

No private copying exception without right to fair compensation for broadcasting organisations (Seven.One vs Corint)

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TMT analysis: Advocate General (AG) Collins delivered on 13 July 2023 his opinion in the case of *Seven.One Entertainment Group GmbH v Corint Media GmbH*, a request for a preliminary ruling from the Regional Court of Erfurt, Germany. He recommended that the Court of Justice rule that Article 2(e) and Article 5(2)(b) of Directive 2001/29/EC (the EU InfoSoc Directive) be interpreted as precluding a Member State from providing a private copying exception to the exclusive reproduction right of broadcasting organisations in fixations of their broadcasts while excluding a right to fair compensation in respect of that copying where it causes them more than minimal harm. Written by Oliver Nilgen, attorney-at-law (Rechtsanwalt) at Meissner Bolte.

Seven.One Entertainment Group GmbH v Corint Media GmbH Case [C-260/22](#)

What are the practical implications of this case?

The request for a preliminary ruling was brought by the Regional Court of Erfurt in litigation between a broadcasting organisation and a collective management organisation regarding the obligation to enforce the right to receive fair compensation for reproductions of fixations of broadcasts that natural persons make for their private use.

The applicant contends that the defendant must enforce the applicant's right under a contract between the parties to a so called 'blank media levy' as compensation for harm caused by private copying.

The defendant argues that the German copyright law excludes broadcasting organisations from the blank media levy.

If the exclusion of the right to fair compensation under national law is compatible with [Directive 2001/29/EC](#), the EU InfoSoc Directive, a blank media levy is not due under the contract and the referring court should dismiss the action before it. However, if that exclusion is incompatible, the applicant is entitled to succeed in its action since, under the contract, the defendant is required to collect the blank media levy on the applicant's behalf.

If as in most cases, the Court of Justice follows the opinion of the AG, it is expected that the Regional Court may decide in the applicant's favour.

What was the background?

The applicant, Seven.One Entertainment Group GmbH, is a broadcasting organisation that produces and broadcasts 'SAT.1 Gold' in Germany. SAT.1 Gold is a private television channel financed through advertising.

The defendant, Corint Media GmbH, is a European corporation of media enterprises that offers licences for the use of digital publications and the programmes of private broadcasters.

The parties entered into a rights management contract. Under the contract, the defendant has taken on the obligation to enforce the applicant's right to receive fair compensation for reproductions of fixations of its broadcasts that natural persons make for their private use.

The defendant claims that it is not obliged to enforce that right because, although national copyright law permits private copying of fixations of broadcasts, it excludes any corresponding right to compensation.

The Regional Court of Erfurt would like to know from the Court of Justice whether it is compatible with the EU InfoSoc Directive that broadcasting organisations in Germany do not receive any money from the blank media levy.

The purpose of this levy is to provide fair compensation for the fact that private individuals make copies of copyrighted works. The applicant argues that it is significantly affected by private copying, among other things in the form of recording of its programming by means of (online) video recorders.

The defendant argues that they are unable to meet this demand, as broadcasting companies are excluded from the blank media levy according to German Copyright law.

What did the court decide?

The referring court of Erfurt seeks an interpretation of the EU InfoSoc Directive and the applicability on national German law.

In the AG's opinion, the reproduction right in [Article 2\(e\)](#) of Directive 2001/29/EC, the EU InfoSoc Directive, is defined in clear, unequivocal terms. It is unqualified and its implementation and effects are neither contingent upon nor subject to Member States adopting measures in any particular form.

It follows from the above that Article 2(e) of the EU InfoSoc Directive constitutes a measure of full harmonisation of the broadcasting organisations' exclusive right of reproduction of fixations of their broadcasts and that Member States have no discretion in implementing that provision. [Article 5\(2\)\(b\)](#) of Directive 2001/29/EC, the EU InfoSoc Directive, unequivocally imposes on those Member States that choose to implement the private copying exception thereunder an unconditional and precise obligation to ensure that rightholders receive fair compensation. The holder of the reproduction right must, 'by operation of law, directly and originally, be [entitled] to the right to the fair compensation provided for in Article 5(2)(b)...under the "private copying" exception' and 'must "necessarily" [be paid fair] compensation'.

Where the referring court is unable to adopt a conforming interpretation of national law, the principle of the primacy of EU law requires it to disapply any provision of national law which is contrary to an applicable provision of the EU InfoSoc Directive that has direct effect. In addition, a national court is obliged to set aside a provision of national law that is contrary to a Directive where that Directive is relied on by organisations that perform a task in the public interest and possesses special powers to do so. As a collective management organisation, German law has conferred special powers on it and it must act in the public interest.

Case details

- Court: Court of Justice (AG's opinion)
- Judges: Advocate General Collins
- Date of judgment: 13 July 2023

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