

Intellectual Property - France

Copyright levies: the *Conseil d'Etat* excludes professionals

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The private copying exception and copyright levies are hot topics in France. Following the *Padawan* decision of the Court of Justice of the European Union (ECJ), the *Conseil d'Etat*, France's highest administrative court, issued a particularly important decision in this regard on June 17 2011.

In line with the *Padawan* decision, this recent ruling of the *Conseil d'Etat* cancelled Decision 11 of the Private Copy Commission of December 17 2008, which had set the rates applicable to several recording devices, such as USB sticks and memory cards. The *Conseil d'Etat* ruled that Decision 11 made no distinction between recording devices for professional use and recording devices that could be deemed to be used for private copying.

Decision 11 was issued by the Private Copy Commission following a previous ruling of the *Conseil d'Etat* dated July 11 2008, which had cancelled earlier decisions of the Private Copy Commission as they had included the volume of illegal copying in the calculation of copyright levies. Decision 11 was thus a cornerstone of the legal framework for copyright levies, and its cancellation will likely trigger a new assessment of all applicable levy rates and the implementation of an updated regime exempting recording devices acquired for professional purposes.

Interestingly, the *Conseil d'Etat* decided to delay implementation of the decision for a period of six months. It said that a retroactive cancellation or even a cancellation with immediate effect would be impossible to deal with, as it would open the floodgates to numerous claims and cause general confusion.

For the time being, therefore, implementation of the decision is suspended and nothing will change as yet. It will thus be business as usual until the Private Copy Commission issues its next decision to reflect the June ruling of the *Conseil d'Etat*. However, further developments should be closely followed over the next few months.

The eventual cancellation of Decision 11 in six months' time should also result in the cancellation of Decisions 12 and 13, as they were largely based on Decision 11. In view of this, it seems that the Private Copy Commission will have little choice but to issue a new decision within the next six months.

The ruling of the *Conseil d'Etat* is a serious blow to the Private Copy Commission, which at the time of the *Padawan* decision declared that it was fully compliant with the ruling of the ECJ; following the ruling of the *Conseil d'Etat*, this would no longer appear to be the case.

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