

Judgment of the Court (Fourth Chamber) of 27 June 2013 (requests for a preliminary ruling from the **Bundesgerichtshof** — Germany) — **Verwertungsgesellschaft Wort (VG Wort) v Kyocera, formerly Kyocera Mita Deutschland GmbH, Epson Deutschland GmbH, Xerox GmbH (C-457/11), Canon Deutschland GmbH (C-458/11), and Fujitsu Technology Solutions GmbH (C-459/11), Hewlett-Packard GmbH (C-460/11) v Verwertungsgesellschaft Wort (VG Wort)**

(Joined Cases C-457/11 to C-460/11) ⁽¹⁾

(Intellectual and industrial property — Copyright and related rights in the information society — Directive 2001/29/EC — Reproduction right — Fair compensation — Concept of ‘reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects’ — Consequences of the non-application of technological measures which are available to prevent or restrict unauthorised acts — Consequences of an express or implied authorisation to reproduce)

(2013/C 225/13)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: Verwertungsgesellschaft Wort (VG Wort), Fujitsu Technology Solutions GmbH (C-459/11), Hewlett-Packard GmbH (C-460/11)

Defendants: Kyocera, formerly Kyocera Mita Deutschland GmbH, Epson Deutschland GmbH, Xerox GmbH (C-457/11), Canon Deutschland GmbH (C-458/11), Verwertungsgesellschaft Wort (VG Wort)

Re:

Requests for a preliminary ruling — Bundesgerichtshof — Interpretation of 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) — Reproduction right — Concept of ‘reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects’ in Article 5(2)(a) of that directive — Possible inclusion of reproductions effected by means of printers and plotters

Operative part of the judgment

1. With regard to the period from 22 June 2001, the date on which 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

entered into force, to 22 December 2002, the date by which that directive was to have been transposed into national law, acts of using protected works or other subject-matter are not affected by that directive.

2. In the context of an exception or limitation provided for by Article 5(2) or (3) of Directive 2001/29, an act by which a rightholder may have authorised the reproduction of his protected work or other subject-matter has no bearing on the fair compensation owed, whether it is provided for on a compulsory or an optional basis under the relevant provision of that directive.
3. The possibility of applying technological measures under Article 6 of Directive 2001/29 cannot render inapplicable the condition relating to fair compensation provided for by Article 5(2)(b) of that directive.
4. The concept of ‘reproductions effected by the use of any kind of photographic technique or by some other process having similar effects’ within the meaning of Article 5(2)(a) of Directive 2001/29 must be interpreted as including reproductions effected using a printer and a personal computer, where the two are linked together. In this case, it is open to the Member States to put in place a system in which the fair compensation is paid by the persons in possession of a device contributing, in a non-autonomous manner, to the single process of reproduction of the protected work or other subject-matter on the given medium, in so far as those persons have the possibility of passing on the cost of the levy to their customers, provided that the overall amount of the fair compensation owed as recompense for the harm suffered by the author at the end of that single process must not be substantially different from the amount fixed for a reproduction obtained by means of a single device.

⁽¹⁾ OJ C 362, 10.12.2011.

Judgment of the Court (Third Chamber) of 27 June 2013 — European Commission v French Republic

(Case C-485/11) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Electronic communications networks and services — Directive 2002/20/EC — Article 12 — Administrative charges applicable to undertakings holding general authorisations — National legislation — Electronic telecommunications operators — Requirement to pay an additional charge)

(2013/C 225/14)

Language of the case: French

Parties

Applicant: European Commission (represented by: A. Bordes and G. Braun, Agents)