



Court of Justice of the European Union

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Judgment in Case C-521/11

Amazon.com International Sales Inc. and Others v Austro-Mechana
Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte
Gesellschaft mbH

Press and Information

The indiscriminate collection of a private copying levy on the first sale of recording media may, under certain conditions, be compatible with EU law

In addition, under certain conditions, there may be a rebuttable presumption that recording media sold to individuals will be used for private purposes

According to EU law¹, the Member States grant, in principle, authors, performers, producers and broadcasting organisations the exclusive right to authorise or prohibit the reproduction of their works, fixations of their performances, their phonograms, their films and fixations of their broadcasts. However, the Member States may provide for exceptions or limitations to those exclusive rights. Accordingly, they may permit, in particular, the making of private copies. A Member State which avails itself of this option must, however, provide that the rightholders receive 'fair compensation'. That compensation is to compensate rightholders for the reproduction, without their authorisation, of their protected works or other protected subject-matter.

In Austria, that fair compensation takes the form of a private copying levy which is collected on the first sale of recording media suitable for reproduction, such as blank CDs and DVDs, memory cards and MP3 players (the so-called 'blank cassette levy').

Austro-Mechana, an Austrian copyright collecting society, brought an action against Amazon before the Handelsgericht Wien (Commercial Court, Vienna, Austria) for the payment of the blank cassette levy for recording media sold in Austria from 2002 to 2004. It claimed an amount of €1 856 275 for the first half of 2004 and sought an order requiring Amazon to provide the accounting data necessary for it to quantify its claim for payment for the remainder of that period. The Handelsgericht Wien granted the application for an order to produce accounts and reserved its decision on the claim for payment. That judgment was upheld on appeal. Amazon, which is of the view that the Austrian blank cassette levy is, for various reasons, contrary to EU law, brought the matter before the Oberster Gerichtshof (Supreme Court, Austria). That court seeks a ruling from the Court of Justice on the interpretation of the relevant provisions of EU law.

The indiscriminate collection in Austria of the blank cassette levy on the first sale of recording media and the possibility of reimbursement in certain cases

The Court observes in this connection that EU law does not allow the private copying levy to be collected in cases where the intended use is clearly not the making of private copies. However, under certain conditions, EU law does not preclude such a system of a general levy with the option of reimbursement in cases where the intended use is not the making of private copies. It is accordingly for the Oberster Gerichtshof to verify in the present case, taking account of the circumstances of the Austrian system and the limits imposed by EU law², whether practical difficulties justify such a system of financing of fair compensation and whether the right to reimbursement is effective and does not make repayment of the levy paid excessively difficult.

The possibility of a presumption of private use of recording media sold to individuals

¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

² The directive cited in footnote 1.

The Court finds that there may be a rebuttable presumption that individuals are using recording media for private purposes, provided that two conditions are fulfilled: - (i) practical difficulties in determining whether the purpose of the use of media is private must warrant the establishment of such a presumption; (ii) that presumption must not result in the imposition of the private copying levy in cases where those media are clearly used for non-private purposes.

The payment of half of the income from blank cassettes not directly to those entitled to fair compensation but to social and cultural institutions set up for their benefit

The Court observes that such payment does not allow the right to fair compensation, or the private copying levy intended to finance it, to be excluded, provided that the social and cultural establishments actually benefit those entitled and the detailed arrangements for the operation of such establishments are not discriminatory, which it is for the Oberster Gerichtshof to verify.

No account taken of a private copying levy already paid in another Member State

The Court's answer is that the obligation to pay a levy such as the blank cassette levy may not be excluded by reason of the fact that a comparable levy has already been paid in another Member State. A person who has previously paid that levy in a Member State which does not have territorial competence to collect it may request its repayment in accordance with its national law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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