



IP ITeasers 025:

Private copying in the cloud

As consumers store their digital belongings increasingly in the cloud, it was only a matter of time until the courts would be called upon to opine whether private copying schemes which have found their way into copyright laws in various jurisdictions around the world would have a role to play in the cloud. That task fell to the European Court of Justice following a reference for a preliminary ruling from the Oberlandesgericht Wien (Higher Regional Court of Vienna) in a case (C-433/20) (<https://bit.ly/3y28kGZ>) opposing the Austrian collecting society *Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft mbH* v *Strato AG*, a German company which offers cloud storage solutions to users, including in Austria.

In essence, the Viennese Court sought to establish whether the private copying exception under Article 5(2)(b) of Directive 2001/29/EC (<https://bit.ly/3b0lkme>) on copyright in the information society extends to copies made by private users in the cloud and, if so, whether the cloud storage provider could be obliged to pay fair compensation to copyright owners. The answer in the European Court's judgment (<https://bit.ly/3NXUVVC>) of 24 March 2022 to the first question is: yes, and to the second question: maybe.