

PRESS RELEASE

Reprobel wins national lawsuit against HP Belgium before the court of appeal of Brussels

In November 2015, the Court of Justice of the EU ruled in the *Hewlett Packard Belgium / Reprobel* case (C-572/13). This landmark ruling received a lot of attention in the press. Last Friday, the court of appeal of Brussels ruled on the merits in this case, furthering on the CJEU ruling. The court of appeal has ruled in favor of Reprobel. Authors and publishers welcome the ruling of the court of appeal.

Flashback to the late autumn of 2015. Following the ruling of the European judges in Luxembourg, almost all importers of copying and multifunctional devices echoed that the (then existing) Belgian reprography scheme was in breach of European law. In the footsteps of HP Belgium itself, most importers eventually abandoned the monthly declaration of the imported devices to Reprobel and / or the subsequent payment of the equipment levies due. Reprobel has consistently stated that this attitude of the importers was a clear violation of the law.

The court of appeal of Brussels has confirmed Reprobel's legal position in the case. The court rules that the remuneration of publishers in the framework of reprography is legitimate and moreover did not affect the authors' own (fair) compensation. The same applies for the criterion of (objective) speed as the sole tariff basis of the equipment levy scheme. The court also considers that the Belgian scheme was sufficiently modulated according to the type of usage (private or professional), and is further of the opinion that the Belgian scheme can be interpreted in conformity with EU law as far as reproductions of sheet music and reproductions from an illegal source are concerned.

The only violation of European law that the court of appeal did find is that Belgian professional users had to pay both an equipment levy and an operator fee on the photocopies, whilst no reimbursement mechanism was in place. But since the relevant provisions of the underpinning European Directive 2001/29 are insufficiently clear, precise and unconditional, these provisions have no direct legal effect. They therefore can't justify the exclusion of the (old) Belgian legislation, as was claimed by HP.

The ruling condemns HP Belgium to pay a provisional amount of 1 EUR to Reprobel, and designates an expert with the task of determining (on the basis of an ISO norm) the objective speed of all reproduction devices HP has put on the Belgian market since December 2002.

Authors and publishers welcome the ruling of the court of appeal. They hope that HP and the other importers concerned will soon sit around the table with Reprobel with an aim of solving the issue of the past in common agreement and with mutual respect.

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