Court of Justice of the European Union: Judgment on sale of multimedia players enabling streaming of illegal content

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On 26 April 2017, the Court of Justice of the European Union (CJEU) delivered its judgment in Stichting Brein v. Wullems, concerning the sale of multimedia players which enable easy access to illegal audiovisual content on the Internet. The case arose in 2014, when Stichting Brein, the Dutch foundation for copyright holders, brought a court action against Mr. Jack Wullems to prevent him from selling certain media players, including on his own website, www.filmspeler.nl. The media players, when connected to the Internet and a television, are able to stream audiovisual material from the Internet. In these media players, add-ons were installed, which link to streaming websites, including sites providing unauthorised access to copyright-protected films and series. The defendant advertised the media players, proclaiming "Never again pay for films, TV-series and sports!" and "Netflix is a thing of the past!".

The Rechtbank Midden-Nederland (District Court, Midden-Nederland) referred a number of questions to the CJEU (see IRIS 2015-10/26). The first and second questions related to whether there was "a communication to the public" under Article 3(1) of Directive 2001/29/EC by selling the media players with add-ons. The Court then applied the reasoning of the recent GS Media case (see IRIS 2016-9/3), and held that there was a communication to the public because the sale of the "filmerspeler" multimedia player was made in full knowledge of the fact that the add-ons containing hyperlinks pre-installed on that player gave access to works published illegally on the Internet. Moreover, the advertising of that multimedia player specifically stated that it made it possible to watch on a television, freely and easily, audiovisual material available on the Internet without the consent of the copyright holders. Finally, the multimedia player was supplied with a view to making a profit, the price for the player being paid in particular to obtain direct access to protected works available on streaming websites without the consent of the copyright holders.

The third and fourth questions concerned whether the temporary reproduction on a multimedia player of a copyright-protected work obtained by streaming is exempt from the right of reproduction under Article 5 of the Directive. An act of reproduction is exempt from the right of reproduction if it satisfies five conditions, namely: (a) the act is temporary; (b) it is transient or incidental; (c) it is an integral and technical part of a technological process; (d) the sole purpose of that

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process is to enable a transmission in a network between third parties by an intermediary or a lawful use of a work or subject matter; and (e) that act does not have any independent economic significance. However, the Court held that purchasers of the media player accessed a free and unauthorised offer of protected works deliberately and in full knowledge of the circumstances. Finally, the temporary act of reproduction on the media player at issue adversely affects the normal exploitation of those works and causes unreasonable prejudice to the legitimate interests of the rightsholder, and would usually result in a diminution of lawful transactions relating to the protected works, which would cause unreasonable prejudice to copyright holders.

Judgment of the Court (Second Chamber), Stichting Brein v. Wullems, Case C-527/15, 26 April 2017

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