



Press and Information

Court of Justice of the European Union

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Judgment in Case C-174/15

Vereniging Openbare Bibliotheken v Stichting Leenrecht

The lending of an electronic book (e-book) may, under certain conditions, be treated in the same way as the lending of a traditional book

In such a situation, the public lending exception, which provides inter alia for the fair remuneration of authors, is applicable

In the Netherlands, the lending of electronic books by public libraries does not come under the public lending regime applicable to traditional books. At present, public libraries make electronic books available to the public via the internet, on the basis of licensing agreements with right holders.

Vereniging Openbare Bibliotheken, an association to which every public library in the Netherlands belongs ('VOB'), takes the view that the regime for traditional books should also apply to digital lending. In that context, it brought an action against Stichting Leenrecht, a foundation entrusted with collecting the remuneration due to authors, by which it sought a declaratory judgment to that effect. VOB's action concerns lending under the 'one copy, one user' model, namely the lending of an electronic book carried out by placing that copy on the server of a public library and allowing the user concerned to reproduce that copy by downloading it onto his own computer, bearing in mind that only one copy may be downloaded during the lending period and that, after that period has expired, the downloaded copy can no longer be used by that user.

The Rechtbank Den Haag (District Court, The Hague, Netherlands), before which the dispute has been brought, considers that its response to VOB's request depends on the interpretation of provisions of EU law and it has referred a number of questions to the Court of Justice for a preliminary ruling. A 2006 EU directive concerning, among other things, the rental and lending rights in respect of books¹ provides that the exclusive right to authorise or prohibit such rentals and loans belongs to the author of the work. Member States may, however, derogate from that exclusive right in respect of public lending, provided that authors obtain, at least, fair remuneration. The question that arises is therefore whether that exception also applies to the lending of electronic books under the 'one copy, one user' model.

In today's judgment, the Court of Justice first notes that there is no decisive ground allowing for the exclusion, in all cases, of the lending of digital copies and intangible objects from the scope of the directive. That conclusion is, moreover, borne out by the objective pursued by the directive, namely that copyright must adapt to new economic developments. In addition, to exclude digital lending entirely from the scope of the directive would run counter to the general principle that a high level of protection is required for authors.

The Court then goes on to verify whether the public lending of a digital copy of a book under the 'one copy, one user' model is capable of coming within the scope of Article 6(1) of the directive.

In that respect, the Court notes that, given the importance of the public lending of digital books, and in order to safeguard both the effectiveness of the exception for public lending referred to in Article 6(1) of the directive and the contribution of that exception to the promotion of culture, it

¹ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28).

cannot be ruled out that that article may apply where the operation carried out by a publicly accessible library, in view of, inter alia, the conditions set out in Article 2(1)(b) of that directive, has essentially similar characteristics to the lending of printed works. That is the case as regards the lending of a digital copy of a book under the 'one copy, one user' model.

The Court therefore holds that the concept of 'lending', within the meaning of the directive, also covers lending of this kind.

The Court also notes that the Member States may lay down additional conditions capable of improving the protection of authors' rights beyond what is expressly laid down in the directive. In the present case, the Netherlands legislation requires that the digital copy of a book made available by the public library must have been put into circulation by a first sale or other transfer of ownership of that copy in the EU by the holder of the right of distribution to the public or with that holder's consent. According to the Court, such an additional condition must be considered to be in accordance with the directive.

Concerning the case where an electronic copy of a book has been obtained from an unlawful source, the Court emphasises that one of the objectives of the directive is to combat piracy and points out that allowing the lending of such a copy would be liable unreasonably to prejudice copyright holders. Consequently, the public lending exception does not apply to the making available by a public library of a digital copy of a book in the case where that copy has been obtained from an unlawful source.

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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