Committee on Petitions

24.6.2010

NOTICE TO MEMBERS

Subject: Petition 0144/2010 by Koen Godderis (Belgian), on the Belgian copying levy

1.   Summary of petition

The petitioner objects to the Belgian copying levy, arguing that it constitutes a distortion of competition. Under Belgian law, a copying levy must be paid on the purchase of blank storage devices (CDs, USB sticks, external hard disks, etc.) capable of storing pictures or recording music. The levy is collected by private company, Auvibel, and is intended for the remuneration of authors, artists and producers. The petitioner argues that the levy infringes European legislation since those who do not wish to make use of copyrighted works should not be forced to pay a private company (Auvibel) fees for copying works falling outside its remit (for example their own work, music, photographs, etc.). By way of example, the petitioner refers to a photographer making backup copies who is required to pay a levy on the purchase of the requisite external hard disk and is obliged to charge accordingly, thereby making him less competitive than other European photographers. The petitioner argues that the levy runs counter to the principle of the free movement of goods and services, with the result that foreign undertakings are no longer willing to supply Belgium with CD-ROMs and DVDs. The petitioner argues that European copyright law is not sufficiently clear and argues that the Commission should rectify this.

2.   Admissibility

Declared admissible on 4 May 2010. Information requested from Commission under Rule 202(6).

3.   Commission reply, received on 24 June 2010.

There are no Community rules on private copying levies. The only applicable provision is the optional exception for private copying, as contained in the 2001 Directive on Copyright in the

Information Society. This exception states that private copying is permitted as long as rightholders receive 'fair compensation' for any prejudice caused by private copying. The Member States are free in the way they ensure that such fair compensation is provided for. A levy on certain equipment is one means to achieve this goal. Other means, such as general compensation funds, can also be envisaged.

As the Directive merely requires that rightholders receive fair compensation for acts of private copying, Member States enjoy a large discretion on how to achieve this goal. Most have opted for levies, but there is no homogenous practice on what equipment is subject to levies.

Germany, France and the Netherlands have opted for levy systems. But all have adopted somewhat different approaches as to the equipment subject to a levy and the applicable rates. The Belgian system mirrors the system in place in France. The Netherlands have opted against levies on USB sticks, external hard drives and MP3 players.

The current system allows for variation in the level of compensation for private copying between Member States. In this context, the Commission has been working with the relevant collecting societies, the consumer electronics industry, and consumer organizations to achieve a coherent view on which products should attract a levy and which products should not. So far these discussions have not led to any consensus.

The issues raised by levies are practical matters that require practical responses. The Commission remains convinced that stakeholders themselves are best placed to develop mutually acceptable solutions in this area. In light of the heterogeneous national approaches to levies, levy tariffs and products subject to levies, the chances of harmonization appear slim.
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Recently the Advocate General at the European Court of Justice rendered his opinion concerning the application of the levy for private copying equipment used by businesses and professionals (Case C 467/08 Sociedad General de Autores y Editores (SGAE) against Padawan). The European Court of Justice is expected to render its ruling in the coming months.

Conclusion

The Commission remains focused on inciting stakeholders to develop mutually acceptable solutions.