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ECJ finds that Spanish copyright legislation aligns with EU law with respect to compensation for private copying

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Introduction

On 8 September 2022, the European Court of Justice (ECJ) issued a preliminary ruling⁽¹⁾ in response to two requests posed by the Spanish Supreme Court (Contentious-Administrative Chamber) within the context of a dispute between:

- an association that represents the digital technology industry in Spain;⁽²⁾ and
- the State Administration and several copyright management societies.

Facts

The dispute concerned a contentious-administrative claim seeking the annulment of certain provisions of Royal Decree 1398/2018, of 23 November 2018, which led to the development of article 25 of the Consolidated Text of the Law on Intellectual Property with respect to the system of fair compensation for private copying.

The requests for a preliminary ruling aimed to determine whether article 5(2)(b) of the EU Copyright Directive⁽³⁾ and the principle of equal treatment preclude Spanish legislation under which a legal person, established and controlled by IP rights management organisations is:

- entrusted with the management of exemptions from payment and reimbursements in respect of the compensation for private copying; and
- entitled to request access to the information necessary for the exercise of the powers of review conferred on it for the management of such payment exemptions and reimbursements, it being impossible to rely on the confidentiality of business accounts.

The referring court pointed out that the circumstance described above – that is, the control of a legal person precisely by IP rights management organisations – may imply an imbalance in the system. Its doubts were intensified by, in its view, the extraordinary powers conferred on the legal person in question as regards review (including the impossibility of relying on the confidentiality of business accounts). In its opinion, this was not countered by the fact that the decisions of that legal person may be the subject of a complaint brought before the Ministry of Culture and Sport, the decisions of which may themselves be the subject of judicial proceedings.

Decision

First question

The ECJ ruled that article (5)(2)(b) of the EU Copyright Directive and the principle of equal treatment do not preclude Spanish legislation pursuant to which a legal person, established and controlled by IP rights management organisations, is entrusted with the management of exemptions from payment and reimbursements in respect of the compensation for private copying.

The ECJ considered that the EU Copyright Directive's provisions on collective management of copyright and related rights entail that the management of compensation for private copying falls, by definition, within the tasks with which collective copyright management organisations may be entrusted.

Nevertheless, in order to consider the Spanish legislation to be aligned with the EU Copyright Directive and the principle of equal treatment, the ECJ remarked that the Spanish legislation needed to provide that exemption certificates in respect of compensation for private copying and reimbursements in respect of such compensation must be granted in good time and on the basis of objective criteria that do not entail any discretion on the part of the legal person competent to examine the applications submitted for that purpose. In addition, it must be possible to challenge the decisions of that legal person refusing such an application before an independent body. The ECJ concluded that the provisions of Royal Decree 1398/2018 appeared to comply with these requirements.

Second question

Likewise, the ECJ ruled that article (5)(2)(b) of the EU Copyright Directive and the principle of equal treatment did not preclude Spanish legislation under which the legal person in question is entitled to request access to the information necessary to exercise its review powers for the management of payment exemptions and reimbursements in respect of compensation for private copying, including the impossibility of relying on the confidentiality of business accounts.

The ECJ reasoned that, considering that the system is based on unilateral declarations by operators, the entity responsible needs to be empowered for the management of that compensation so as to check the veracity of the declarations in question. The performance of those duties of veracity control would be hindered if the person under review could invoke the confidentiality of their business accounts. In any case, those checks must relate exclusively to information which makes it possible to verify the conditions for benefitting from an exemption or a reimbursement, and to calculate any amounts payable. The legal person in charge of such control is also obliged to safeguard the confidential nature of the information obtained.

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Endnotes

(1) C-263/21.

(2) Asociación Multisectorial de Empresas de Tecnologías de la Información, Comunicaciones y Electrónica.

(3) 2001/29/EC.