

If the answer to Question 1 is in the affirmative:

- 2a. Does European Union law grant the legislatures of the Member States the option of providing for a legal presumption in favour of a transfer to the film-maker of the exploitation rights within the meaning of paragraph 1 to which the principal director of a cinematographic or audiovisual work or other authors of films designated by the legislatures of the Member States are entitled, even in respect of rights other than rental and lending rights, and if so, must the conditions laid down in Article 2(5) and (6) of Directive 92/100, in conjunction with Article 4 of that directive, be satisfied?
- 2b. Must the primary ownership of rights of the principal director of a cinematographic or audiovisual work, or of other authors of films designated by the legislature of a Member State also be applied to the rights granted by the legislature of a Member State to equitable remuneration, such as 'empty cassette remuneration' pursuant to Paragraph 42b of the Austrian Urhebergesetz (Copyright law), or to rights to fair compensation within the meaning of Article 5(2)(b) of Directive 2001/29?

If the answer to Question 2b is in the affirmative:

3. Does European Union law grant the legislatures of the Member States the option of providing for a legal presumption in favour of a transfer to the film-maker of the rights to remuneration within the meaning of paragraph 2 to which the principal director of a cinematographic or audiovisual work or other authors of films designated by the legislatures of the Member States are entitled, and if so, must the conditions laid down in Article 2(5) and (6) of Directive 92/100, in conjunction with Article 4 of that directive, be satisfied?

If the answer to Question 3 is in the affirmative:

4. If a legal provision of a Member State accords to the principal director of a cinematographic or audiovisual work or other authors of films designated by the legislatures of the Member States a right to half of the statutory rights to remuneration, but provides that that right is capable of alteration and not therefore unwaivable, is that provision consistent with the aforementioned provisions of European Union law in the area of copyright and related rights?

- (2) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15)
- (3) Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ 2006 L 372, p. 12)
- (4) 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)

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 June 2010 — Telefónica de España, S.A. v Administración del Estado

(Case C-284/10)

(2010/C 246/32)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Telefónica de España, S.A

Defendant: Administración del Estado

Question referred

Does Directive 97/13/EC ⁽¹⁾ of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services and, in particular, Article 6 thereof, permit Member States to charge holders of general authorisations an annual fee which is calculated on the basis of a percentage of gross operating income invoiced in the relevant year, subject to such amount not exceeding two per thousand, and which is applied for the purpose of defraying the costs, including management costs, incurred by the telecommunications regulatory body in the implementation of the scheme of licences and general authorisations, as provided for in Article 71 of Law 11/1998 of 24 April 1998 on telecommunications?

⁽¹⁾ Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61)

⁽¹⁾ OJ 1997 L 117, p. 15.