

Kluwer Copyright Blog

Blank Tape Levies: the Latvian Constitutional Court's first copyright case

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“The Cabinet of Ministers has failed to assess impact of technology development onto blank tapes and equipment to be used for reproduction and thus imposable with blank tape levy.” (Judgement Constitutional Court, 14.3).

Last year, the *Satversmes tiesa*, the Constitutional Court of Latvia, had to deal with the first copyright case since its establishment in 1996. The importance of the case, the [Blank Tape Levy-case](#), lies especially in the dogmatic assessment of copyright in the light and the frame of the Constitution of Latvia (the *Satversme*). Article 113 of the constitution states that the State shall protect copyright.

The complainants were four of the five collective management organizations that are registered in Latvia. They collect, inter alia, levies for private digital copying on behalf of authors and holders of related rights. The respondent was the Cabinet of Ministers. According to the Latvian Copyright Law the Cabinet of Ministers is responsible for drawing up a list of empty data carriers and equipment used for private digital reproduction that are subject to levies.

Latvian Cabinet's Regulation no. 312, 'Regulations regarding the Amount of the Blank Tape Levy and the Levy of Equipment Used for Reproduction and the Procedures for the Collection, Repayment, Distribution and Payment Thereof,' was issued in 2005. It contains data carriers such as audio cassettes, video cassettes, CDs and DVDs, and recording equipment such as radios with audio cassette recording function, television sets with video cassette or DVD recording function and similar. The Regulation has neither been revised nor updated since its release in 2005.

In this case, the complainants argued that the Regulation infringed the fundamental rights of authors and holders of related rights, as it regulated the payment of blank tape levies only for certain empty data carriers and equipment. The Cabinet of Ministers denied any infringement of fundamental rights and held that the Regulation complied with the *Satversme*, the constitution.

The Cabinet indicated that the purpose of blank tape levies was not only to protect persons subject to copyright and related rights, but also to balance those interests with the interests of society as a whole. Therefore it was not thought right to put a levy on each blank tape or on all kinds of recording equipment, just because they could be used for reproduction of objects of copyright or related rights.

The Constitutional Court did not agree with the Cabinet of Ministers and ruled that the Cabinet of Ministers had failed to fulfill its task commissioned by the legislator in Article 34 (2) of the Latvian Copyright Law, namely to establish criteria and to draw up a list of empty data carriers and recorders that are subject to levies, to follow technological developments, supplement the list of empty data carriers and equipment and to substantiate whether the legal regulatory framework is still effective and should or should not be improved.

Therefore the Cabinet of Minister had failed to ensure the protection of the fundamental rights established in Article 113 of the *Satversme*. The Constitutional Court reminded that the State could not relinquish rights that have been included into the *Satversme*. These rights are not just of a declarative nature and protection of them has become a constitutional value. As a result of the judgment the Cabinet of Minister revised Regulation No. 312 in October 2012.

Constitutionally, there are at least three exciting dogmatic aspects to this case.

First of all, the relationship of Article 105 and Article 113 of the *Satversme* is not clear as far as the protection of copyrights (and patents) is concerned. Article 113 of the *Satversme* provides expressis verbis that the State shall protect copyright and patents. Article 105 of the *Satversme* protects property. It has been argued that Article 105 of the *Satversme* shall protect economic rights of authors, whereas Article 113 of the *Satversme* refers to their personal rights. The Constitutional Court did not share this opinion. According to its judgement, both personal and economic rights of authors arise from Article 113 of the *Satversme*. Unfortunately the Constitutional Court did not answer whether Article 105 of the *Satversme* is still applicable on copyrights. This could be interesting, because, in some cases, legitimate restrictions on Article 105 and Article 113 of the *Satversme* could lead to different results.

Secondly, the judgment of the Constitutional Court resolves the misunderstanding of Article 113 of the *Satversme*. Some copyright lawyers stated earlier that the wording of the *Satversme* provided for an absolute protection of copyright, and one that could not be restricted. The Constitutional Court reminded that constitutional values were not absolute, not even if the text of the *Satversme* did not explicitly allow for their restriction. Instead, each basic right can be restricted pursuant to the general principles regulating restriction of fundamental rights. Therefore a restriction of copyright shall be considered constitutional, if the restriction has been provided for by law, has a legitimate aim and it is proportional.

Thirdly, the scope of constitutional protection of related rights still remains open. As the wording of Article 113 of the *Satversme* only speaks of copyright, it is unclear whether it also protects holders of related rights. In this case, the Constitutional Court did not want to set a clear framework and argued that the contested restrictions saw to copyright and related rights as well, as the legal remedies were identical. Therefore the Court decided to assess only the restriction of copyright and that the relevant arguments should apply to the restriction of related rights in the same manner.

Judging from the reasoning in this case, the Court appears to follow binding international treaties and European provisions: the question of the constitutional protection of related rights is therefore of a more dogmatic nature and should not interfere with the protection of related rights in practice.

MP

A full summary of this case has been added to the Kluwer IP Cases Database (<http://www.kluweripcases.com/>).

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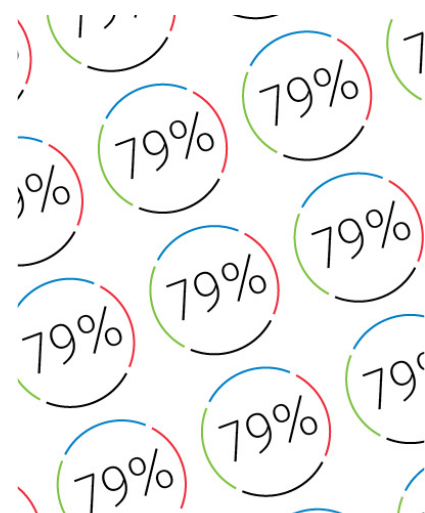
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