

Copyright Levies Can Be Imposed on Printer and Computer Sales in the EU and Germany

Introduction

In a recent ruling, the Court of Justice of the European Union (CJEU) has found that manufacturers, importers and sellers of personal computers and printers, where the two devices are linked together, are liable to pay a financial levy to those rights-holders whose works may be copied by these devices.

The Ruling

The CJEU ruled on a number of questions referred to it by the *Bundesgerichtshof* (the German Federal Supreme Court) under *Verwertungsgesellschaft Wort* (VG Wort) in combined cases C-457/11, C-458/11, C-459/11 and C-460/11 concerning those provisions of the Copyright Directive (2001/29/EC) (the Directive) designed to compensate rights-holders for the reproduction of copyright works carried out under the exceptions set out in the Directive.

The exclusive reproduction right of authors, performers and producers in relation to certain types of creative works under Article 2 of the Directive is limited in scope by Article 5(2) of the Directive which – subject to a fair compensation – allows reproductions of such works to be made without the rightholder's authorisation if reproductions are "effected by the use of any kind of photographic technique or by some other process having similar effect" (Article 5(2)(a)) providing the rights-holder is compensated, where the reproduction is for private use (Article 5(2)(b)) or for educational and informative use (Article 5(2)(c)).

In Germany, pursuant to the provisions of the Copyright Act (*Urheberrechtsgesetz* or *UrhG*) implementing Articles 5(2)(a) and (b) of the Directive, "fair compensation" for rights-holders is achieved by levying a charge on those who manufacture, import or sell devices capable of making reproductions by means of photocopying or any process having similar effect. (The *UrhG* currently imposes a levy varying from €38.35 to €613.56, depending on the number of copies that can be made per minute and the availability or not of colour copying.) The *Bundesgerichtshof* was asked to decide whether this charge should be levied on all printers or personal computers that were able to make reproductions, or only those that were linked to one or more other devices such as scanners, which might themselves be subject to the same charge, and therefore, whether the companies concerned in the case are obliged to pay VG Wort (the authorised copyright collecting society representing authors and publishers of literary works in Germany) these levies.

As the case hinged on the interpretation of the Directive, *Bundesgerichtshof* referred questions to the CJEU.

In essence, the CJEU decided the following:

1. The interpretation of "by some other process having similar effect" in Article 5(2) includes personal computers and printers, where the two are linked together. The CJEU decided that the required element (i.e., that the work is reproduced onto paper or a similar media) may also be achieved by converting a digital representation of the work on a computer to paper, via a printer.

2. The Directive is unclear as to who owes the financial compensation to rights-holders in respect of reproductions using a linked printer and computer. In principle, the person who makes such a reproduction under the exception should be liable. However, due to the potential practical difficulties with this system, it is open to Member States to go back to the stages before the actual copying and put in place a "private copying levy" for the purposes of financing fair compensation (i.e., on the printer and computer manufacturers), to the extent that the cost of the levy can be passed on to customers.
3. Member States (as the parties responsible for implementing the exceptions to the exclusive right of rights-holders), may elect to install certain "technological" measures to ensure that reproduction may only be made in strict accordance with the exceptions provided. Implementation of such measures, however, will have no bearing on the fact that compensation is due to those rights-holders. It is at the discretion of the Member States concerned to determine whether the level of compensation awarded to rights-holders is dependent upon the implication of such technological measures.

National Implementation

All Member States, except for the UK and Ireland, have implemented Articles 5(2)(a) and 5(2)(b) of the Directive into national law. Most Member States use a system of copyright levies to provide for compensation to rights-holders, which operates as a surcharge on equipment and/or blank media which can be used for private copying. However, the decision from the CJEU will now require the extension of such levies to apply to printers and computers, when linked together.

Although the UK government has indicated plans to introduce a private-copying exception, it will be limited to format-shifting, and it will not impose a levy or other financial compensation since the exception causes minimal harm. The decision above will nevertheless be of interest to manufacturers and importers of reprographic devices and computers based outside of the UK and Ireland, and for consumers and businesses alike who will eventually bear the financial burden should the levy result in higher prices for printers and personal computers.

The full case is available to [read online](#).

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