



Reports of Cases

Joined Cases C-457/11 to C-460/11

Verwertungsgesellschaft Wort (VG Wort)

v

Kyocera and Others (C-457/11) and Canon Deutschland GmbH (C-458/11)

and

Fujitsu Technology Solutions GmbH (C-459/11) and Hewlett-Packard GmbH (C-460/11)

v

Verwertungsgesellschaft Wort (VG Wort)

(Requests for a preliminary ruling from the Bundesgerichtshof)

(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)

Summary — Judgment of the Court (Fourth Chamber), 27 June 2013

1. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Temporal application — Acts of using protected works or other subject-matter, occurring before the date by which that directive was to have been transposed — Directive not applicable*

(European Parliament and Council Directive 2001/29, Art. 10(2))

2. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Reproduction right — Exceptions and limitations — Conditions — Fair compensation — Authorisation by the rightholder of the reproduction of his protected work or other subject-matter — No effect*

(European Parliament and Council Directive 2001/29, Art. 5(2) and (3))

3. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Jurisdiction of the national court — Establishing and assessing the facts in the case — Necessity of a question referred and relevance of the questions raised — Assessment by the national court — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Questions not related to the purpose of the main proceedings*

(Art. 267 TFEU)

4. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Reproduction right — Private copying exception — Fair compensation — Non-application of available technological measures seeking to prevent or restrict acts which are not authorised — Effect*

(European Parliament and Council Directive 2001/29, Arts 5(2)(b) and 6)

5. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Reproduction right — Exceptions and limitations — 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 — Concept — Reproductions effected using a printer and a personal computer linked together — Included*

(European Parliament and Council Directive 2001/29, Art. 5(2)(a))

6. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Reproduction right — Exceptions and limitations — 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 — Fair compensation — Reproductions made by means of a single process, with the use of a chain of devices — Whether possible for Member States to put in place a levy chargeable to the persons in possession of equipment contributing, in a non-autonomous manner, to the single reproduction process — Conditions*

(European Parliament and Council Directive 2001/29, Art. 5(2)(a))

1. With regard to the period from 22 June 2001, the date on which Directive 2001/29 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. It follows from Article 10(2) thereof that the directive is to apply without prejudice to any acts concluded and rights acquired before 22 December 2002.

(see paras 27, 29, operative part 1)

2. In the context of an exception or limitation provided for by Article 5(2) or (3) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, 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.

(see para. 40, operative part 2)

3. See the text of the decision.

(see para. 44)

4. The possibility of applying technological measures under Article 6 of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, cannot render inapplicable the condition relating to fair compensation provided for by Article 5(2)(b) of that directive.

The purpose of fair compensation is to compensate authors for the harm suffered by them following the introduction of the private copying exception, and therefore for the use made of their protected works without their authorisation. It is, however, the Member States and not the rightholders which establish the private copying exception and which authorise, for the purposes of the making of such a copy, such use of protected works or other subject-matter. Consequently it is for the Member State which, by the establishment of that exception, has authorised the making of the private copy to ensure the proper application of that exception, and thus to restrict acts which are not authorised by the rightholders. The technological measures that rightholders have the possibility of using should be understood as technologies, devices or components which are capable of ensuring that the objective pursued by the private copying exception is achieved or capable of preventing or limiting reproductions which are not authorised by the Member States within the framework of that exception. Therefore, having regard to the voluntary nature of those technological measures, even where such a possibility exists, the non-application of those measures cannot in any way render inapplicable the fair compensation due.

Nevertheless, it is open to the Member State concerned to make the actual level of compensation owed to rightholders dependent on whether or not such technological measures are applied, so that those rightholders are encouraged to make use of them and thereby voluntarily contribute to the proper application of the private copying exception.

(see paras 49, 52, 53, 56-59, operative part 3)

5. 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 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as including reproductions effected using a printer and a personal computer, where the two are linked together.

As long as the result, that is to say the analogue representation of a protected work or other subject-matter, is ensured, the number of operations or the nature of the technique or techniques used during the reproduction process at issue does not matter, on condition, however, that the various elements or non-autonomous stages of that single process act or are carried out under the control of the same person and are all intended to reproduce the protected work or other subject-matter on paper or a similar medium. In those situations, Article 5(2)(a) of Directive 2001/29 does not preclude the use in the process referred to in that provision of several devices, including those with a digital function.

(see paras 70, 72, 80, operative part 4)

6. It is, in principle, for the person who has made a reproduction referred to in Article 5(2)(a) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, to finance the compensation which will be paid to the rightholders. However, Member States are free, given the practical difficulties encountered, to put in place, where appropriate, a levy chargeable to the persons in possession of the equipment on which that reproduction has been made. Where the reproductions at issue have been made by means of a single process, with the use of a chain of devices, 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.

(see paras 77, 78, 80, operative part 4)