Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

16 November 2016*

(Reference for a preliminary ruling — Intellectual and industrial property rights — Directive 2001/29/EC — Copyright and related rights — Articles 2 and 3 — Rights of reproduction and communication to the public — Scope — 'Out-of-print' books which are not or no longer published — National legislation giving a collecting society rights to exploit out-of-print books for commercial purposes — Legal presumption of the authors'consent — Lack of a mechanism ensuring authors are actually and individually informed)

In Case C-301/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 6 May 2015, received at the Court on 19 June 2015, in the proceedings

Marc Soulier,

Sara Doke

v

Premier ministre,

Ministre de la Culture et de la Communication,

intervening parties:

Société française des intérêts des auteurs de l'écrit (SOFIA),

Joëlle Wintrebert and Others,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský (Rapporteur), M. Safjan and D. Šváby, Judges,

Advocate General: M. Wathelet,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 11 May 2016,

* * Language of the case: French.

after considering the observations submitted on behalf of:

— Mr Soulier and Ms Doke, by F. Macrez, avocat,

— the Société française des intérêts des auteurs de l'écrit (SOFIA), by C. Caron and C. Fouquet, avocats,

— the French Government, by D. Colas and D. Segoin, acting as Agents,

— the Czech Government, by M. Smolek and D. Hadroušek and by S. Šindelková, acting as Agents,

— the German Government, by T. Henze and M. Hellmann and by D. Kuon, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato,

— the Polish Government, by B. Majczyna, M. Drwięcki and M. Nowak, acting as Agents,

— the European Commission, by J. Hottiaux and J. Samnadda and by T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 July 2016,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Articles 2 and 5 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

2 This request was made in the course of proceedings between, on the one hand, Mr Marc Soulier and Ms Sara Doke and, on the other, the Premier Ministre (Prime Minister of France) and the Ministre de la Culture et de la Communication (French Minister for Culture and Communication) concerning the legality of décret nº 2013-182, du 27 février 2013, portant application des articles L. 134-1 à L. 134-9 du code de la propriété intellectuelle et relatif à l'exploitation numérique des livres indisponibles du XXème siècle (Decree No 2013-182 of 27 February 2013, implementing Articles L. 134-1 to L. 134-9 of the French Intellectual Property Code and relating to the digital exploitation of out-of-print 20th century books) (JORF No 51 of 1 March 2013, p. 3835).

Legal context

International law

Berne Convention

3 Article 2 of the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971), as amended on 28 September 1979 ('the Berne Convention'), states, inter alia, in paragraphs 1 and 6 thereof:

'1. The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, …

…

6. The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.'

4 According to Article 3(1) and (3) of the Berne Convention:

'1. The protection of this Convention shall apply to:

(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

…

3. The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. …'

5 Article 5 of that Convention provides, inter alia, in paragraphs 1 and 2 thereof:

'1. Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

2. The enjoyment and the exercise of those rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.'

6 Article 9 of that Convention provides, inter alia, in paragraph 1 thereof:

'Authors of literary and artistic works protected under this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner or form.'

7 Article 11a of that Convention provides, inter alia, in paragraph 1 thereof:

'Authors of literary and artistic works shall enjoy the exclusive right of authorising:

…

2° any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organisation other than the original one;

…'

WIPO Copyright Treaty

8 On 20 December 1996 the World Intellectual Property Organisation (WIPO) adopted in Geneva the WIPO Copyright Treaty ('the WIPO Copyright Treaty'), which was approved on behalf of the Community by Council Decision 2000/278/EC of 16 March 2000 (OJ 2000 L 89, p. 6).

9 Article 1(4) of the WIPO Copyright Treaty, entitled 'Relation to the Berne Convention', provides:

'Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.'

EU law

10 Recitals 9, 15 and 32 of Directive 2001/29 state:

'(9) Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. Intellectual property has therefore been recognised as an integral part of property.

…

(15) The Diplomatic Conference held under the auspices of the World Intellectual Property Organisation (WIPO) in December 1996 led to the adoption of two new Treaties, the "WIPO Copyright Treaty" and the "WIPO Performances and Phonograms Treaty", dealing respectively with the protection of authors and the protection of performers and phonogram producers. Those Treaties update the international protection for copyright and related rights significantly, not least with regard to the "digital agenda" and improve the means to fight piracy worldwide. [The European Union] and a majority of Member States have already signed the Treaties and the process of making arrangements for the ratification of the Treaties by the [Union] and the Member States is under way. This Directive also serves to implement a number of the new international obligations.

…

(32) This Directive provides for an exhaustive enumeration of exceptions and limitations to the reproduction right and the right of communication to the public. Some exceptions or limitations only apply to the reproduction right, where appropriate. This list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning internal market. Member States should arrive at a coherent application of these exceptions and limitations, which will be assessed when reviewing implementing legislation in the future.'

11 Article 2 of Directive 2001/29, entitled 'Reproduction right', provides:

'Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

(a) for authors, of their works;

…'

12 Article 3 of Directive 2001/29, headed 'Right of communication to the public of works and right of making available to the public other subject matter', provides:

'Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.'

13 Article 5 of that directive, entitled 'Exceptions and limitations', states, inter alia, in paragraphs 2 and 3 thereof, that the Member States may, in the cases listed therein, provide for various exceptions and limitations to the reproduction right and the right of communication to the public provided for in Articles 2 and 3 of that directive.

French law

14 The Loi No 2012-287, du 1 er **mars 2012, relative à l'exploitation numérique des livres indisponibles du XX ème siècle (Law No 2012-287 of 1 March 2012 on the digital exploitation of out-of-print 20th century books) (JORF No 53 of 2 March 2012, p. 3986) added to Title III of Book One of the first part of the Intellectual Property Code, which deals with the exploitation of rights related to copyright, a Chapter IV, entitled 'Special provisions relating to the digital exploitation of out-of-print books', comprising Articles L. 134-1 to L. 134-9 of that code. Some of those articles were subsequently amended or repealed by the Loi No 2015-195, du 20 février 2015, portant diverses dispositions d'adaptation au droit de l'Union européenne dans les domaines de la propriété littéraire et artistique et du patrimoine culturel (Law No 2015-195 of 20 February 2015 containing various provisions implementing EU law in the fields of literary and artistic property and cultural heritage) (JORF No 45 of 22 February 2015, p. 3294)**.

15 Articles L. 134-1 to L. 134-9 of the Intellectual Property Code, as drafted following those two laws, read as follows:

'Article L. 134-1

For the purposes of this Chapter, an out-of-print book means a book published in France before 1 January 2001 which is no longer commercially distributed by a publisher and is not currently published in print or in a digital format.

Article L. 134-2

A public database indexing out-of-print books shall be created and made openly available, free of charge, through an online, public communication service. The Bibliothèque nationale de France (National Library of France) shall be responsible for implementing and updating it and for recording the information provided for in Articles L. 134-4, L. 134-5 and L. 134-6.

…

Article L. 134-3

I. When a book has been registered in the database referred to in Article L. 134-2 for more than six months, the right to authorise its reproduction and performance in digital format shall be exercised by a collecting society governed by Title II of Book III of this Part and approved for that purpose by the Minister responsible for culture.

With the exception of the case provided for in the third subparagraph of Article L. 134-5, the reproduction and performance of the book in digital format shall be authorised, in return for remuneration, on a non-exclusive basis and for a renewable period of five years.

II. Approved societies shall have standing to bring legal proceedings with a view to protecting the rights that they administer.

III. The approval provided for in I shall be issued having regard to:

…

2° equal representation of authors and publishers among the members and within the executive bodies;

…

5° the fairness of the rules governing the distribution of collected income among successors in title, whether or not they are parties to the publishing contract. The amount of the sums received by the author or authors of the book may not be less than the amount of the sums received by the publisher;

6° the evidentiary measures which the society intends to apply in order to identify and locate rightholders, for the purposes of distributing the collected income;

…

Article L. 134-4

I. The author of an out-of-print book or a publisher with the right to reproduce printed copies of that book may oppose the exercise by an approved collecting society of the right of authorisation referred to in the first subparagraph of Article L. 134-3(I). Notification of that opposition shall be submitted in writing to the body referred to in the first subparagraph of Article L. 134-2 no later than six months after the book in question has been registered in the database referred to in the same subparagraph.

…

Article L. 134-5

If, upon expiration of the period laid down in Article L. 134-4(I), the author or publisher has not given notice of opposition, the collecting society shall offer authorisation to reproduce and perform an out-of-print book in digital format to the publisher having the right to reproduce that book in print.

…

The exploitation authorisation referred to in the first subparagraph shall be issued by the collecting society on an exclusive basis for a 10-year period which is tacitly renewable.

…

If the offer referred to in the first subparagraph is not accepted …, the reproduction and performance of the book in digital format shall be authorised by the collecting society as provided for in the second subparagraph of Article L. 134-3(I).

…

Article L. 134-6

The author and publisher having the right of reproduction in print of an out-of-print book shall at any time jointly notify the collecting society referred to in Article L. 134-3 of their decision to withdraw the latter's right to authorise the reproduction and performance of that book in digital format.

The author of an out-of-print book may decide at any time to withdraw from the collecting society referred to in Article L. 134-3 the right to authorise the reproduction and performance of a book in digital format if he provides evidence that he alone holds the rights laid down in L. 134-3. He shall notify it of his decision.

…

Article L. 134-7

The detailed rules for the application of this Chapter, in particular the arrangements for access to the database provided for in Article L. 134-2, the nature and format of the data collected and the most appropriate publicity measures to ensure that successors in title are as well informed as possible, the conditions for issuing and withdrawing the approval of collecting societies provided for in Article L. 134-3, shall be laid down in a decree of the Conseil d'État (Council of State).

Article L. 134-9

By derogation from the provisions in the first three subparagraphs of Article L. 321-9, income collected through the exploitation of out-of-print books which it has not been possible to distribute because the recipients could not be identified or located before expiry of the period provided for in the last subparagraph of L. 321-1 shall be used by the approved societies referred to in Article L. 134-3 for initiatives to support creative activities, initiatives to develop writers and initiatives by libraries to promote reading amongst the public.

…'

16 The detailed rules for the application of Articles L. 134-1 to L. 134-9 of the Intellectual Property Code were subsequently laid down, pursuant to Article L. 134-7 of that code, by Decree No 2013-182, which inserted, inter alia, Article R. 134-11 into that code, which provides:

'The publicity measures referred to in Article L. 134-7 shall include an information campaign initiated by the Minister responsible for culture, in conjunction with the collecting societies and the professional organisations in the book sector.

That campaign shall include the presentation of the framework for an online public communication service, an online mailing operation, the publication of flyers in the national press and the distribution of banners on news websites.

It shall begin on the date laid down in the first subparagraph of Article R. 134-1 and shall continue for a period of six months.'

The dispute in the main proceedings and the question referred for a preliminary ruling

17 Within the meaning of the Intellectual Property Code, an 'out-of-print book' means a book published in France before 1 January 2001 which is no longer commercially distributed by a publisher and is not currently published in print or in digital form. Articles L. 134-1 to L. 134-9 of that code established a legal framework intended to make those books accessible once again by organising their commercial exploitation in digital form. The detailed rules for the application of those provisions were laid down by Decree No 2013-182.

18 By application registered on 2 May 2013, Mr Soulier and Ms Doke, who are both authors of literary works, requested the Conseil d'État (Council of State, France) to annul Decree No 2013-182.

19 In support of their claim, they submit, in particular, that Articles L. 134-1 to L. 134-9 of the Intellectual Property Code establish an exception or a limitation to the exclusive reproduction right laid down in Article 2(a) of Directive 2001/29 and that that exception or limitation is not included among those listed exhaustively in Article 5 thereof.

20 The Syndicat des écrivains de langue française (SELF), the Autour des auteurs association and 35 natural persons subsequently intervened in the proceedings in support of the claim brought by Mr Soulier and Ms Doke.

21 In their respective defences, the Prime Minister and the Minister for Culture and Communication both contested that the claim should be dismissed.

22 SOFIA subsequently intervened in the proceedings, also seeking to have those claims dismissed. SOFIA presents itself as a society made up equally of authors and publishers, mandated to manage the right to authorise the reproduction and representation of out-of-print books in digital form, the public lending right and the remuneration for digital private copying in the field of writing.

23 After dismissing all the pleas of Mr Soulier and Ms Doke that rested on legal bases other than Articles 2 and 5 of Directive 2001/29, the referring court started the examination of the pleas relating to those articles by holding, immediately, that the treatment of that aspect of the case depends on the interpretation to be given of those articles.

24 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do [Articles 2 and 5] of Directive 2001/29 preclude legislation, such as that [established in Articles L. 134-1 to L. 134-9 of the Intellectual Property Code], that gives approved collecting societies the right to authorise the reproduction and the representation in digital form of "out-of-print books", while allowing the authors of those books, or their successors in title, to oppose or put an end to that practice, on the conditions that it lays down?'

The question referred for a preliminary ruling

Preliminary observations

25 It is common ground, on the one hand, that the national legislation at issue in the main proceedings concerns not only the right to authorise the reproduction of out-of-print books in digital form, within the meaning of Article 2(a) of Directive 2001/29, but also the right to authorise the representation under that form and that such a representation constitutes a 'communication to the public' within the meaning of Article 3(1) of that directive.

26 On the other hand, that legislation does not fall within the scope of any of the exceptions and limitations that the Member States have the option of placing, on the basis of Article 5 of Directive 2001/29, on the rights of reproduction and communication to the public laid down in Article 2(a) and Article 3(1) of that directive. The list of exceptions and limitations authorised by that directive is exhaustive in nature, as is apparent from recital 32 thereof.

27 It therefore follows that Article 5 of Directive 2001/29 appears to be irrelevant for the purposes of the main proceedings.

28 In those circumstances, it must be considered that, by its question, the referring court asks, in essence, whether Article 2(a) and Article 3(1) of Directive 2001/29 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, that gives an approved collecting society the right to authorise the reproduction and communication to the public, in digital form, of out-of-print books, while allowing the authors of those books or their successors in title to oppose or put an end to that practice on the conditions that that legislation lays down.

The Court's reply

29 Article 2(a) and Article 3(1) of Directive 2001/29 provide, respectively, that the Member States are to grant authors the exclusive right to authorise or prohibit direct or indirect reproduction of their works by any means and in any form and the exclusive right to authorise or prohibit any communication to the public of their works.

30 In that regard, it must be observed, first of all, that the protection conferred by those provisions on authors must be given a broad interpretation (judgments of 16 July 2009, *Infopaq International*, C-5/08, EU:C:2009:465, paragraph 43, and of 1 December 2011, *Painer*, C-145/10, EU:C:2011:798, paragraph 96).

31 Therefore, that protection must be understood, in particular, as not being limited to the enjoyment of the rights guaranteed by Article 2(a) and Article 3(1) of Directive 2001/29, but as also extending to the exercise of those rights.

32 Such an interpretation is supported by the Berne Convention, Articles 1 to 21 of which the European Union is required to comply with under Article 1(4) of the WIPO Copyright Treaty, to which the European Union is a party and which Directive 2001/29 is intended, in particular, to implement, as stated in recital 15 thereof. It is apparent from Article 5(2) of that convention that the protection which it guarantees to authors extends both to the enjoyment and to the exercise of the rights of reproduction and communication to the public referred to in Article 9(1) and Article 11a(1) thereof, which correspond to those protected by Directive 2001/29.

33 Next, it is important to emphasise that the rights guaranteed to authors by Article 2(a) and Article 3(1) of Directive 2001/29 are preventive in nature, in the sense that any reproduction or communication to the public of a work by a third party requires the prior consent of its author (concerning the right of reproduction, see, to that effect, judgments of 16 July 2009, *Infopaq International*, C-5/08, EU:C:2009:465, paragraphs 57 and 74, and of 4 October 2011, *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraph 162, and, concerning the right of communication to the public, see, to that effect, judgments of 15 March 2012, *SCF Consorzio Fonografici*, C-135/10, EU:C:2012:140, paragraph 75, and of 13 February 2014, *Svensson and Others*, C-466/12, EU:C:2014:76, paragraph 15).

34 It follows that, subject to the exceptions and limitations laid down exhaustively in Article 5 of Directive 2001/29, any use of a work carried out by a third party without such prior consent must be regarded as infringing the copyright in that work (see, to that effect, judgment of 27 March 2014, *UPC Telekabel Wien*, C-314/12, EU:C:2014:192, paragraphs 24 and 25).

35 Nevertheless, Article 2(a) and Article 3(1) of Directive 2001/29 do not specify the way in which the prior consent of the author must be expressed, so that those provisions cannot be interpreted as requiring that such consent must necessarily be expressed explicitly. It must be held, on the contrary, that those provisions also allow that consent to be expressed implicitly.

36 Thus, in a case in which it was questioned about the concept of a 'new public', the Court held that, in a situation in which an author had given prior, explicit and unreserved authorisation to the publication of his articles on the website of a newspaper publisher, without making use of technological measures restricting access to those works from other websites, that author could be regarded, in essence, as having authorised the communication of those works to the general internet public (see, to that effect, judgment of 13 February 2014, *Svensson and Others*, C-466/12, EU:C:2014:76, paragraphs 25 to 28 and 31).

37 However, the objective of increased protection of authors to which recital 9 of Directive 2001/29 refers implies that the circumstances in which implicit consent can be admitted must be strictly defined in order not to deprive of effect the very principle of the author's prior consent.

38 In particular, every author must actually be informed of the future use of his work by a third party and the means at his disposal to prohibit it if he so wishes.

39 Failing any actual prior information relating to that future use, the author is unable to adopt a position on it and, therefore, to prohibit it, if necessary, so that the very existence of his implicit consent appears purely hypothetical in that regard.

40 Consequently, without guarantees ensuring that authors are actually informed as to the envisaged use of their works and the means at their disposal to prohibit it, it is de facto impossible for them to adopt any position whatsoever as to such use.

41 Concerning national legislation such as that at issue in the main proceedings, it must be stated that it gives an approved society the right to authorise the digital exploitation of out-of-print books, while allowing the authors of those books to oppose that practice in advance, within a time limit of six months after their registration in a database established to that effect.

42 Exercise of the right of opposition established by such legislation for the benefit of all the holders of rights in the books concerned, and in particular the authors, thus has the effect of prohibiting the use of those works, whereas the lack of opposition of a given author within the prescribed period can be construed, with regard to Article 2(a) and Article 3(1) of Directive 2001/29, as the expression of his implicit consent to that use.

43 It does not follow from the decision to refer that that legislation offers a mechanism ensuring authors are actually and individually informed. Therefore, it is not inconceivable that some of the authors concerned are not, in reality, even aware of the envisaged use of their works and, therefore, that they are not able to adopt a position, one way or the other, on it. In those circumstances, a mere lack of opposition on their part cannot be regarded as the expression of their implicit consent to that use.

44 This is all the more true considering that such legislation is aimed at books which, while having been published and commercially distributed in the past, are so no longer. That particular context precludes the conclusion that it can reasonably be presumed that, without opposition on their part, every author of these 'forgotten' books is, however, in favour of the 'resurrection' of their works, in view of their commercial use in a digital format.

45 Admittedly, Directive 2001/29 does not preclude national legislation, such as that at issue in the main proceedings, from pursuing an objective such as the digital exploitation of out-of-print books in the cultural interest of consumers and of society as a whole. However, the pursuit of that objective and of that interest cannot justify a derogation not provided for by the EU legislature to the protection that authors are ensured by that directive.

46 Lastly, it must be stated that legislation such as that at issue in the main proceedings enables, in particular, authors to put an end to the commercial exploitation of their works in digital format, either by mutual agreement with the publishers of those works in printed format or alone, on condition, however, in that second case, that they provide evidence that they alone hold the rights in their works.

47 In that regard, it is important to point out, first, that it follows from the exclusive nature of the rights of reproduction and communication to the public laid down in Article 2(a) and Article 3(1) of Directive 2001/29 that the authors are the only persons to whom that directive gives, by way of original grant, the right to exploit their works (see, to that effect, judgment of 9 February 2012, *Luksan*, C-277/10, EU:C:2012:65, paragraph 53).

48 It follows that, if Directive 2001/29 does not prohibit Member States from granting certain rights or certain benefits to third parties, such as publishers, it is provided that those rights and benefits do not harm the rights which that directive gives exclusively to authors (see, to that effect, judgment of 12 November 2015, *Hewlett-Packard Belgium*, C-572/13, EU:C:2015:750, paragraphs 47 to 49).

49 Consequently, it must be considered that, when the author of a work decides, in the context of the implementation of legislation such as that at issue in the main proceedings, to put an end to the future exploitation of that work in a digital format, that right must be capable of being exercised without having to depend, in certain cases, on the concurrent will of persons other than those to whom that author had given prior authorisation to proceed with such a digital exploitation and, thus, on the agreement of the publisher holding only the rights of exploitation of that work in a printed format.

50 Secondly, it follows from Article 5(2) of the Berne Convention, which is binding on the Union for the reasons set out in paragraph 32 of the present judgment, that the enjoyment and the exercise of the rights of reproduction and communication to the public given to authors by that convention and corresponding to those laid down in Article 2(a) and 3(1) of Directive 2001/29 may not be subject to any formality.

51 It follows, in particular, that, in the context of legislation such as that at issue in the main proceedings, the author of a work must be able to put an end to the exercise, by a third party, of rights of exploitation in digital format that he holds on that work, and in so doing prohibit him from any future use in such a format, without having to submit beforehand, in certain circumstances, to a formality consisting of proving that other persons are not, otherwise, holders of other rights in that work, such as those concerning its exploitation in printed format.

52 Having regard to all of the foregoing considerations, the answer to the question is that Article 2(a) and Article 3(1) of Directive 2001/29 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, that gives an approved collecting society the right to authorise the reproduction and communication to the public in digital form of ‘out-of-print’ books, namely, books published in France before 1 January 2001 which are no longer commercially distributed by a publisher and are not currently published in print or in digital form, while allowing the authors of those books, or their successors in title, to oppose or put an end to that practice, on the conditions that that legislation lays down.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 2(a) and Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as precluding national legislation, such as that at issue in the main proceedings, that gives an approved collecting society the right to authorise the reproduction and communication to the public in digital form of 'out-of-print' books, namely, books published in France before 1 January 2001 which are no longer commercially distributed by a publisher and are not currently published in print or in digital form, while allowing the authors of those books, or their successors in title, to oppose or put an end to that practice, on the conditions that that legislation lays down.

[Signatures]