

**Judgment of the Court (Third Chamber) of 16 June 2011
(reference for a preliminary ruling from the Hoge Raad der
Nederlanden (Netherlands)) — Stichting de Thuis kopie v
Opus Supplies Deutschland GmbH, Mijndert van der Lee,
Hananja van der Lee**

(Case C-462/09) ⁽¹⁾

**(Approximation of laws — Copyright and related rights —
Directive 2001/29/EC — Reproduction right — Exceptions
and limitations — Exception of copying for private use —
Article 5(2)(b) and (5) — Fair compensation — Person
responsible for paying the levy earmarked for financing of
that compensation — Distance selling between two persons
resident in different Member States)**

(2011/C 232/10)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Stichting de Thuis kopie

Defendants: Opus Supplies Deutschland GmbH, Mijndert van der
Lee, Hananja van der Lee

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 5(2)(b) and (5) 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 rights — Fair compensation — Distance selling between two persons residing in two different Member States — Legislation not permitting the recovery of compensation

Operative part of the judgment

1. 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, in particular Article 5(2)(b) and (5) thereof, must be interpreted as meaning that the final user who carries out, on a private basis, the reproduction of a protected work must, in principle, be regarded as the person responsible for paying the fair compensation provided for in Article 5(2)(b). However, it is open to the Member States to establish a private copying levy chargeable to the persons who make reproduction equipment, devices and media available to that final user, since they are able to pass on the amount of that levy in the price paid by the final user for that service.
2. Directive 2001/29, in particular Article 5(2)(b) and (5) thereof, must be interpreted as meaning that it is for the Member State which has introduced a system of private copying levies chargeable

to the manufacturer or importer of media for reproduction of protected works, and on the territory of which the harm caused to authors by the use for private purposes of their work by purchasers who reside there occurs, to ensure that those authors actually receive the fair compensation intended to compensate them for that harm. In that regard, the mere fact that the commercial seller of reproduction equipment, devices and media is established in a Member State other than that in which the purchasers reside has no bearing on that obligation to achieve a certain result. It is for the national court, where it is impossible to ensure recovery of the fair compensation from the purchasers, to interpret national law in order to allow recovery of that compensation from the person responsible for payment who is acting on a commercial basis.

⁽¹⁾ OJ C 24, 30.1.2010.

**Judgment of the Court (Seventh Chamber) of 16 June 2011
(reference for a preliminary ruling from the Upravno
sodišče Republike Slovenije (Slovenia)) — Marija Omejc
v Republika Slovenija**

(Case C-536/09) ⁽¹⁾

**(Common agricultural policy — Community aid schemes —
Integrated administration and control system — Regulation
(EC) No 796/2004 — Fact of preventing an on-the-spot check
from being carried out — Definition — Farmer not living on
the holding — Farmer's representative — Definition)**

(2011/C 232/11)

Language of the case: Slovene

Referring court

Upravno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Marija Omejc

Defendant: Republika Slovenija

Re:

Reference for a preliminary ruling — Upravno sodišče Republike Slovenije — Interpretation of Article 23(2) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18) — Concept of prevention of an on-the-spot check — Concept of the representative of the farmer, when the farmer does not reside on the farm