Kluwer Copyright Blog

Update on the UK Private Copying Exception

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We reported here last month that the private copying exception, which took effect on 1 October 2014 as s.28B of the Copyright, Designs and Patents Act, was declared unlawful by the High Court. The court found that the evidence relied on by the government in order to introduce the exception without also providing a means of "fair compensation" to rights holders was flawed.

In a follow-up judgment, available here, the High Court formally quashed the regulations which created the private copying exception following further submissions from the parties.

Perhaps surprisingly, the regulation was quashed with the agreement of the UK government. The Secretary of State stated that the government did not want to create any uncertainty in the law by submitting that the regulation remain in force while the government took "*the opportunity to reflect further… as to whether, and in what form, any further factual enquiries should be carried out and whether a new private copying exception should be introduced*".

The primary dispute before the court was whether the exception should therefore be quashed only with prospective effect or also with retrospective effect. The judge rejected the claimants' request that the regulation be quashed retrospectively, finding the proposition unattractive particularly because it was "*quite possible, and indeed probable, that very substantial numbers of persons commenced copying because [as of 1 October 2014] they had become entitled in law to do so*."

The UK government has confirmed that it is now considering the available options of which, as we noted previously, there are many. What is clear is that, as was the case before 1 October 2014, private copying of copyright protected works in the UK now constitutes an act of infringement.

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