for paying the compensation from the general state budget must be declared null as it stays without any effective legal basis.

The Spanish Government is now preparing a working document for the future system of private copying compensation that would be based again on a levy on carriers, equipment and devices and that would be used for the negotiations with the main stakeholders concerned.

Tribunal Supremo, Sala de lo Contencioso-Administrativo, Seccion Cuarta, Sentencia num. 2394/2016

http://www.poderjudicial.es/stfls/SALA%20DE%20PRENSA/NOTAS%20DE%20PRENSA/20161111%20Sentencia_Canon%20digital.pdf

Judgment of the Supreme Court, no. 2394/2016, 10 November 2016

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026