



Reports of Cases

Case C-419/13

Art & Allposters International BV
v
Stichting Pictoright

(Request for a preliminary ruling from the Hoge Raad der Nederlanden)

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights — Directive 2001/29/EC — Article 4 — Distribution rights — Exhaustion rule — Concept of ‘object’ — Transfer of the image of a protected work from a paper poster to a painter’s canvas — Replacement of the medium — Impact on exhaustion)

Summary — Judgment of the Court (Fourth Chamber), 22 January 2015

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Interpretation of national law — Not included*

(Art. 267 TFEU)

2. *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 — Exhaustion where the first sale or first other transfer of property with the European Union is made by the rightholder or with his consent — Marketing the work in the European Union after alteration of its medium without the consent of the rightholder — Inapplicability of the exhaustion rule*

[Directive 2001/29 of the European Parliament and of the Council, recital 28 and Arts 2(a) and 4(2)]

1. See the text of the decision.

(see para. 22)

2. Article 4(2) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that the rule of exhaustion of the distribution right set out in Article 4(2) of Directive 2001/29 does not apply in a situation where a reproduction of a protected work, after having been marketed in the European Union with the copyright holder’s consent, has undergone an alteration of its medium, such as the transfer of that reproduction from a paper poster onto a canvas, and is placed on the market again in its new form.

The EU legislature, by using the terms ‘tangible article’ and ‘that object’ in recital 28 and Article 4(2) of Directive 2001/29, wished to give authors control over the initial marketing in the European Union of each tangible object incorporating their intellectual creation. In that regard, a replacement of the medium of a work, such as a transfer of the image of an artistic work from a paper poster onto a

painter's canvas results in the creation of a new object incorporating the image of the protected work, whereas the poster itself ceases to exist. Such an alteration of the copy of the protected work, which provides a result closer to the original, is actually sufficient to constitute a new reproduction of that work, within the meaning of Article 2(a) of Directive 2001/29, which is covered by the exclusive right of the author and requires his authorisation.

Furthermore, the fact that the ink is saved during the transfer cannot affect the finding that the image's medium has been altered. What is important is whether the altered object itself, taken as a whole, is, physically, the object that was placed onto the market with the consent of the rightholder. Consequently, the consent of the copyright holder does not cover the distribution of an object incorporating his work if that object has been altered after its initial marketing in such a way that it constitutes a new reproduction of that work. In such an event, the distribution right of such an object is exhausted only upon the first sale or transfer of ownership of that new object with the consent of the rightholder.

(see paras 37, 42, 43, 45, 46, 49, operative part)