

IFRRO European Group Statement on the CJEU ruling in the Padawan case

Boston, 26 October 2010

IFRRO European Group would like to comment on the ruling of the Court of Justice of the European Union in the case between the Padawan Company and the Spanish collective management organisation, SGAE.

In answering questions raised by the Provincial Court of Barcelona, the CJEU has recognised fundamental principles as regards the fair compensation of rightholders through levies when a private copying exception based on article 5, 2, b of the Directive 2001/29 is introduced into national legislation by Member states.

The first one is that **it underlines the obligation for a Member State that implements the exception to provide for the payment of fair compensation to rightholders**. The concept of fair compensation has to be interpreted uniformly across the European Union, subject to the power conferred to Member States to determine the form, detailed arrangements for financing and collection and the level of that fair compensation. It thus recognises that the concrete implementation of this obligation can lead to different results at national level.

This decision also recognizes that **an equipment levy is a suitable system to compensate the rightholders** for private copying of their work and consistent with a fair balance between the interests of rightholders and the users of the protected work, especially as ultimately the costs on the levy can be passed on to the natural person executing the private copy.

The Court held **possible harm** to the rightholders is an important criterion in calculating fair compensation.

If the equipment is made available to a natural person, it is unnecessary to show that they have made private copies as they can be presumed to use the equipment for private purposes. The simple fact that the equipment or devices are able to make copies is sufficient in itself to justify the application of a private copying levy.

IFRRO points out that according to surveys that devices in the business sector are very often used for private copying.

Moreover, IFRRO would like to remind that this preliminary ruling concerns the application of article 5n 2, b on the exception for private copying. **In the text and image based sector, the application of a levy on copying devices is most frequently based on article 5, 2, a of the Directive 2001/29** which allows Member States to introduce an exception for reprography. This exception has a broader scope than the exception for private copying and the compensation is not based solely on private use.