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Estonian Authors' Society, Estonian Performers' Union and Estonian Association of Phonogram Producers vs. Government of the Republic of Estonia (“Blank tape levy” case)

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An interesting case about the legality of a regulation issued by the Estonian Government on the “blank tape levy”

The Estonian Authors' Society, Estonian Performers' Union and Estonian Association of Phonogram Producers (right holders' collecting societies) filed a complaint in the administrative court claiming monetary damages (income loss) from the Government of the Republic of Estonia. The claimants were of the opinion that Section 3(1) of Regulation No. 14 of 17 January 2006 on the “blank tape levy” was not in compliance with Article 5(2)(b) of the “Infosoc” Directive (2001/29/EU) and with Sections 32 and 39 of the Estonian Constitution. The claimants argued that this regulation fails to guarantee authors, performers and phonogram producers equitable remuneration under the private copying exemption, because the exhaustive list of the equipment and devices subject to the “blank tape levy” is not in accordance with recent technological developments in this field.

It is remarkable that the amount of the “blank tape levies” distributable to right holders in Estonia has decreased year by year. In fact, in 2014 the costs of collecting the “blank tape levies” exceeded the collected amounts and so as a result the right holders did not receive any remuneration under the private copying exemption.

The Estonian Government did not argue against the claim *per se*. The government admitted that indeed in recent years there had not been any empirical studies performed in Estonia which could show that the proportion of the private copying at issue was insignificant and did not harm the legal interests of the right holders. Therefore, the government agreed that the current blank tape levy system in Estonia was inadequate and thus may harm the reproduction rights of authors, performers and phonogram producers.

The Tallinn Circuit Court found that the public authority in Estonia had failed to perform its obligations by issuing a regulation on the “blank tape levy” that clearly failed to guarantee authors, performers and phonogram producers equitable remuneration under the private copying exemption, and that the claim for compensation by way of damages was therefore justified. However, the [Supreme Court ruled](#) that before being able to decide upon the question of whether a claim for

damages under Section 14 of the Estonian State Liability Act was justified, the court must first establish the facts and the amount of damages, as well as the causation between the breach of the obligations of the public authority and the monetary damages suffered by the claimants. The Supreme Court found that in this case the circuit court had failed to establish these obligatory prerequisites.

The action shall therefore continue in the Tallinn Circuit Court as that court must now determine whether all the prerequisites for compensation of damages under Section 14(1) of the Estonian State Liability Act exist.

A [full summary](#) of this case has been published on [Kluwer IP Law](#)

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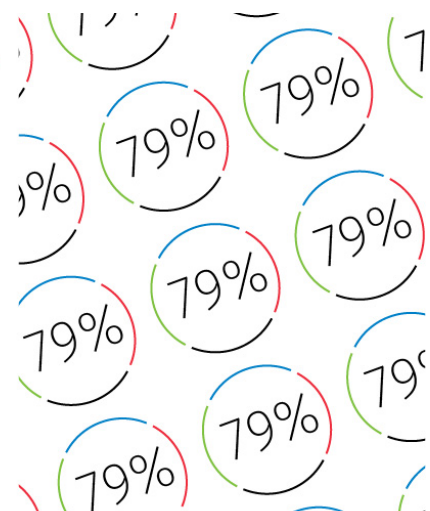
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