Brussels, 29 October 2010
077VDH10

PRESS RELEASE

GESAC welcomes the ECJ's confirmation in the SGAE/Padawan decision that private copying levy systems achieve a fair balance between the interests of authors and those of users of copyright protected content

On Thursday, 21 October 2010, the European Court of Justice adopted its decision in the SGAE/Padawan case (C – 467-08). The landmark ruling has been welcomed by authors' societies within GESAC, as it settles a number of controversial issues concerning how authors and composers must be fairly compensated for these reproductions.

First and foremost, the ECJ confirms that, in those countries where consumers are allowed by law to make private copies of copyright protected content, **authors have a right to be fairly compensated for these reproductions**.

This permission exists in most EU countries, which have introduced private copying levies as the way to guarantee this fair compensation. These systems provide that persons who commercialise digital reproduction equipments, devices and/or media to consumers are the persons liable to finance the fair compensation, inasmuch as they are able to pass on its cost to consumers.

In its ruling, **the ECJ not only validates that this fair compensation can take the form of a 'private copying levy'** chargeable to those who make digital reproduction equipment, devices and/or media available to consumers, **but it goes even further. It makes clear that private copying levy systems achieve a 'fair balance' between the interests of authors and those of the users of the copyright protected content.**

The ruling also confirms that **copying of copyright protected content by consumers must be regarded as an act likely to cause harm to the author of the work concerned.** In other words, the act of making a private copy is in itself harmful to the author of the work concerned and consequently justifies the application of a 'private copying levy'.

It also establishes that where recording equipments, devices and/or media have been made available to consumers it is unnecessary to show that they have in fact made private copies

Registered Office and General Secretariat: 23, rue Montoyer - B-1000 BRUXELLES
Tel. (32-2) 511.44.54 - Fax: (32-2) 514.56.62
E-mail: secretariatgeneral@gesac.org - Website: http://www.gesac.org
EEIG Brussels Register n° 38

with the help of that tools and have therefore actually caused harm to the author of the protected work. **The fact that that equipments, devices and/or media are able to make copies is sufficient in itself to justify the application of the private copying levy.**

As regards professional uses, the ECJ recalls the principle according to which 'private copying levy' cannot be applied to copies made by companies for professional purposes on digital reproduction equipments, devices and/or media acquired by them.

The Court does not specify how Member States should implement this principle. In fact, the Court says that it is up to Member States to determine the form, detailed arrangements for financing and collection, and the level of compensation.

National private copying levy systems in the EU already provide for solutions to achieve such implementation. In the Nordic region for example, this is done through a mechanism of exemptions and refunds for professional users. In other countries, this requirement is complied with by reducing the level of the tariff, in order to take into account that some of the levied products are going to be used by companies or public administrations for purposes other than private copying.

Therefore, since national private copying levy systems already provide for solutions to take these professional uses into account, it is not expected that significant changes (if any) will be introduced in this respect.

#