

Clarification to preliminary questions

On April 1, 2015, the District Court of The Hague issued a judgment that it will refer questions to the European Court of Justice for a preliminary ruling. The questions are formulated as follows:

"1. Should Articles 1(1), 2(1)(b) and 6(1) of Directive 2006/115 be interpreted in such a way that "lending", as referred to in the directive, includes making copyrighted novels, anthologies of stories, biographies, travelogues, children's books and youth literature available for use without direct or indirect economic or commercial advantage by establishments accessible to the public - by placing a copy in digital form (reproduction A) on the establishment's server and making it possible for a user to reproduce it on his own computer by downloading (reproduction B), - such that the copy made by the user during the download (reproduction B) is no longer usable after a limited period of time, and - such that other users are not able to download the copy (reproduction A) onto their computer during this time?

2. If the first question must be answered in the affirmative, does Article 6 of Directive 2006/115 and/or any other provision of European Union law preclude Member States from attaching the condition, to the application of the restriction on the lending right laid down in Article 6 of Directive 2006/115, that the copy of the work (reproduction A) made available by the establishment has been put into circulation by the first sale or other transfer of ownership of that copy in the European Union by the rightholder or with his consent within the meaning of Article 4(2) of Directive 2001/29?

3. If the second question must be answered in the negative, does Article 6 of Directive 2006/115 impose other requirements on the origin of the copy made available by the establishment (reproduction A), such as, for example, the requirement that that copy has been obtained from a legal source?

4. If the second question must be answered in the affirmative, must Article 4(2) of Directive 2001/29 be interpreted in such a way that the first sale or other transfer of ownership of subject-matter, as referred to in that paragraph, also means the making available of digital copies of copyrighted novels, anthologies of stories, biographies, travelogues, children's books and youth literature at a distance by means of downloading for use for an unlimited period of time?"

In short, the procedure is about the question whether or not libraries are allowed to lend e-books if they pay a lending right remittance to the rightful claimant which also means that publishers do no longer have the right to forbid the lending of e-books.

The question is based on the assumption of lending e-books according to the one user one copy model which means:

- a) An e-book for which an indefinite user license has been obtained, can only be lent to one user at the time; and
- b) The copy of the e-book which is available to the borrower, is only available for a limited period of time. After this period, the copy of the e-book is no longer available to the borrower.

The question does not relate to academic work, professional publications, databases, references, computer programmes, audio-visual work, image recordings, music, audio recordings or combinations of the above, but is restricted to e-books in the form of copyrighted novels, anthologies of stories, biographies, travelogues, children's books and youth literature. These are the categories of copyrighted works libraries lend to the public traditionally.

For further information:

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