JUDGMENT OF THE COURT (Fourth Chamber)
10 April 2014 (*)

(Reference for a preliminary ruling — Intellectual property — Copyright and related rights — Harmonisation of certain aspects of copyright and related rights in the information society — Directive 2001/29/EC — Article 5(2)(b) and (5) — Reproduction right — Exceptions and limitations — Reproduction for private use — Lawful nature of the origin of the copy — Directive 2004/48/EC– Scope)

In Case C-435/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decision of 21 September 2012, received at the Court on 26 September 2012, in the proceedings

ACI Adam BV and Others

v

Stichting de Thuiskopie,

Stichting Onderhandelingen Thuiskopie vergoeding,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Fourth Chamber, M. Safjan, J. Malenovský (Rapporteur) and A. Prechal, Judges,

Advocate General: P. Cruz Villalón,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 October 2013,

after considering the observations submitted on behalf of:

ACI Adam BV and Others, by D. Visser, advocaat,

Stichting de Thuiskopie and Stichting Onderhandelingen Thuiskopie vergoeding, by T. Cohen Jehoram and V. Rörsch, advocaten,

the Netherlands Government, by C. Schillemans and M. Noort, acting as Agents,

the Spanish Government, by M. García-Valdecasas Dorrego, acting as Agent,

the Italian Government, by G. Palmieri, acting as Agent, assisted by P. Gentili, avvocato dello Stato,

the Lithuanian Government, by D. Kriaučiūnas and J. Nasutavičienė, acting as Agents,

the Austrian Government, by A. Posch, acting as Agent,

the European Commission, by J. Samnadda and F. Wilman, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 January 2014,

gives the following

Judgment

This request for a preliminary ruling concerns the 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), and of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45 and corrigenda in OJ 2004 L 195, p. 16 and OJ 2007 L 204, p. 27).

The request has been made in proceedings between, on the one hand, ACI Adam BV and a certain number of other undertakings ('ACI Adam and Others') and, on the other, Stichting de Thuiskopie ('Thuiskopie') and Stichting Onderhandelingen Thuiskopie vergoeding ('SONT') — two foundations responsible for, first, collecting and distributing the levy imposed on manufacturers and importers of media designed for the reproduction of literary, scientific or artistic works with a view to private use ('the private copying levy'), and, secondly, determining the amount of that levy — regarding the fact that SONT, in determining the amount of that levy, takes into account the harm resulting from copies made from an unlawful source.

Legal context

EU law

Directive 2001/29

Recitals 22, 31, 32, 35, 38 and 44 in the preamble to Directive 2001/29 state the following:

'The objective of proper support for the dissemination of culture must not be achieved by sacrificing strict protection of rights or by tolerating illegal forms of distribution of counterfeited or pirated works.

…

A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject-matter must be safeguarded. …

This Directive provides for an exhaustive enumeration of exceptions and limitations to the reproduction right and the right of communication to the public. Some exceptions or limitations only apply to the reproduction right, where appropriate. This list takes due account of the different legal traditions in Member States, while, at the same time,

aiming to ensure a functioning internal market. Member States should arrive at a coherent application of these exceptions and limitations, which will be assessed when reviewing implementing legislation in the future.

…

In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject-matter. When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.

…

Member States should be allowed to provide for an exception or limitation to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use, accompanied by fair compensation. This may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders. Although differences between those remuneration schemes affect the functioning of the internal market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the information society. Digital private copying is likely to be more widespread and have a greater economic impact. Due account should therefore be taken of the differences between digital and analogue private copying and a distinction should be made in certain respects between them.

When applying the exceptions and limitations provided for in this Directive, they should be exercised in accordance with international obligations. Such exceptions and limitations may not be applied in a way which prejudices the legitimate interests of the rightholder or which conflicts with the normal exploitation of his work or other subject-matter. The provision of such exceptions or limitations by Member States should, in particular, duly reflect the increased economic impact that such exceptions or limitations may have in the context of the new electronic environment. Therefore, the scope of certain exceptions or limitations may have to be even more limited when it comes to certain new uses of copyright works and other subject-matter.'

Article 2(a) of Directive 2001/29 provides:

'Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

(a) for authors, of their works'.

Article 5(2) and (5) of that directive provides:

'2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:

…

in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;

…

5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.'

Article 6 of Directive 2001/29 provides:

'1. Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

…

3. For the purposes of this Directive, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the *sui generis* right provided for in Chapter III of [Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20)]. Technological measures shall be deemed "effective" where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), (2)(c), (2)(d), (2)(e), (3)(a), (3)(b) or (3)(e) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned.

…'

Directive 2004/48

Article 1 of Directive 2004/48 defines its subject-matter as follows:

‘This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term “intellectual property rights” includes industrial property rights.’

Article 2 of Directive 2004/48, which relates to the scope of that directive, provides in paragraph 1:

‘Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.’

Netherlands law

Article 1 of the Law on copyright (Auteurswet, Stb. 2008, No 538) (‘the AW’) confers on the creator of a literary, scientific or artistic work, or his legal successors, inter alia the exclusive right to reproduce that work subject to the limitations provided for by law.

Article 16c(1) and (2) of the AW establishes the principle of the private copying levy. That provision is worded as follows:

‘1. The reproduction of a work or a part thereof on an item designed for the performance, representation or reproduction of a work shall not be regarded as an infringement of the copyright in that work if the reproduction is made for ends that are neither directly nor indirectly commercial and serves exclusively for the own practice, study or use of the natural person making the reproduction.

2. Payment of a fair remuneration in respect of the reproduction referred to in paragraph 1 shall be due to the creator of the work or his legal successors. The manufacturer or importer of the items referred to in paragraph 1 shall be liable for payment of the remuneration.’

Article 1019h of the Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering), which constitutes the transposition of Article 14 of Directive 2004/48, is worded as follows:

‘In so far as is necessary, by way of derogation from Book I, Title II, Section 12, Paragraph 2 and Article 843a(1), the unsuccessful party shall be ordered to pay the reasonable and proportionate legal costs and other expenses incurred by the successful party, unless equity does not allow this.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

ACI Adam and Others are importers and/or manufacturers of blank data media such as CDs and CD-Rs.

Under Article 16c of the AW, ACI Adam and Others are required to pay the private copying levy, the amount of which is determined by SONT, to Thuiskopie.

ACI Adam and Others submit that that amount incorrectly takes into account the harm suffered, as the case may be, by copyright holders as a result of copies made from unlawful sources.

Consequently, ACI Adam and Others brought proceedings against Thuiskopie and SONT before the Rechtbank te ’s-Gravenhage (District Court, The Hague) claiming, in essence, that the private copying levy provided for in Article 16c(2) of the AW is intended exclusively to remunerate copyright holders for acts of reproduction falling within the scope of paragraph 1 of that article, with the result that the amount of that fee should not take into account compensation for harm suffered as a result of copies of works made from unlawful sources.

The Rechtbank te ’s-Gravenhage dismissed the application of ACI Adam and Others by judgment of 25 June 2008.

ACI Adam and Others appealed against that judgment before the Gerechtshof te ’s-Gravenhage (Regional Court of Appeal, The Hague). By judgment of 15 November 2010, that court upheld the judgment delivered by the Rechtbank te ’s-Gravenhage.

The referring court, before which ACI Adam and Others appealed in cassation against the judgment of the Gerechtshof te ’s-Gravenhage, takes the view that Directive 2001/29 does not specify whether reproductions made from an unlawful source must be taken into account in determining the fair compensation referred to in Article 5(2)(b) of that directive.

In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

Should Article 5(2)(b) — whether or not in conjunction with Article 5(5) — of Directive [2001/29] be interpreted as meaning that the limitation on copyright referred to therein applies to reproductions which satisfy the requirements set out in that provision, regardless of whether the copies of the works from which the reproductions were taken became available to the natural person concerned lawfully — that is to say: without infringing the copyright of the rightholders — or does that limitation apply only to reproductions taken from works which have become available to the person concerned without infringement of copyright?

If the answer to question 1 is that expressed at the end of the question, can the application of the “three-stage test” referred to in Article 5(5) of Directive [2001/29] form the basis for the expansion of the scope of the exception of Article 5(2), or can its application only lead to the reduction of the scope of the limitation?

If the answer to question 1 is that expressed at the end of the question, is a rule of national law which provides that in the case of reproductions made by a natural person for private use and without any direct or indirect commercial objective, fair compensation is payable, regardless of whether the making of those reproductions is authorised under Article 5(2) of Directive [2001/29] — and without there being any infringement by that rule of the prohibition right of the rightholder and his entitlement to damages — contrary to Article 5 of [that] Directive, or to any other rule of EU law?

In the light of the “three-stage test” of Article 5(5) of Directive [2001/29], is it important when answering that question that technological measures to combat the making of unauthorised private copies are not (yet) available?

Is Directive [2004/48] applicable to proceedings such as these where — after a Member State, on the basis of Article 5(2)(b) of Directive [2001/29], has imposed the obligation to pay the fair compensation referred to in that provision on producers and importers of media which are suitable and intended for the reproduction of works, and has determined that that fair compensation should be paid to an organisation designated by that Member State which has been charged with collecting and distributing the fair compensation — those liable to pay the

compensation bring an action for a declaration by the courts, in respect of certain contested circumstances which have a bearing on the determination of the fair compensation, against the organisation concerned, which defends the action?'

Consideration of the questions referred

The first and second questions

By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether EU law, in particular Article 5(2)(b) of Directive 2001/29, read in conjunction with paragraph 5 of that article, is to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not distinguish the situation in which the source from which a reproduction for private use is made is lawful from that in which that source is unlawful.

It should be noted at the outset that Article 2 of Directive 2001/29 provides that Member States are to grant authors the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their works, while reserving to those Member States the option, under Article 5(2) of that directive, of providing for exceptions and limitations to that right.

As regards the scope of those exceptions and limitations, it must be pointed out that, according to the settled case-law of the Court, the provisions of a directive which derogate from a general principle established by that directive must be interpreted strictly (Case C-5/08 *Infopaq International* EU:C:2009:465, paragraph 56 and the case-law cited).

It follows that the different exceptions and limitations provided for in Article 5(2) of Directive 2001/29 must be interpreted strictly.

Furthermore, it must be pointed out that Article 5(5) of Directive 2001/29 requires that the exceptions and limitations to the reproduction right are to be applied only in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

As is apparent from its wording, that provision of Directive 2001/29 simply specifies the conditions for the application of the exceptions and limitations to the reproduction right which are authorised by Article 5(2) of that directive, namely that those exceptions and limitations are to be applied only in certain special cases, which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder. Article 5(5) of that directive does not therefore define the substantive content of the different exceptions and limitations set out in Article 5(2) of that directive, but takes effect only at the time when they are applied by the Member States.

Consequently, Article 5(5) of Directive 2001/29 is not intended either to affect the substantive content of provisions falling within the scope of Article 5(2) of that directive or, inter alia, to extend the scope of the different exceptions and limitations provided for therein.

Furthermore, it is apparent from recital 44 in the preamble to Directive 2001/29 that the EU legislature meant to envisage, when Member States provide for the exceptions or limitations referred to by that directive, that the scope of those exceptions or limitations could be limited even more when it comes to certain new uses of copyright works and other subject-matter. By contrast, neither that recital nor any other provision of that directive envisages the possibility of the scope of such exceptions or limitations being extended by the Member States.

In particular, under Article 5(2)(b) of Directive 2001/29, Member States may provide for an exception to the author's exclusive reproduction right in his work in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial ('the private copying exception').

That provision does not address expressly the lawful or unlawful nature of the source from which a reproduction of the work may be made.

The wording of that provision must therefore be interpreted by applying the principle of strict interpretation, as referred to in paragraph 23 of the present judgment.

Such an interpretation requires Article 5(2)(b) of Directive 2001/29 to be understood as meaning that the private copying exception admittedly prohibits copyright holders from relying on their exclusive right to authorise or prohibit reproductions with regard to persons who make private copies of their works; however, it precludes that provision from being understood as requiring, beyond that limitation which is provided for expressly, copyright holders to tolerate infringements of their rights which may accompany the making of private copies.

Such a finding is, moreover, borne out by the context of which Article 5(2)(b) of Directive 2001/29 forms part and by its underlying objectives.

In that regard, first, it is apparent from recital 32 in the preamble to Directive 2001/29 that the list of exceptions provided for in Article 5 thereof has to ensure a balance between the different legal traditions in Member States and the proper functioning of the internal market.

It follows that the Member States have the option of introducing the different exceptions provided for in Article 5 of that directive, in accordance with their legal traditions, but that, once they have made the choice of introducing a certain exception, it must be applied coherently, so that it cannot undermine the objectives which Directive 2001/29 pursues with the aim of ensuring the proper functioning of the internal market.

If the Member States had the option of adopting legislation which also allowed reproductions for private use to be made from an unlawful source, the result of that would clearly be detrimental to the proper functioning of the internal market.

Secondly, it is apparent from recital 22 in the preamble to Directive 2001/29, that the objective of proper support for the dissemination of culture must not be achieved by sacrificing strict protection of rights or by tolerating illegal forms of distribution of counterfeited or pirated works.

Consequently, national legislation which makes no distinction between private copies made from lawful sources and those made from counterfeited or pirated sources cannot be tolerated.

Furthermore, when it is applied, national legislation, such as that at issue in the main proceedings, which does not draw a distinction according to whether the source from which a reproduction for private use is made is lawful or unlawful, may infringe certain conditions laid down by Article 5(5) of Directive 2001/29.

First, to accept that such reproductions may be made from an unlawful source would encourage the circulation of counterfeited or pirated works, thus inevitably reducing the volume of sales or of other lawful transactions relating to the protected works, with the result that a normal exploitation of those works would be adversely affected.

Secondly, the application of such national legislation may, having regard to the finding made in paragraph 31 of the present judgment, unreasonably prejudice copyright holders.

It is apparent from the foregoing considerations that Article 5(2)(b) of Directive 2001/29 must be interpreted as not covering the case of private copies made from an unlawful source.

Against the same background of Article 5(5) of Directive 2001/29, the referring court also inquires whether, in assessing whether national legislation, such as that at issue in the main proceedings, is in conformity with EU law, regard must be had to the fact that technological measures, within the meaning of Article 6 of that directive, and to which Article 5(2)(b) of that directive refers, do not, or not yet, exist at the time when that legislation is implemented.

In that regard, the Court has already held that the technological measures to which Article 5(2)(b) of Directive 2001/29 refers are intended to restrict acts which are not authorised by the rightholders, that is to say to ensure the proper application of that provision and thus to prevent acts which do not comply with the strict conditions imposed by that provision (see, to that effect, Joined Cases C-457/11 to C-460/11 *VG Wort* EU:C:2013:426, paragraph 51).

Furthermore, inasmuch as it is the Member States and not the rightholders which establish the private copying exception and which authorise, for the purposes of the making of such a copy, such use of protected works or other subject-matter, it is, consequently, for the Member State which, by the establishment of that exception, has authorised the making of the private copy to ensure the proper application of that exception, and thus to restrict acts which are not authorised by the rightholders (see, to that effect, *VG Wort* EU:C:2013:426, paragraphs 52 and 53).

It is apparent from paragraphs 39 and 40 of the present judgment that national legislation, such as that at issue in the main proceedings, which does not distinguish the situation in which the source from which a reproduction for private use is made is lawful from that in which that source is unlawful, is not capable of ensuring the proper application of the private copying exception. The fact that no applicable technological measures to combat the making of unlawful private copies exist is not capable of calling that finding into question.

It follows that, in assessing whether national legislation, such as that at issue in the main proceedings, is in conformity with EU law, there is no need to take into account the fact that technological measures, within the meaning of Article 6 of Directive 2001/29, and to which Article 5(2)(b) of that directive refers, do not, or do not yet, exist.

Lastly, the finding which the Court reached in paragraph 41 of the present judgment is not called into question in the light of the condition of 'fair compensation' referred to in Article 5(2)(b) of Directive 2001/29.

In that regard, it must, first, be pointed out that, under that provision, Member States which decide to introduce the private copying exception into their national law are required to provide for the payment of 'fair compensation' to rightholders.

It is also important to bear in mind that an interpretation of that provision according to which Member States which have introduced the private copying exception, provided for by EU law and including, as set out in recitals 35 and 38 in the preamble to that directive, the concept of 'fair compensation' as an essential element, are free to determine the limits in an inconsistent and unharmonised manner which may vary from one Member State to another, would be incompatible with the objective of that directive of harmonising certain aspects of the Law on copyright and related rights in the information society and ensuring competition in the internal market is not distorted as a result of Member States' different legislation (see, to that effect, Case C-467/08 *Padawan* EU:C:2010:620, paragraphs 35 and 36).

The purpose of such compensation is, according to the case-law of the Court, to compensate authors for private copies made of their protected works without their authorisation, with the result that it must be regarded as recompense for the harm suffered by authors as a result of such unauthorised copies (see, to that effect, *Padawan* EU:C:2010:620, paragraphs 30, 39 and 40).

Accordingly, it is, in principle, for the person who has caused such harm, namely the person who has made the copy of the protected work without seeking prior authorisation from the rightholder, to make good the harm suffered by financing the compensation which will be paid to that rightholder (see, to that effect, *Padawan* EU:C:2010:620, paragraph 45, and Case C-462/09 *Stichting de Thuiskopie* EU:C:2011:397, paragraph 26).

The Court has, however, accepted that, given the practical difficulties connected with such a system of fair compensation, it is open to the Member States to establish a levy for the purposes of financing fair compensation chargeable not directly to the private persons concerned, but to those who may pass on the amount of that levy in the price charged for making reproduction equipment, devices and media available or in the price for the copying service supplied, the burden of that levy thus ultimately being borne by the private user who pays that price (see, to that effect, *Padawan* EU:C:2010:620, paragraphs 46 and 48, and *Stichting de Thuiskopie* EU:C:2011:397, paragraphs 27 and 28).

Secondly, it is apparent from recital 31 in the preamble to Directive 2001/29 that the levy system introduced by the Member State concerned must safeguard a fair balance between the rights and interests of authors, who are the recipients of the fair compensation, on the one hand, and those of users of protected subject-matter, on the other.

A private copying levy system, such as that at issue in the main proceedings, which does not, as regards the calculation of the fair compensation payable to its recipients, distinguish the situation in which the source from

which a reproduction for private use has been made is lawful from that in which that source is unlawful, does not respect the fair balance referred to in the preceding paragraph.

Under such a system, the harm caused, and therefore the amount of the fair compensation payable to the recipients, is calculated on the basis of the criterion of the harm caused to authors both by reproductions for private use which are made from a lawful source and by reproductions made from an unlawful source. The sum thus calculated is then, ultimately, passed on in the price paid by users of protected subject-matter at the time when equipment, devices and media which enable private copies to be made are made available to them.

Consequently, all the users who purchase such equipment, devices and media are indirectly penalised since, by bearing the burden of the levy which is determined regardless of the lawful or unlawful nature of the source from which such reproductions are made, they inevitably contribute towards the compensation for the harm caused by reproductions for private use made from an unlawful source, which are not permitted by Directive 2001/29, and are thus led to assume an additional, non-negligible cost in order to be able to make the private copies covered by the exception provided for by Article 5(2)(b) of that directive.

Such a situation cannot be regarded as satisfying the condition of the fair balance to be found between, on the one hand, the rights and interests of the recipients of the fair compensation and, on the other, those of those users.

In the light of all of the foregoing considerations, the answer to the first and second questions is that EU law, in particular Article 5(2)(b) of Directive 2001/29, read in conjunction with paragraph 5 of that article, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not distinguish the situation in which the source from which a reproduction for private use is made is lawful from that in which that source is unlawful.

The third question

By its third question, the referring court asks, in essence, whether Directive 2004/48 is to be interpreted as meaning that it may apply to proceedings, such as those in the main proceedings, in which those liable for payment of the fair compensation bring an action before that court for a ruling against the body responsible for collecting that remuneration and distributing it to copyright holders, which defends that action.

It must be borne in mind that Directive 2004/48 seeks, as is apparent from Article 1 thereof, to ensure the enforcement of intellectual property rights by means of the introduction, for that purpose, of various measures, procedures and remedies within the Member States.

The Court has held that the provisions of Directive 2004/48 are intended to govern only the aspects of intellectual property rights related to, first, the enforcement of those rights and, secondly, to infringement of them, by requiring that there must be effective legal remedies designed to prevent, terminate or rectify any infringement of an existing intellectual property right (see Case C-180/11 *Bericap Záródástechnikai* EU:C:2012:717, paragraph 75).

Furthermore, it is apparent from Article 2(1) of Directive 2004/48 that the provisions thereof simply ensure the enforcement of the various rights enjoyed by persons who have acquired intellectual property rights, namely the proprietors of such rights, and cannot be interpreted as being intended to govern the various measures and procedures available to persons who are not themselves the proprietors of such rights, and which do not relate solely to an infringement of those rights (see, to that effect, *Bericap Záródástechnikai* EU:C:2012:717, paragraph 77).

Proceedings, such as those in the main proceedings, which relate to the scope of the private copying exception scheme and to its impact on the collection and distribution of the fair compensation which has to be paid by importers and/or manufacturers of blank media, in accordance with Article 5(2)(b) of Directive 2001/29, do not derive from an action brought by rightholders which seeks to prevent, terminate or rectify any infringement of an existing intellectual property right, but from an action brought by economic operators regarding the fair compensation which it is for them to pay.

Accordingly, Directive 2004/48 cannot apply.

In the light of the foregoing considerations, the answer to the third question is that Directive 2004/48 must be interpreted as not applying to proceedings, such as those in the main proceedings, in which those liable for payment of the fair compensation bring an action before the referring court for a ruling against the body responsible for collecting that remuneration and distributing it to copyright holders, which defends that action.

Costs

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

EU law, in particular Article 5(2)(b) 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, read in conjunction with paragraph 5 of that article, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not distinguish the situation in which the source from which a reproduction for private use is made is lawful from that in which that source is unlawful.

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as not applying to proceedings, such as those in the main proceedings, in which those liable for payment of the fair compensation bring an action before the referring court for a ruling against the body responsible for collecting that remuneration and distributing it to copyright holders, which defends that action.

[Signatures]

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* Language of the case: Dutch.