



Press and Information

Court of Justice of the European Union

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Judgment in Case C-433/20  
Austro-Mechana

## **The ‘private copying’ exception under the Copyright Directive applies to the storage in the cloud of a copy of a protected work for private purposes**

*Rightholders must receive fair compensation, which, however, need not necessarily be imposed on cloud providers*

Austro-Mechana<sup>1</sup> is a copyright collecting society which exercises the legal rights to the remuneration that is due under the private copying exception.<sup>2</sup> It brought a claim for payment of that remuneration before the Handelsgericht Wien (Commercial Court, Vienna, Austria) that was directed against Strato AG, a provider of cloud storage services. That court dismissed the claim on the ground that Strato does not supply storage media to its customers, but provides them with an online storage service.

Hearing the case on appeal, the Oberlandesgericht Wien (Higher Regional Court, Vienna) asked the Court of Justice whether the storage of content in the context of cloud computing comes within the scope of the private copying exception laid down by Article 5(2)(b) of Directive 2001/29.<sup>3</sup>

The Court of Justice holds that **the private copying exception applies to copies of works on a server in storage space made available to a user by the provider of a cloud computing service. However, Member States are not obliged to make the providers of cloud storage services subject to the payment of fair compensation under that exception, in so far as the payment of fair compensation to rightholders is provided for in some other way.**

### **Findings of the Court**

In the first place, Directive 2001/29 provides that the private copying exception applies to reproductions on any medium.<sup>4</sup> The Court rules on the applicability of that exception to copies of works in the cloud.

As regards the concept of ‘reproduction’, the Court states that the saving of a copy of a work in storage space in the cloud constitutes a reproduction of that work. The upload of a work to the cloud consists in storing a copy of it.

As regards the words ‘any medium’, the Court observes that these refer to all of the media on which a protected work may be reproduced, including the servers used in cloud computing. In that regard, the fact that the server belongs to a third party is not decisive. Accordingly, the private copying exception may apply to reproductions made by a natural person with the aid of a device belonging to a third party. In addition, one of the objectives of Directive 2001/29 is to prevent copyright protection in the European Union from becoming outdated or obsolete as a result of

<sup>1</sup> Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft mbH.

<sup>2</sup> The private copying exception is an exception to the exclusive right of authors to authorise or prohibit the reproduction of their works. It concerns reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial.

<sup>3</sup> Member States have the option to provide for such an exception under 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 (OJ 2001 L 167, p. 10). In that case, those States must ensure that rightholders receive fair compensation.

<sup>4</sup> Article 5(2)(b) of Directive 2001/29.

technological developments. That objective would be undermined if the exceptions and limitations to copyright protection were interpreted in such a way as to exclude digital media and cloud computing services.

Consequently, the concept of 'any medium' covers a server on which storage space is made available to a user by the provider of a cloud computing service.

In the second place, the Court rules on the subjection of providers of cloud storage services to the payment of fair compensation and takes the view, in essence, that, as EU law currently stands, such an imposition is within the discretion conferred on the national legislature to determine the various elements of the system of fair compensation.

In that regard, it points out that Member States which implement the private copying exception are required to provide for a system of fair compensation intended to compensate rightholders.

As regards the person liable to pay the fair compensation, it is in principle for the person carrying out the private copying, namely the user of cloud computing storage services, to finance that compensation.

However, in the event of practical difficulties related to the identification of end users, **Member States may introduce a private copying levy chargeable to the producer or importer of the servers by means of which the cloud computing services are offered to natural persons. That levy will be passed on economically to the purchaser of such servers and will ultimately be borne by the private user who uses that equipment or to whom a reproduction service is provided.**

**When setting the private copying levy, Member States may take account of the fact that certain devices and media may be used for private copying in connection with cloud computing. However, they must ensure that the levy thus paid, in so far as it affects several devices and media in the single process of private copying, does not exceed the possible harm to the rightholders.**

Consequently, Directive 2001/29 does not preclude national legislation that does not make the providers of cloud storage services subject to the payment of fair compensation, in so far as that legislation provides for the payment of fair compensation in some other way.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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