

Kluwer Copyright Blog

UK: R. (on the application of British Academy of Songwriters, Composers and Authors) & others v. Secretary of State for Business, Innovation and Skills, High Court of Justice, QBD, 19 June 2015 & 27 July 2015

Stavroula Karapapa (University of Reading) · Tuesday, November 24th, 2015

The Secretary of State's decision to introduce section 28B of the CDPA 1988, which created an exception to copyright for personal private use without a mechanism for compensating rightholders, was found to be unlawful. The Secretary of State had introduced the provision on the basis that any harm caused to rightholders would be zero or minimal; however that was not justified by the evidence.

In a follow-up decision, the court quashed the Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 in their entirety in light of its previous decision that they were unlawful. The court ruled that the quashing had prospective effect but declined to make any ruling as to whether or not the Regulations were void *ex tunc*.

The court decided that it would not be appropriate to make a reference to the CJEU in this case. Since the Regulations had been quashed, the essence of the case had disappeared and any reference would therefore be a hypothetical, albeit interesting, question.

A full summary of these two judgments has been published on [Kluwer IP Law](#)

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