

Case C-456/06

Peek & Cloppenburg KG

v

Cassina SpA

(Reference for a preliminary ruling
from the Bundesgerichtshof)

(Copyright — Directive 2001/29/EC — Article 4(1) — Distribution to the public by sale or otherwise of the original of a work or a copy thereof — Use of reproductions of copyright-protected furniture as items of furniture exhibited in a sales area and in display windows — No transfer of ownership or possession)

Opinion of Advocate General Sharpston delivered on 17 January 2008 I - 2733

Judgment of the Court (Fourth Chamber), 17 April 2008 I - 2750

Summary of the Judgment

Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Distribution rights

(European Parliament and Council Directive 2001/29, Art. 4(1))

The concept of distribution to the public, otherwise than through sale, of the original of a work or a copy thereof, for the purpose of Article 4(1) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, applies only where there is a transfer of the ownership of that object. As a result, neither granting to the public the right to use reproductions of a work protected by copyright nor exhibiting to the public those reproductions without actually granting a right to use them can constitute such a form of distribution.

The concept of distribution 'by sale or otherwise' for the purpose of Article 4(1) of Directive 2001/29 must be interpreted in the light of the definitions given in the World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, that directive being intended to implement at Community level the Community's obligations under the those Treaties. Those Treaties link the concept of distribution exclusively to that of transfer of ownership.

The wording of the provisions relating to the exhaustion of the right of distribution in the Copyright Treaty and Directive 2001/29 points to the same conclusion. Thus, since Article 4(2) of that directive provides for the exhaustion of the distribution right within the Community in respect of the original or copies of the work on the first sale or other transfer of ownership, the same interpretation should be given to the term 'otherwise' in Article 4(1), because the two provisions form a whole.

Those findings are not affected by recitals 9 to 11 in the preamble to Directive 2001/29, which state that harmonisation of copyright must take as a basis a high level of protection, that authors have to receive an appropriate reward for the use of their work and that the system for the protection of copyright must be rigorous and effective. That protection can be achieved only within the framework put in place by the Community legislature.

(see paras 31-38, 41, operative part)