



Annex to Chapter 11 on the InfoSoc Directive #4

 <i><u>Dr. Péter Mezei</u></i>	<i>INFOSOC DIRECTIVE #4</i> Chapter 11 aims to introduce the content and case law related to some aspects of limitations and exceptions under the InfoSoc Directive. [Art. 5(1) and 5(2).] <i><u>45 minutes</u></i>	 <i><u>45 minutes</u></i>
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Reading task

Please read the following case accessible via the attached link, and answer/discuss the questions/notes below.

Case C-467/08 - Padawan SL v. Sociedad General de Autores y Editores de España (SGAE), Judgment of the Court of 21 October 2010

<http://curia.europa.eu/juris/document/document.jsf?docid=83635&doclang=en>

Please focus on the syllogism of the CJEU regarding use → harm → payment of remuneration → charging users.

Questions to the reading

1. What is “fair compensation” and who owes it to the rights holders? What is “harm” and who causes that to the rights holders?
2. What practical difficulties might arise from a direct obligation to pay fair compensation to rights holders by end-users? What is the advantage of obliging producers/importers of machines capable to contain private copies of protected subject matter?
3. What if the end-user is using the relevant data carrier for purposes other than private copying?

Further recommended readings

<http://ipkitten.blogspot.com/2010/10/padawan-v-sgae-more-detail.html>

<http://copyrightblog.kluweriplaw.com/2013/09/17/private-copying-levy-the-aftershocks-of-padawan/>

Further questions/tasks to the chapter's content

1. Can Member States introduce any new limitation or exception other than those included in the InfoSoc Directive?
2. What is a limitation and what is an exception?
3. What is the grandfather-clause?
4. What are the cumulative conditions of “temporary acts of reproduction”? Could you recall how the CJEU interpreted these elements in Infopaq I and II?
5. What is the main difference between “reprography” under Art. 5(2)(a) and “private copying on other medium” under Art. 5(2)(b)?
6. What does it mean: “autonomous concept of EU law”?
7. Can rights holders waive of their fair remuneration?

List of relevant definitions/concepts

Please think these definitions/concepts over again, as they are crucial in understanding copyright law in the EU.

limitations, exceptions, temporary acts of reproduction, private copying, autonomous concept of EU law, fair compensation, harm, other process having similar effect, waiver of remuneration

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