

# Debate/débat

## CLAUDE BRUNET

Grâce au professionnalisme de nos intervenants de ce matin, nous avons gagné cinq minutes sur l'horaire, ce qui vous permet maintenant de poser des questions.

## MATHIAS LEJEUNE

Mathias Lejeune from Germany. I would like to add two comments to Adolf Dietz' explanation about the German situation.

My first remark is about the decision of the *Bundesgerichtshof* concerning the question of whether scanners should be covered by private copying levies. Last year, the highest German court in civil matters decided that levies should also be imposed on scanners. One of the parties heavily argued that not the scanners but the PC-systems connected to the scanners should take the levies. In its decision, the *Bundesgerichtshof*, as the German colleagues know, has explicitly stated that PCs in this connection should not take the levies. The reasoning was that, if a new technology comes up and the question whether a levy has to be imposed, a careful evaluation of the technology and its components has to be made. Components that are the best suited to copy should take the levies. Of course, this decision only talks about the connection of PCs with scanners. But I think, it is fair to say that the *Bundesgerichtshof* has shown a certain reluctance in this decision concerning levies on PCs, and it has taken into account the fact that a normal standard PC system nowadays incorporates CD-writers and DVD-writers, both components for which levies apply.

Now, we shall see how this will work out because the recommendation of the arbitration panel has not been accepted by the industries and the lower courts will have to do something on the basis of this decision of the *Bundesgerichtshof*.

My second remark relates to IFA, the International Broadcasting Exposition, held in Frankfurt just recently. I think that the big topic there was the future of television sets, and the issue which was discussed was digital video broadcasting. In very few years, probably less than two, you will be able to buy sophisticated tv sets which include digital video broadcasting technology but also other

technologies. Certainly, some features which we have nowadays in PC systems will be part of television systems; for instance, Internet access. If we thought that PCs should take levies, then we would end up saying that such kind of sophisticated tv-systems would have to take levies as well. This, in the end, would mean that we would have a household tax for every tv-system that includes such kind of technology. I am not convinced that this is the right way.

#### **ADOLF DIETZ**

I have forgotten to tell you that the 12-euro PC-levy which is proposed only concerns the reprography aspects. For the rest, this is not yet decided.

The second comment I would like to make is that it is true that, when we are faced with a complex equipment with different functions and different elements, we have to decide on which element the levy should be imposed. However, it is in my view, undeniable that PCs as such serve to copy simply for the purpose of downloading. If you download something and it remains in your computer, you have copied something without any scanner or printer and so on. So, in such a case, a PC is a copying machine.

#### **BRUCE STOCKFISH**

I am Bruce Stockfish, Government of Canada. A question for Adolf Dietz, but perhaps anyone in the panel. Bob Hadl this morning mentioned that at, in his view, 8 out of 12 European countries with private copying systems were not paying out those levies to foreign authors, presumably US authors. I would like to hear the European rebuttal for that. If it so, why our shares are not being paid out from the levies. Is there a violation of national treatment? Perhaps the answer in part lies in the difference between performers and authors, in which case perhaps the answer lies in the difference between Rome and Berne. Will that situation with the full implementation of the Information Society Directive and ultimately ratification of 1996 treaties change?

#### **ADOLF DIETZ**

About the question of national treatment, I would say the following. As far as the levy scheme administered by GEMA is concerned, there is full application of national treatment. Because, as I told you, this is distributed together with the money collected on the basis of performing rights. And performing rights, classically, are combined with national treatment. In other situations, there are some hesitations sometimes concerning the application of national treatment. This is the case, for example, as far as the remuneration for public lending right is con-

cerned. But this is another problem because some people think that this is not covered by the Berne Convention. However, in the classical field of remuneration for copying works, this is no problem at all.

**CRISTOF KRÜGER**

J'aimerais juste demander à Adolf Dietz, s'il croit que le montant des rémunérations dans notre système en Allemagne est satisfaisant en ce qui concerne les montants. Je crois qu'il faut dire que les gens n'en sont pas contents; ils disent qu'il n'y a pas assez d'argent qu'on peut avoir avec notre système et on lutte depuis 15 ans pour augmenter les rémunérations, mais sans succès. Et pourquoi? Parce que c'est une chose politique et de toute façon, les fabricants des appareils ont un grand intérêt pour que le prix des appareils ne soit pas trop chargé avec des rémunérations pour les auteurs.

**ADOLF DIETZ**

Of course, Mister Krüger, you know that the German government has now entered a big debate on the so-called "second basket" of the digital agenda. And one of the topics is precisely the question of the amount of the levies. There was also a government study four years ago where they positively recommended to increase it. Now, of course, it has to be related with the other questions relating to controlled and uncontrolled access. This is an open question and I would say that there should be a principle according to which the more material is available in unprotected form, the higher the levy should be.