JUDGMENT OF THE COURT (Grand Chamber)

12 September 2006 *

In Case C-479/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Østre Landsret (Denmark), made by decision of 16 November 2004, received at the Court on 19 November 2004, in the proceedings

Laserdisken ApS

v

Kulturministeriet,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and J. Malenovský, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr, G. Arestis (Rapporteur), J. Klučka, U. Lõhmus and A. Ó Caoimh, Judges,

* Language of the case: Danish.

Advocate General: E. Sharpston,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 14 February 2006,

after considering the observations submitted on behalf of:

— Laserdisken ApS, by H.K. Pedersen, as partner,

— the Polish Government, by T. Nowakowski, acting as Agent,

— the European Parliament, by K. Bradley and L.G. Knudsen, acting as Agents,

— the Council of the European Union, by H. Vilstrup, F. Florindo Gijón and R. Liudvinaviciute, acting as Agents,

— the Commission of the European Communities, by W. Wils and N.B. Rasmussen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation and validity of Article 4(2) 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) ('the Directive' or 'Directive 2001/29').

2 The reference was made in the context of proceedings between Laserdisken ApS ('Laserdisken') and the Kulturministeriet (Ministry of Culture) concerning the applicability of section 19 of the Danish Law on copyright (Ophavsretslov), as amended by Law No 1051 (Lov nr. 1051, om ændring af ophavsretsloven) (Law No 1051 amending the Law on copyright) of 17 December 2002, to the import and sale in Denmark of DVDs lawfully marketed outside the European Economic Area (EEA).

Legal context

3 Directive 2001/29 was adopted on the basis of Articles 47(2) EC, 55 EC and 95 EC. Article 1 thereof, entitled 'Scope', provides in paragraph 1 that '[t]his Directive concerns the legal protection of copyright and related rights in the framework of the internal market, with particular emphasis on the information society'.

4 Under the title 'Rights and exceptions', Chapter II of the Directive contains Articles 2 to 5. Article 2 concerns the right of reproduction, Article 3 the right of communication to the public of works and the right of making available to the public other subject-matter, Article 4 the right of distribution, whilst Article 5 concerns exceptions and limitations to the rules laid down in the preceding three articles.

5 Article 4 of the Directive reads as follows:

'1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.'

6 Article 5(2) of the Directive provides that Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in certain cases. Article 5(3) provides that Member States may also provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the cases listed in that paragraph.

7 According to Article 5(4) of the Directive, '[w]here the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction'.

8 Prior to transposition of Directive 2001/29, section 19 of the Danish Law on copyright provided that '[w]hen a copy of a work is, with the copyright holder's consent, sold or in some other manner transferred to another party, the copy may be distributed further'.

9 Following amendment of that law by Law No 1051 of 17 December 2002, intended to transpose Directive 2001/29, section 19(1) has since read as follows:

'When a copy of a work is, with the copyright holder's consent, sold or in some other manner transferred to another party within the European Economic Area, the copy may be distributed further. As regards further distribution in the form of lending or rentals, the provision in the first sentence shall also apply to sales or other forms of transfer to other parties outside the European Economic Area.'

10 Pursuant to Article 65(2) of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) ('the EEA Agreement'), specific provisions and arrangements concerning intellectual, industrial and commercial property are to be found in Protocol 28 and Annex XVII to that agreement. By Decision of the EEA Joint Committee No 110/2004 of 9 July 2004 amending Annex XVII (Intellectual property) to the EEA Agreement (OJ 2004 L 376, p. 45), Directive 2001/29 was incorporated into that agreement.

The main proceedings and the questions referred for a preliminary ruling

11 Laserdisken is a commercial company which sells inter alia copies of cinematographic works to individual purchasers through its sales outlets in Denmark.

12 Until the end of 2002, those copies were mostly imported by the company from other Member States of the European Union but also from non-member countries. The products included special editions, such as original American editions, or editions filmed using special techniques. Another major part of the product range consisted of cinematographic works which were not or would not be available in Europe.

13 Having registered a significant drop in its operations following the abovementioned legislative amendment, on 19 February 2003 Laserdisken brought legal proceedings against the Kulturministeriet before the Østre Landsret (Eastern Regional Court), claiming that section 19 of the Law on copyright, as amended in the context of the transposition of Article 4(2) of Directive 2001/29, did not apply. According to Laserdisken, the new provisions of section 19 have a significant effect on its imports and sales of DVDs lawfully marketed outside the EEA.

14 In support of that claim, Laserdisken pleaded invalidity of Directive 2001/29, on the ground that Articles 47(2) EC, 55 EC and 95 EC are not the appropriate legal basis for adoption thereof.

15 Laserdisken also argued that Article 4(2) of that directive infringes the international agreements which bind the Community in matters of copyright and related rights, the rules of the EC Treaty concerning the establishment of a competition policy, the principle of proportionality in connection with combating piracy and, more generally, completing the internal market, freedom of expression, the principle of equal treatment and the provisions of the Treaty concerning the Member States' cultural policy and educational policy, namely Articles 151 EC and 153 EC.

16 Since the abovementioned pleas in law were contested in their entirety by the Kulturministeriet, the Østre Landsret decided to stay the proceedings and to refer the following two questions to the Court for a preliminary ruling:

'(1) Is Article 4(2) of Directive [2001/29] invalid?

(2) Does Article 4(2) of Directive [2001/29] preclude a Member State from retaining international exhaustion in its legislation?'

The questions

The second question

17 By its second question, which it is appropriate to consider first, the national court asks whether Article 4(2) of Directive 2001/29 precludes national rules which provide that the distribution right in respect of the original or copies of a work is exhausted where the first sale or other transfer of ownership is made by the holder of that right or with his consent outside the Community.

18 Laserdisken and the Polish Government claim that Article 4(2) of Directive 2001/29 does not preclude a Member State from retaining such a rule of exhaustion in its legislation. The Commission of the European Communities maintains the opposite view.

19 Article 4(1) of Directive 2001/29 enshrines the exclusive right for authors, in respect of the original of their works or of copies thereof, to authorise or prohibit any form of distribution to the public by sale or otherwise.

20 Article 4(2) contains the rule pertaining to exhaustion of that right. According to that provision, the distribution right is not to be exhausted in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

21 It follows that for the right in question to be exhausted, two conditions must be fulfilled: first, the original of a work or copies thereof must have been placed on the market by the rightholder or with his consent and, second, they must have been placed on the market in the Community.

22 Laserdisken and the Polish Government argue, essentially, that Article 4(2) of the Directive leaves it open to the Member States to introduce or maintain in their respective national laws a rule of exhaustion in respect of works placed on the market not only in the Community but also in non-member countries.

23 Such an interpretation cannot be accepted. According to the twenty-eighth recital in the preamble to Directive 2001/29, copyright protection under that directive includes the exclusive right to control distribution of the work incorporated in a tangible article. The first sale in the Community of the original of a work or copies thereof by the rightholder or with his consent exhausts the right to control resale of that object in the Community. According to the same recital, that right should not be exhausted in respect of the original of the work or of copies thereof sold by the rightholder or with his consent outside the Community.

24 It follows from the clear wording of Article 4(2) of Directive 2001/29, in conjunction with the twenty-eighth recital in the preamble to that directive, that that provision does not leave it open to the Member States to provide for a rule of exhaustion other than the Community-wide exhaustion rule.

25 That finding is supported by Article 5 of Directive 2001/29, which allows Member States to provide for exceptions or limitations to the reproduction right, the right of communication to the public of works, the right of making available to the public other subject-matter and the distribution right. Nothing in that article indicates that the exceptions or limitations authorised might relate to the rule of exhaustion laid down in Article 4(2) of Directive 2001/29 and, therefore, allow Member States to derogate from that rule.

26 This, moreover, is the only interpretation which is fully consistent with the purpose of Directive 2001/29 which, according to the first recital in the preamble thereto, is to ensure the functioning of the internal market. A situation in which some Member States will be able to provide for international exhaustion of distribution rights whilst others will provide only for Community-wide exhaustion of those rights will inevitably give rise to barriers to the free movement of goods and the freedom to provide services.

27 In the light of the foregoing, the answer to the second question must be that Article 4(2) of Directive 2001/29 is to be interpreted as precluding national rules providing for exhaustion of the distribution right in respect of the original or copies of a work placed on the market outside the Community by the rightholder or with his consent.

The first question

28 Laserdisken and the Polish Government propose that the answer to the question be that Directive 2001/29, and in particular Article 4(2) thereof, are contrary to Community law. The European Parliament, the Council of the European Union and the Commission, on the other hand, contend that none of the grounds of invalidity put forward may be upheld.

The legal basis for Directive 2001/29

29 Laserdisken claims that Directive 2001/29 was adopted incorrectly on the basis of Articles 47(2) EC, 55 EC and 95 EC, because they cannot be used as a basis for the Community-wide exhaustion rule laid down in Article 4(2) of that directive.

30 According to settled case-law, in the context of the organisation of the powers of the Community the choice of the legal basis for a measure must rest on objective factors which are amenable to judicial review. Those factors include in particular the aim and content of the measure (Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 54 and case-law cited).

31 The Court notes that Articles 47(2) EC, 55 EC and 95 EC, on the basis of which Directive 2001/29 was adopted, allow for the taking of measures necessary for the smooth functioning of the internal market as regards freedom of establishment and the freedom to provide services through harmonisation of national laws pertaining to the content and exercise of copyright and related rights.

32 Directive 2001/29 clearly pursues the objectives covered by the abovementioned provisions of the Treaty.

33 According to the first recital in the preamble to that directive, the Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted, and harmonisation of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives.

34 On that point, the third recital in the preamble to Directive 2001/29 states that the proposed harmonisation will help to implement the four freedoms of the internal market. The sixth recital in the preamble to the same directive states, however, that without harmonisation at Community level, legislative activities at national level might result in significant differences in protection and thereby in restrictions on the free movement of services and products incorporating, or based on, intellectual property.

35 It follows from the foregoing that the objections raised by Laserdisken in the present case relating to the legal basis of the Directive are unfounded.

Article 4(2) of Directive 2001/29

— Infringement of international agreements concluded by the Community on copyright and related rights

36 The national court does not state which agreements binding the Community might be infringed by the rule of Community-wide exhaustion of distribution rights laid down in Article 4(2) of Directive 2001/29.

37 In its observations, Laserdisken states, although without providing further explanations, that the distribution right and the exhaustion rule laid down in Article 4(2) of Directive 2001/29 are contrary to Articles 1(c) and 2(a) of the Convention on the Organisation for Economic Co-operation and Development (OECD), signed in Paris on 14 December 1960. Those provisions state respectively that '[t]he aims of the [OECD] shall be to promote policies designed ... to contribute to the expansion of world trade on a multilateral, non-discriminatory basis' and that, in pursuit of those aims inter alia, 'the [Member States] agree that they will ... promote the efficient use of their economic resources'.

38 The Court finds that not only is that argument vague, but also that the provisions referred to by Laserdisken, even if they do bind the Community, are not intended to regulate the issue of exhaustion of distribution rights.

39 Moreover, the fifteenth recital in the preamble to Directive 2001/29 states that the Directive implements the international obligations resulting from the adoption, in Geneva on 20 December 1996, under the auspices of the World Intellectual Property Organisation ('WIPO'), of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which treaties were approved on behalf of the Community by Council Decision 2000/278/EC of 16 March 2000 (OJ 2000 L 89, p. 6).

40 Regarding the right of distribution, neither Article 6(2) of the WIPO Copyright Treaty nor Articles 8(2) and 12(2) of the WIPO Performances and Phonograms Treaty impose an obligation on the Community, as a contracting party, to provide for a specific rule concerning the exhaustion of that right.

41 It follows from the purpose of those treaties, as formulated inter alia in the first recitals in the preambles thereto, that they tend towards a harmonisation of the rules pertaining to copyright and related rights.

42 More specifically, regarding the right of distribution, the WIPO Copyright Treaty fulfils its harmonisation objective in providing for the exclusive right of authors to authorise the making available to the public of the originals of their works and copies thereof through sale or other transfer of ownership. The Treaty does not, however, affect the contracting parties' power to determine the conditions governing how exhaustion of that exclusive right may apply after the first sale. It thus allows the Community to pursue further harmonisation of national laws also in relation to the rule of exhaustion. The abovementioned provisions of the WIPO Copyright Treaty and those of Directive 2001/29 are therefore complementary, in the light of the harmonisation objective pursued.

43 It follows from all the above considerations that the submission that Article 4(2) of Directive 2001/29 infringes the international agreements concluded by the Community in the field of copyright and related rights cannot be upheld.

— The Treaty rules relating to the establishment of a competition policy

44 Laserdisken claims that the exhaustion rule laid down in Article 4(2) of Directive 2001/29 reinforces suppliers' control of the distribution channels, thereby adversely affecting free competition. The core of the argument put forward by the applicant in the main proceedings is that competition is generally nullified by that exhaustion rule combined with the regional encoding system for DVDs. Certain works placed on the market outside the Community are not accessible within the Community, due to that rule.

45 The Polish Government adds that that exhaustion rule prevents the promotion of greater competitiveness and gives holders of copyright and related rights a level of protection of their interests going beyond the purpose of such rights.

46 By all of their assertions, the applicant in the main proceedings and the Polish Government argue, essentially, that the exhaustion rule laid down in Article 4(2) of Directive 2001/29 prevents free competition at the global level.

47 It should be borne in mind that, according to Article 3(1)(g) EC, the activities of the Community are to include, as provided for in the Treaty and in accordance with the timetable set out therein, a system ensuring that competition in the internal market is not distorted. In that context, Title VI of the Treaty contains a Chapter 1, which includes Articles 81 EC to 89 EC laying down rules on competition.

48 In the present case, according to the first recital in the preamble to Directive 2001/29, harmonisation of the laws of the Member States on copyright and related rights contributes to the establishment of the internal market and to the institution of a system ensuring that competition in that market is not distorted.

49 It follows that the harmonisation achieved by that directive is also intended to ensure undistorted competition in the internal market, in accordance with Article 3(1)(g) EC.

50 According to the argument put forward by Laserdisken and the Polish Government, the Community legislature is obliged, in adopting Directive 2001/29, to take account of a principle of free competition at the global level, an obligation which does not follow from either Article 3(1)(g) EC or the other provisions of the Treaty.

51 It follows from the foregoing that the ground of invalidity based on infringement of the Treaty rules relating to the establishment of a competition policy must be rejected.

— Infringement of the principle of proportionality

52 According to Laserdisken and the Polish Government, the exhaustion rule laid down in Article 4(2) of Directive 2001/29 is not necessary for attaining the objective of an internal market without barriers and imposes on the citizens of the European Union burdens which go beyond what is necessary. That provision is, moreover, ineffective in preventing the distribution of works placed in circulation in the Community without the consent of holders of copyright and related rights.

53 According to settled case-law, the principle of proportionality, which is one of the general principles of Community law, requires that measures implemented through Community provisions be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 122).

54 The applicant in the main proceedings criticises, essentially, the choice made by the Community institutions in favour of the rule of exhaustion of the right of distribution in the Community.

55 It is, accordingly, appropriate to consider whether the adoption of that rule constitutes a measure which is disproportionate in relation to the objectives pursued by those institutions.

56 It should be borne in mind that differences in the national laws governing exhaustion of the right of distribution are likely to affect directly the smooth functioning of the internal market. Accordingly, the objective of harmonisation in this area is to remove impediments to free movement.

57 Moreover, according to the ninth recital in the preamble to Directive 2001/29, the protection of copyright and related rights helps to ensure the maintenance and development of creativity in the interests of inter alia authors, performers, producers and consumers. The tenth recital in the preamble to the same directive states that legal protection of intellectual property rights is necessary in order to guarantee an appropriate reward for the use of works and to provide the opportunity for satisfactory returns on investment. In the same vein, the eleventh recital states that a rigorous, effective system of protection is a way of ensuring that European cultural creativity and production receive the necessary resources and of safeguarding the independence and dignity of artistic creators and performers.

58 In the light of the abovementioned objectives, it appears that the choice made by the Community legislature in Article 4(2) of Directive 2001/29 in favour of the rule of exhaustion in the Community is not a disproportionate measure capable of affecting the validity of that provision.

59 It follows from all the foregoing considerations that the argument alleging infringement of the principle of proportionality is unfounded.

— Breach of freedom of expression

60 According to Laserdisken, Article 4(2) of Directive 2001/29 has the effect of depriving citizens of the Union of their right to receive information, in breach of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'). Laserdisken also pleads disregard of the freedom of copyright holders to communicate their ideas.

61 As a preliminary point, it should be recalled that, according to settled case-law, fundamental rights form an integral part of the general principles of law the observance of which the Court ensures, and that, for that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories. The ECHR has special significance in that respect (Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 71 and case-law cited).

62 Freedom of expression, enshrined in Article 10 of the ECHR, is a fundamental right the observance of which is ensured by the Community courts (Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 44). The same is true of the right to property, which is guaranteed by Article 1 of the Additional Protocol to the ECHR (see, to that effect, Case C-347/03 *Regione autonoma Friuli-Venezia Giulia and ERSA* [2005] ECR I-3785, paragraph 119, and Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451, paragraph 126).

63 First, the argument that there has been a breach of the freedom of expression guaranteed by Article 10 of the ECHR because copyright holders are prevented from communicating their ideas must be rejected. According to Article 4(2) of Directive 2001/29, the right of distribution is exhausted provided that the copyright holder has given his consent to the first sale or other transfer of ownership. That holder is, therefore, in a position to exercise his control over the first placing on the market of the object covered by that right. In that context, freedom of expression clearly cannot be relied upon to have the rule of exhaustion invalidated.

64 Secondly, regarding the freedom to receive information, even if the exhaustion rule laid down in Article 4(2) of Directive 2001/29 may be capable of restricting that freedom, it nevertheless follows from Article 10(2) of the ECHR that the freedoms guaranteed by Article 10(1) may be subject to certain limitations justified by objectives in the public interest, in so far as those derogations are in accordance with the law, motivated by one or more of the legitimate aims under that provision and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see, to that effect, Case C-71/02 *Karner* [2004] ECR I-3025, paragraph 50).

65 In the present case, the alleged restriction on the freedom to receive information is justified in the light of the need to protect intellectual property rights, including copyright, which form part of the right to property.

66 It follows that the argument that there has been a breach of freedom of expression must be rejected.

— Infringement of the principle of equal treatment

67 Laserdisken claims that the rule of exhaustion laid down in Article 4(2) of Directive 2001/29 is capable of infringing the principle of equal treatment. It states, by way of example, that a producer and a licence holder established in a non-member country are not in the same situation as a producer and a licence holder established in the Community.

68 It is settled case-law that the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (*ABNA and Others*, paragraph 63 and case-law cited).

69 Even if the argument of the applicant in the main proceedings may be profitably put forward in the present context, it does not establish that the application of Article 4(2) of the Directive amounts to treating two comparable situations differently. There is no doubt that a producer and a licence holder established in a non-member country are not in an identical or comparable situation to that of a producer and a licence holder established in the Community. In actual fact, Laserdisken is essentially asserting that situations which are manifestly not comparable must be treated in the same way.

70 It follows that the argument that there has been infringement of the principle of equal treatment must be rejected.

— Infringement of Articles 151 EC and 153 EC

71 According to Article 151(1) EC, the Community is to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

72 Article 153(1) EC provides inter alia that, in order to promote the interests of consumers and to ensure a high level of consumer protection, the Community is to contribute to promoting their right to information and education.

73 Laserdisken, supported by the Polish Government, claims that, in adopting Article 4(2) of Directive 2001/29, the Community disregarded the abovementioned provisions.

74 The Court finds, in the first place, that those provisions are referred to either expressly or in essence by a number of recitals in the preamble to that directive.

75 As is apparent from the ninth and eleventh recitals in the preamble to Directive 2001/29, 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 and a rigorous, effective system for their protection is one of the main ways of ensuring that European cultural creativity and production receive the necessary resources and of safeguarding the independence and dignity of artistic creators and performers.

76 According to the twelfth recital in the preamble to Directive 2001/29, adequate protection of copyright works and subject-matter of related rights is also of great importance from a cultural standpoint, and Article 151 EC requires the Community to take cultural aspects into account in its action.

77 Lastly, under the fourteenth recital in the preamble to Directive 2001/29, the Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching.

78 In the second place, Article 5 of Directive 2001/29 provides for a system of exceptions and limitations to the various rights laid down in Articles 2 to 4 in order to enable Member States to exercise their powers inter alia in the fields of education and teaching.

79 There are, moreover, strict boundaries placed on that system by Article 5(5), which provides that the exceptions and limitations provided for are to be applied only in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

80 It follows from the foregoing that the cultural aspects specific to the Member States, which are referred to in essence by the applicant in the main proceedings, and the right to education, which the Community legislature must take into account in its action, have been fully taken into consideration by the Community institutions in the drafting and adoption of Directive 2001/29.

81 It follows that the arguments alleging infringement of Articles 151 EC and 153 EC must be rejected.

82 Accordingly, the answer to the national court must be that consideration of the first question does not reveal any information such as to affect the validity of Article 4(2) of Directive 2001/29.

Costs

83 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 (Grand Chamber) hereby rules:

1. **Consideration of the first question does not reveal any information such as to affect the validity of Article 4(2) 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.**

2. **Article 4(2) of Directive 2001/29 is to be interpreted as precluding national rules providing for exhaustion of the distribution right in respect of the original or copies of a work placed on the market outside the European Community by the rightholder or with his consent.**

[Signatures]