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Private Copy meeting | update on the Spanish situation



Update on the Spanish situation – Index

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Spanish Supreme Court rulings 495/2021 (April 12th, 2021) and 506/2021 (April 14th, 2021) concerning liability of the Spanish Government for the lack of private copy remuneration in 2015, 2016 & 2017

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Pending proceeding before ECJ in reference to Private Copy remuneration: AMETIC vs Spanish State

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Legal Background concerning these rulings

On December 30th, 2011 the Spanish Government passed Royal Decree 20/11 that substituted the private copy remuneration functioning scheme, for a state budget determined remuneration.

- - Developing Royal Decree 20/11 to a further extent, on December 7th, Royal Decree 1657/2012 was passed in order to determine the procedure and criteria to establish the annual amount of private copy remuneration payable to right holders.
- **The June 29th, State budget Law 2/2012 allocated 5.000.000 € for collecting societies**, as a result of analyzing the harm that private copy caused to right holders.

- Subsequently Order ECD/2018/2128/2013, Order ECD/2166/2014 and Order ECD/2226/2015, specified the private copy remuneration **payable for years 2012, 2013 and 2014 at 5.000.000 €**, amount which was paid out to the Spanish CMOs.
- **On September 10th, 2014**, The Supreme Court brought up a preliminary ruling before the European Court of Justice concerning the compatibility of the state budget funded private copy remuneration system with EU Laws, which tuned out in the june, 9th 2016 ECJ ruling that held that Article 5(2)(b) of Directive 2001/29/EC must be interpreted as precluding a scheme for fair compensation for private copying like the Spanish system, which is financed from the General State Budget in such a **way that it is not possible to ensure that the cost of that compensation is borne by the users of private copies.**

- Order ECD1649/2016 specified the private copy remuneration payable for year **2015 which was 5.000.000 €**, but wasn't paid to rightholders.
- That meant that private copies in both periods (**2015-2016/2017**) were made but right holders weren't compensated.
- Between year 2016-August **2017**, there was legal void, till a new regulation was passed reinstating the traditional private copy remuneration scheme, Despite the existence of a private copy exception in the Copyright Act, no compensation was afforded by the Spanish Government whilst that period.

- **SGAE, AGEDI and AIE filed claims against the Spanish Government** which were rejected. Lawsuits were then filed before the Supreme Court demanding damages for the liability of the Public Administration concerning losses incurred by way of the budget-funded private copy remuneration system largely based on the infringement of Directive 29/2001/EU
- The Supreme Court declares null the rejection of the filed claims, states that the **Spanish Government infringed EU laws and obliges the State to pay out all relevant CMOS a total amount of 57 millions Euros** (not immediately but subject to a separate process to be initiated by the State with the Supreme Court acting as a sort of “mediator” for all possible discrepancies that might arise)

- **Since august 2017, Royal Decree 12/2017, that amends the Spanish Copyright Act, is in force.** This regulation, restores to a larger extent, the traditional private COPYING remuneration scheme, abolishing the state budget determined remuneration.
- **Provisional tariffs were set by Royal Decree 12/2017.** New tariffs will be set by an order of the Presidency Ministry, following the joint proposal of the Ministry of Culture, Education and sports and the Ministry of energy, tourism and digital agenda. The new tariffs will be reviewed, anytime considering technological innovation and market evolution, but at least every three years.
- Now in NEGOTIATIONS

- A one-stop shop (VENTANILLA UNICA DIGITAL <http://ventanillaunica.digital/>) starts functioning and allows those obliged to pay the private COPYING remuneration to sort out invoicing and claim refunding, if it is the case.
- It is a joint venture of all the Spanish CMO to manage Private Copying.



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Pending proceeding before ECJ - Private Copy remuneration

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Submission of two questions by the Spanish Supreme Court for a preliminary ruling by the European Court of Justice.

Reference matter: Private Copy Remuneration (AMETIC vs. Spanish State)

Plaintiff: AMETIC (The Spanish branch of Digital Europe)

Defendant: Spanish State

Codefendants: VENTANILLA ÚNICA DIGITAL (VUD), the one-stop shop for private copy remuneration in Spain and ADEPI (lobbying association of several CMOs, excluding SGAE and VEGAP). Several CMOs (including SGAE).

The case in general terms

AMETIC considers the RD 1398/2018 infringes:

- a) Legal requisites concerning the passing of a Law (the necessity of certain reports, etc...)
- b) EU regulations as interpreted by the ECJ.
- c) Several Spanish regulations.

General consideration

The aim of this lawsuit is to erode the legal foundation upon which Ventanilla Única Digital operates, not only RD 1398/2018, but the private copy remuneration regulation as set in Article 25 of the Spanish Copyright Act.

State of affairs

Before a final ruling is reached, the Spanish Supreme Court, questioned the plaintiff and defendants in very broad terms about the possibility of a preliminary ruling by the ECJ, but without proposing any specific questions. Finally the Supreme Court, partially inspired by AMETC's arguments agreed to pose the following questions before the ECJ.

1) ¿Is the internal configuration of the legal person referred in article 25.10 of the Spanish Copyright Act compatible with Directive 2001/29/CE, or in broader terms with the general principles of EU law?

2) ¿Is compatible with Directive 2001/29 or in broader terms with the general principles of EU law, that the national law entitles said **legal person with the possibility of requesting relevant information including accountancy statements, from those users which demand an exemption certificate** in order not to pay the Private Copy Remuneration?

The reasoning behind the questions posed

Concerning **question 1**, the Supreme Court considers that the **one-stop shop, to the extent that is only made up by right holders (namely CMOs) is asymmetric and could infringe the principle of equality** before the law, as those obliged to pay the private copy remuneration and also interested third parties (especially consumer organizations) do not participate the one-stop organization, and ex ante measures regarding who is exempt from private cop remuneration are one-sided as are taken unilaterally by the one-stop shop.

Concerning **question 2**, the Supreme Court considers that **rights afforded to the legal person are exorbitant when it comes to the information** requested to those who ask for an exemption certification from the one-stop shop.