

Court of Justice clarifies European provisions with regard to reprography

Background: *In Belgium it is permitted by law under certain conditions to photocopy copyright protected works (e.g. a newspaper, magazine or photograph) or short fragments taken from other copyright protected works (e.g. a book) without the author's or the publisher's consent. The law provides that, in return, authors and publishers must receive compensation, in the form of a reprography remuneration. The tariffs and modalities of the collection of this remuneration are laid down in a Royal Decree dating from 1997. The King has entrusted Reprobel with the legal mandate to collect the reprography remuneration and distribute it to the rightsholders, through its member collective management organisations of authors and publishers. The reprography remuneration is of a dual nature: it consists of an equipment levy due by manufacturers and importers which market reproduction devices such as copiers and all-in-one devices in Belgium (compensation per device), and an operator fee due by professional users such as corporations as well as government and educational institutions (compensation per copy of a protected work).*

The European Information Society Directive, dating from 2001, requires Member States which have included such an exception to copyright in their legislation, to ensure compensation of the rightsholders. In any case, this compensation should be fair, in that rightsholders must receive full compensation for the economic harm suffered by them as a result of the reprography exception. On their part, manufacturers and importers of copiers would rather have the levies on reproduction devices disappear. In the margins of these political discussions, which were extended into the Belgian courts, certain manufacturers (including Hewlett-Packard) contest the rates for devices established by Royal Decree. In late 2013, the Brussels Court of Appeal filed a request for a preliminary ruling with the Court of Justice of the European Union regarding the interpretation of the Directive. Today, the Court of Justice has handed down its decision in this case.¹

Judgment: Reprobel takes note of the judgment of the European Court of Justice, which clarifies a number of aspects relating to the reprography exception. Since the Court has formulated an answer to the specific questions referred by the Brussels Court of Appeal, the judgment should be read and interpreted in the light of the wording of these questions.

In its judgment, the Court of Justice acknowledges the possibility of setting up a dual compensation system (as is the case in Belgium) in which a compensation is due both in relation to reproduction devices and the reproductions themselves, but subjects such a system to a number of specific conditions regarding both parts of the compensation. As to the beneficiaries, the Court holds that, as a rule, the law may not assign part of the fair compensation meant for the authors to the publishers. Contrary to what the Court's press release may suggest, the Court seems to leave the door open for the national legislator to provide a separate compensation for publishers – outside the scope of the Directive – with a view to compensating the proper harm suffered by the latter as a result of the reprography exception. However, it is clear that such a national compensation for publishers may in no way prejudice the fair compensation granted to authors on the basis of the Directive.

¹ CJEU 12 November 2015, C-572/13:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=171384&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=729516>

Reprobel will now continue the debate before the Belgian courts and shall cooperate with the responsible minister, administration and all other stakeholders towards a reprography system that secures the compensation of authors and publishers for the future.

For English press contacts:

contact deputy managing director / head legal Kurt Van Damme

T: +32 479 58 66 35 / Email: kvandamme@reprobel.be