



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## J U D G E M E N T

On Behalf of the Republic of Latvia

Riga, 2 May 2012

Case No. 2011-17-03

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis, and Sanita Osipova,

with the Court secretary Elina Kursiša,

having regard to constitutional complaints of associations “Latvian Association of Performers and Producers” [„*Latvijas Izpildītāju un producentu apvienība*”], “Copyright and Communication Consulting Agency / Latvian Authors Association” [„*Autortiesību un komunikēšanās konsultāciju aģentūra / Latvijas Autoru apvienība*”], “Latvian Association of Cinematographers” [„*Latvijas Kinoproducentu asociācija*”] and “Latvian Association of Professional Actors” [„*Latvijas Profesionālo aktieru apvienība*”] (hereinafter – the Applicants),

with the presence of sworn advocates Mr Lauris Liepa and Ms Līga Fjodorova acting as representatives of the Applicants, assistant of sworn advocate M. Matīss Šķiņķis, as well Ms Elita Mīlgrāve and Ms Ieva Platpere acting as representatives of the association “Latvian Association of Performers and Producers”,

with the presence of a sworn advocate Ms Ineta Krodere-Imša and assistant of sworn advocate Mr Ilmārs Šatovs acting as representatives of the institution that adopted the contested act, namely, the Cabinet of Ministers,

according to Article 85 of the Satversme [Constitution] of the Republic of Latvia, Article 16 3<sup>rd</sup> indent, Article 17 (1), 11<sup>th</sup> indent, and Article 19.<sup>2</sup> of the Constitutional Court Law,

in Riga, on 13, 14 and 30 March 2012, in open court hearings, examined the case

**“On Compliance of Section 3 and 4 of 10 May 2005 Cabinet of Minister Regulation No. 312 “Regulations regarding the Amount of the Blank Tape Levy and the Levy of Equipment Used for Reproduction and the Procedures for the Collection, Repayment, Distribution and Payment Thereof” with Article 64, Article 105 and Article 113 of the Satversme of the Republic of Latvia”.**

### **The Facts**

1. On 10 May 2005, the Cabinet of Ministers issued Regulation No. 321 “Regulations regarding the Amount of the Blank Tape Levy and the Levy of Equipment Used for Reproduction and the Procedures for the Collection, Repayment, Distribution and Payment Thereof” (hereinafter – Regulation No. 321) according to paragraph seven of Section 34 of the Copyright Law.

Para 3 and 4 of the Regulation (hereinafter – the Contested Norms) provide a list of blank tapes and equipment used for reproduction (hereinafter – blank tapes and equipment), for which levy (hereinafter – blank tape levy) shall be paid, as well as establishes the amount of blank tape levy for each entity.

The Contested Norms provide:

“3. The blank tape levy shall be paid in the following amount (the amount of the levy shall be determined as an individual rate per one unit):

3.1. audio cassettes – 0.03 lats;

3.2. video cassettes - 0.06 lats;

3.3. mini discs (MD) – 0.03 lats;

3.4. CD-R, CD-RW – 0.10 lats; and

3.5. DVD-R, DVD-RW – 0.20 lats.

4. The levy for the equipment used for reproduction shall be paid in the following amount (the amount of the levy shall be determined as an individual rate per one unit):

4.1. an audio tape-recorder with audio cassette recording function, a radio with audio cassette recording function, an audio tape-recorder with audio cassette and CD recording function, a radio with audio cassette and CD recording function, a radio with CD recording function, a radio with MD recording function, a CD player with recording function, a MD player with recording function, a MP3 player with an integrated hard disk – 1 lats;

4.2. a video player with video cassette recording function, a television set with video cassette recording function - 1 lats;

4.3. a DVD player with recording function, a television set with DVD recording function - 1 lats;

4.4. a satellite receiver with data recording function – 1 lats;

4.5. any CD recorder which can be connected to a computer – 1 lats; and

4.6. any DVD recorder which can be connected to a computer – 1 lats.”

**2.** The Applicants ask the Constitutional Court to assess compliance of the Contested Norms with Article 64, Article 105 and Article 113 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

According to the Applicants, Article 105 of the Satversme refers not only movable and immovable property, but also includes intellectual property and objects because they have economic value. Article 105 of the Satversme protects rights of persons subject to copy right and related rights to freely use their property, to establish the procedure for its use and to receive compensation for the use thereof. Consequently, by permitting reproduction of objects of copyright

and related rights, persons subject to copyright and related rights should have the right to receive a fair compensation.

Section 34 (1) and Section 54 (5) of the Copyright Law establish a restriction to copyright and related rights because they permit reproduction of works without consent of their authors. The above mentioned norms also establish the right of authors to a fair compensation. However, the right to receive a fair compensation are restricted by the Contested Norms because they require collection of blank tape levy only in certain cases.

At the court hearing, the representative of the Applicants indicated that restriction of the fundamental rights of persons subject to copyright and related rights has been established by law. However, in the Copyright Law, the legislator has authorized the Cabinet of Ministers to apply blank tape levy to all blank tapes and equipment used for reproduction of authors' works. The Cabinet of Ministers has failed to execute the authorization of the legislator and has thus infringed Article 64 of the Satversme, namely, it has failed to ensure protection of the fundamental rights established in Article 113 of the Satversme.

The Applicants hold that the restriction of material rights established in the Contested Norms fails to comply with the principle of proportionality because detriment caused to the rights of persons subject to copyright and related rights is greater than benefit gained by the society. Private persons may freely reproduce objects of copyright and related rights for their personal use, whilst the Contested Norms require collection of blank tape levy only in respect to certain blank tape and equipment. This fails to ensure a reasonable balance between interests of the society and those of persons subject to copyright and related rights.

The Applicants indicate that the duty of the State to create an appropriate and effective system for protection of copyright follows from Article 113 of the Satversme. The right to receive a fair compensation for reproduction of objects of copyright is an integral part of copyright. A fair compensation should be proportional with the detriment caused to the rights of persons subject to copyright by permitting natural persons to reproduce objects of copyright without

consent of their authors. Such a fair compensation shall be considered as counterperformance to damages undergone by persons subject to copyright.

At the court hearing, the representative of the Applicants also indicated: for Regulation No. 321 to comply with the rights of persons subject to copyright and related rights, the Cabinet of Ministers had to introduce necessary amendments into it and supplement the list of blank tapes and equipment already on 1 January 2008. Consequently, up to now authors do not receive compensation from all blank tapes and equipment that can be used for reproduction of objects of copyright and related rights.

**3.** The institution that issued the Contested Norms, namely the **Cabinet of Ministers** does not share the opinion of the Applicant and holds that the Contested Norms do comply with legal norms of a higher legal force.

The Cabinet of Ministers indicates that the restrictions included in the Contested Norm have a legitimate aim – to establish the right of persons subject to copyright and related rights to receive a fair compensation for reproduction of legally obtained works in one physical copy for use of natural persons for non-commercial purposes taking into account public interests.

The Cabinet of Ministers holds that the Contested Norms do comply with Article 105 of the Satversme and are appropriate for reaching of the legitimate aim. For the Cabinet of Ministers to be able to establish the amount of blank tape levy, it is first necessary to concretize the list of blank tapes and equipment for which the levy is to be paid. The list of blank tapes and equipment, as well as amounts of blank tape levy is necessary for assuring legal certainty. Otherwise producers and importers of blank tapes and equipment would not be able to establish the amount of blank tape levy to be paid. Consequently, the Contested Norms do ensure reaching of the legitimate aim.

It is not possible to reach the legitimate aim of the Contested Norm by other means and by restricting the rights and legal interests of persons at a lesser extent. No alternative measures that would ensure reaching of the legitimate aim of the Contested Norm at the same quality exist.

The purpose of the Contested Norms is not only protection of interests of persons subject to copyright and related rights, but also coordinating of these interests with those of the entire society.

The Cabinet of Ministers disagrees with the opinion of the Applicants that the first is committed to establish blank tape levy in respect to all possible blank tapes and equipment. This duty of the Cabinet of Ministers is limited only to those blank tapes and equipment that are usually used for reproduction of works. It is not possible to commit someone to pay the blank tape levy per each blank tape or equipment only because they can be used for reproduction of objects of copyright or related rights. Such blank tapes and equipment, the basic purpose of which is reproduction of objects of copyright and related rights, can not be included into the Contested Norms. Consequently, alternative measures would not ensure reaching of the legitimate aim of the Contested Norms at the same quality.

The Cabinet of Ministers indicates that benefit gained by the society is greater than detriment caused to the rights of an individual. Persons subject to copyright and related rights are interested in receiving as high compensation as possible; however, this interest is contrary to interests of the society. In the frameworks of the present case, it is necessary to ensure balance between rights of persons subject to copyright and related rights on the one hand and interests of the society on the other hand. The legislator has decided to establish a narrow restriction of reproduction right by permitting it only in cases of having met certain criteria. Consequently, the restriction of rights of persons subject to copyright and related rights is minimal, whilst blank tapes levy established in the Contested Norms is commensurate with the restriction. At the court hearing, the representative of the Cabinet of Ministers indicated that the respective payment shall not be regarded as compensation of the use of objects of copyright as to its essence and content; it shall be rather considered as a tax established by law that should be paid when purchasing blank tapes and equipment disregarding the fact whether they would be or not used for copying objects of copyright or related

rights. This payment as such is a material divergence from the principle that states that payments should be made for what is used.

According to the Cabinet of Ministers, Article 113 of the Satversme does not protect the rights of persons subject to related rights. Related rights are rights of economic nature, legal protection of which does not follow from the duty of the State to protect copyright. The Contested Norms do comply with Article 113 of the Satversme because, when ensuring a fair balance between the rights of persons subject to copyright and interests of the society, the State has fulfilled its duty to protect copyright.

When assessing compliance of the Contested Norms with Article 64 of the Satversme, it should be verified whether the legislator has settled all of the most important issues of public life. It is not possible to regulate all possible issues in the frameworks of the Copyright Law. Consequently, enumeration of blank tapes and equipment used for reproduction, establishment amount of compensation and the procedure for its collection, repayment and disbursement is delegated to the Cabinet of Ministers. Consequently, the Cabinet of Ministers has acted within the frameworks of the authorization granted to it by the legislator.

The Cabinet of Ministers asks rejecting the request of the Applicants to recognize the Contested Norm as null and void as from 1 January 2008. Such request contradicts the principle of legitimate expectations and that of legal certainty. Manufacturers and importers of blank tapes and equipment have taken into account the effective legal regulatory framework. Blank tape levy for blank tapes and equipment referred to in the Contested Norms has not been collected, and at present this can not be done in respect to private persons.

**4. A summoned person – the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) is of the viewpoint that the Contested Norms do not comply with legal norms of a higher legal force.

The Ombudsman holds that, when interpreting Article 113 of the Satversme in conjunction with international legal acts in the field of human rights, it can be concluded that Article 113 of the Satversme protects property interests of persons

subject to copyright. Consequently, constitutionality of the Contested Norms shall be assessed in the context of Article 105 rather than article 113 of the Satversme. Moreover, the scope of Article 113 of the Satversme applies not only to copyright but also to related rights and protection of property interests of persons subject to related rights.

The Copyright Law establishes the general right to collect blank tape levy for reproduction of objects of copyright and related rights for personal use. The Contested Norms refer to certain blank tapes and equipment and thus restrict the right of persons subject to copyright and related rights to receive the blank tape compensation for those blank tapes and equipment that are not mentioned in the Contested Norms.

The Ombudsman indicates that the authorization granted to the Cabinet of Ministers, namely, the authorization to establish procedure for collection of the blank tape levy, generally grants the right to elaborate the particular procedure. It does not exclude the right of the Cabinet of Ministers to adopt legal norms of material nature; however, the regulation may not include such norms that would establish legal relations that differ considerably from those established in the authorizing law. Since, in the Contested Norms, the Cabinet of Ministers has simply concretized objects, for which the blank tape levy shall be paid, it has observed the limits of authorization granted by the legislator.

The Ombudsman indicates that the Contested Norms establish compensation for blank tapes and equipment, the basic function of which is reproduction of copyright and related rights objects. The Contested Norms do not include such blank tapes and equipment, the basic purpose of which is not reproduction of copyright and related rights objects. Consequently, there is no reason to request paying the blank tape levy for blank tapes and equipment, the basic function of which is not reproduction of copyright and related rights objects.

Taking into account the rapid development of technologies and their availability to the public, the Cabinet of Ministers is committed to systematically revise lists of blank tapes and equipment, for which the blank tape levy should be

paid. Although there is no reason to establish blank tape levy for each possible blank tape and equipment, nowadays such blank tapes and equipment are used for reproduction that are not included into the Contested Norms. This constitutes an ungrounded restriction of rights of persons subject to copyright and related rights to receive compensation for reproduction of works.

5. A summoned person – **the Ministry of Culture** indicates that it has taken part in preparation of the reply of the Cabinet of Ministers and it fully agrees the opinion stated therein. The Contested Norms establish a fixed amount of the blank tape levy for blank tapes and equipment, the primary function of which is reproduction of copyright and related rights objects for personal use. Such regulatory framework does not assure proportionality and balance between interests of the parties concerned.

In the frameworks of a work group, the Ministry of Culture has tried to compromise between the parties in respect to introducing necessary amendments into the Contested Norms; however, it has not yet achieved it.

6. A summoned person – **the Ministry of Justice** – fully shares the opinion of the Cabinet of Ministers insofar as it concerns compliance of the Contested Norms with Article 105 and Article 113 of the Satversme.

The Ministry of Justice holds that, when adopting the Contested Norms, the Cabinet of Ministers has acted in the frameworks of the authorization granted by Section 34 (7) of the Copyright Law. The legislator has commissioned the Cabinet of Ministers to establish the blank tape levy, which has been done by adopting Regulation No. 321. The authorization included in Section 34 (7) of the Copyright Law does not provide any list of blank tapes and equipment for which the blank tape levy should be paid. Consequently, the respective decision was left up to the Cabinet of Ministers to decide.

The Ministry of Justice indicates that the Contested Norms do comply with requirements of the Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on harmonization of certain aspects of copyright and

related rights in the information society (hereinafter – Directive 2001/29/EC). Section 5 (2) indent “b” of the above mentioned directive provides that one of preconditions for reproduction of a work for private use is the right to a fair compensation. The EU law does not establish a common procedure for establishment of a fair compensation for reproduction. Elaboration of the amount and the procedure of collection of the fair compensation falls within the competence of each Member State.

The Court of Justice of the European Union has recognized that the notion of a fair compensation is an autonomous notion of the EU law that should be interpreted in a uniform manner by all Member States disregarding their right to establish provisions for receipt of the above mentioned compensation. The term of a fair compensation shall be assessed accordingly to the criteria of proportionality principle and it should ensure balance between different interests and protect interests of persons who pay the compensation. The Court of Justice of the European Union has indicated that the requirement of a fair balance should be observed in case if tapes and equipment are used for production of copies of works by thus causing losses to persons subject to copyright and related rights. Consequently, attention should be paid to the purpose of particular blank tapes and reproduction equipment. Namely, it is necessary to find out whether particular blank tapes and equipment are used mainly for reproduction of copyright and related rights objects or for other purposes, too.

At the court hearing, Mr Inguss Kalniņš, director of the Ministry of Justice Department of the Court of Justice of the European Union and a representative of the Ministry of Justice explained that particular blank tapes and equipment for which the blank tape levy should be paid must be established after having assessed their purpose, namely, after having considered whether private persons would use them for reproduction of works for personal use. If the blank tape levy is collected for blank tapes and equipment that are basically used for other purposes, this causes an unfair situation – a person who, in a particular case, does not have the duty of counterperformance or payment should pay the levy.

The Ministry of Justice does not agree with the argumentation of the Applicant that the blank tape levy should be paid for all blank tapes and equipment that can be used for reproduction of works for personal use. Section 5 (2) indent “b” of the Directive 2001/29/EC should be interpreted in a way that there should be a link between application of the levy that finances a fair compensation and presumed reproduction executed by blank tapes and equipment for private needs.

**7. A summoned person – the Saeima Education, Culture and Science Committee** (hereinafter – the Committee) indicates the following: there is no reason to consider that the duty of the Cabinet of Ministers included into the Copyright Law would not be fulfilled pursuant to the authorization granted by the legislator or by exceeding the limits of the authorization.

The task of the legislator is to establish the main principles and to grant necessary authority to the Cabinet of Ministers. The legislator establishes the main content guidelines rather than assesses and reviews all issues that could be included into the Cabinet of Ministers regulations. The Commission does not have the reason to hold that Regulation No. 321 establishes such regulatory framework of legal relations that the legislator has not established or wanted.

**8. A summoned person – the association “Copyright and Communication Consulting Agency / Latvian Authors Association” (“*Latvijas Informācijas un komunikāciju tehnoloģiju asociācija*”)** (hereinafter – the LIKTA) has submitted, to the Constitutional Court, an opinion on constitutionality of the Contested Norms jointly elaborated by several associations of the field, namely, LIKTA, the Association of Computer Technologies of Latvia [*Latvijas Datortehnoloģiju asociācija*], the Latvian Electrical Engineering and Electronics Industry Association [*Latvijas Elektrotehnikas un elektronikas ražošanas asociācija*], the Latvian Mobile Phone Dealer Association [*Latvijas Mobilo telefonu tirgotāju asociācija*], the Telecommunications Association of Latvia [*Latvijas Telekomunikāciju*

*asociācija*], and the Latvian Internet Association [*Latvijas Interneta asociācija*] (hereinafter – the Field Associations).

The Field Associations share the opinion that the Contested Norms are proportional and do comply with the Satversme.

The Field Associations question whether private persons should be permitted creating copies of copyright objects. Likewise, the issue whether it is grounded to collect the blank tape levy for each blank tapes and equipment, the final purpose of which is unknown and the levy collected is not related with reproduction of a work actually performed is discussable.

The Cabinet of Ministers has assured protection of interest of persons subject to copyright and related rights by forming an effective mechanism for collection and receipt of the fair compensation. The Contested Norms establish both, the list of tapes and equipment for which the blank tape levy should be paid and the amount of the levy. To protect interests of authors and the rest of the society, the Cabinet of Ministers has balanced all elements of calculation of the fair compensation and has made a political decision to establish the particular list of blank tapes and equipment and the amount of the levy.

The Field Associations hold that the Contested Norms do comply with the principle of proportionality because interests of different groups of the society have been taken into account. By collecting the blank tape levy for blank tapes and equipment that at present are not included into the Contested Norms, this would cause detriment to interests of other groups of the society. In such a case, prices of particular products would increase, competitiveness of dealers of blank tapes would be threatened, the amount of illegally sold blank tapes would increase, and other negative consequences would occur. The blank tape levy collected in Latvia already exceeds that of Lithuania and Estonia in respect to its amount and rate compared to the gross domestic product.

The mechanism for blank tape levy collection should ensure a fair compensation to the persons subject to copyright, and it shall be paid only in case if the latter have incurred losses. Consequently, the blank tape levy shall be paid only for such blank tapes and equipment that are used for copying of works.

When assuring observance of the proportionality principle, it is necessary to consider inclusion of each blank tape and equipment into the Contested Norms, and this should be done in the context of the blank tape levy to be established in respect to each kind of blank tapes of equipment. Such blank tapes and equipment, the basic function of which is not copying of copyright objects, can not be included into the list. In cases when the harm caused to persons subject to copyright is minimal, there is no duty to ensure the mechanism of the blank tape levy.

The Field Associations indicate: should the Contested Norms be recognized as anticonstitutional, they may not be recognized as null and void with retroactive effect because private persons have counted with the particular legal regulatory framework.

**9.** A summoned person – **Dr.sc.administr. Imants Gorbāns, associate professor of the Faculty of Computing of the University of Latvia** indicates that blank tapes in the field of information and communication technologies are divided into hard disks, flash memories, memory cards, optical disks, magnetic disks, magnetic tapes and floppy disks. The above mentioned blank tapes can be integrated into electronic devices or attached externally. It is important to separate blank tapes from devices wherein they can be integrated or attached to; otherwise this may lead to double imposition of the blank tape levy.

All devices that permit recording copyright and related rights objects shall be regarded as blank tapes disregarding their basic purpose. It is possible to distinguish between primary and secondary functions of blank tapes; however, the majority of blank tapes used nowadays can be used either for reproduction of copyright or related right objects, or storing of data that are not protected by copyright. Consequently, all possible blank tapes should be subject to the blank tape levy, though the amount of it should be minimal.

**10.** A summoned person – **Dr.iur. Ingrīda Kariņa-Bērziņa, a guest lecturer at the Riga Graduate School of Law** holds that Article 113 of the

Satversme establishes protect of both copyright and related rights. Copyright and related rights have developed in historically different conditions by protecting the different legal interests; however, pursuant to normative acts binding to Latvia, the State is committed to protect both, copyright and related rights. Consequently, it is reasonable to consider that related rights also pertain to the scope of Article 113 of the Satversme.

The core of copyright includes protection of material and non-material rights. Copyright shall be regarded as a kind of property that should be assessed in the context of Article 105 of the Satversme. The regulatory framework of Section 34 (1) of the Copyright Law shall be considered as exceptional right rather than compulsory alienation because it is not possible to establish at what amount and how copyright is infringed. The assumption that the only alternative solution of a user is to purchase another copy of the work follows from the wording of compulsory alienation, which would give the right of the person subject to the copyright to receive compensation for the copy not sold.

However, it is also likely that a user would be satisfied with owning only one copy purchased and would not even consider purchasing another one. Consequently, a particular attention should be paid to the term of a fair compensation. A fair compensation for lawful reproduction of a work shall not be considered as a measure to compensate losses incurred because of piracy.

Section 34 of the Copyright Law does not refer to those blank tapes and equipment, for which blank tape levy should be collected. The Cabinet of Ministers is authorized to establish the amount of blank tape levy, as well as elaborate the procedure for its collection, compensation and disbursement. Consequently, the Cabinet of Ministers has the necessary authorization to determine those blank tapes and equipment, for which blank tape levy should be paid.

Directive 2001/29/EC permits Member States of the European Union to determine whether they would permit or not reproduction of works for personal use. It commits the Member States to introduce the blank tape levy; however, if such levy is established, then it is necessary to assure its fairness. Practical

measures of the Member States of the European Union in this respect differ; moreover, in certain states no blank tape levy is collected.

### **The Findings**

**11.** The Applicants hold that the Contested Norms do not comply with Article 64, Article 105 and Article 113 of the Satversme. The Applicant maintained the particular viewpoint at the court hearing. However, the Cabinet of Ministers holds that the Contested Norms do comply with legal norms of a higher legal force.

The Contested Norms have been adopted based on the authorization of the legislator included into Section 34 (7) of the Copyright Law, and they establish a list of taxable blank tapes and equipment, as well as the amount of blank tape levy. The collected blank tape levy ensures the right of a subject or copyright and related rights to receive a fair compensation for the exception of reproduction of works for personal use. Therefore the Constitutional Court shall first of all assess compliance of the Contested Norms with Article 113 of the Satversme that establish the duty of the State to protect copyright. In case if the Contested Norms would be recognized as compliant with Article 113 of the Satversme, the Court shall proceed with assessment of compliance thereof with Article 64 and Article 105 of the Satversme.

**12.** Article 113 of the Satversme provides the following: „The State shall recognise the freedom of scientific research, artistic and other creative activity, and shall protect copyright and patent rights.”

The above mentioned article includes two mutually related aspects: freedom of artistic creativity and protection of works created as a result of creative activity. In the present case, there is no dispute on restrictions of freedom of scientific, artistic or other kind of creation or protection of patent rights.

To ensure the fundamental rights enshrined in the Satversme, the State has to implement a range of measures – both, passive, for instance, non-interference with the rights of a person, and active, for instance ensuring of meeting individual needs of a person (*see: Judgment of 3 April 2008 by the Constitutional Court in the case No. 2007-23-01, Para 7*). The Constitutional Court has reiterated: if certain rights have been included into the Satversme, the State cannot relinquish them. These rights are not just of a declarative nature and protection of them has become a constitutional value (*see, e.g.: Judgment of 13 March 2001 by the Constitutional Court in the case No. 2000-08-0109, the findings, and Judgment of 31 March 2010 in the case No. 2009-76-01, Para 5.5*).

Consequently, the Constitutional Court shall assess compliance of the Contested Norms with Article 113 of the Satversme insofar as it establishes the duty of the State to protection copyright.

**12.1.** Based on opinions of the case participants and the summoned persons, it can be concluded that they have different viewpoints in respect to the fact whether the duty to protect copyright established in Article 113 of the Satversme include protection of rights and legal interests of subjects of related rights.

The last sentence of Section 54 (5) of the Copyright Law provides the right of subjects of related rights to receive blank tape compensation according to the procedure established in Section 34 (2) – (7) of the Copyright Law. There is no reason to consider that the rights of a subject of related rights to receive blank tape compensation as established in the Copyright Law are broader or substantially different if compared to those of a subject of copyright. Pursuant to Section 20 of the Regulation No. 321, collected blank tape compensation is distributed among subjects of copyright and those of related rights. However, the Contested Norms regulate the procedure of collection of the blank tape levy rather than the procedure of distributing it among the above mentioned subjects. Consequently, the rights of subjects of copyright and those of related rights insofar as they follow from the Contested Norms shall not be disassociated.

It has been recognized in case-law of the Constitutional Court that rights of two groups of persons are equal in principle and mutually related; therefore it is

not useful to assess restriction of rights of each group of persons separately (*see: Judgment of the Constitutional Court of 28 March 2012 on termination of legal proceedings in the case No. 2011-10-03, Para 23*). In the context of the present case, this means that it is not necessary to assess whether Article 113 of the Satversme requires protection of rights of subjects of related rights because, insofar as it follows from the Contested Norms, the restriction of the rights of subjects of related rights and those of copyrights are identical, and their rights are being protected by applying the same legal measures.

Therefore the Constitutional Court shall assess only the restriction of the rights of subjects of copyright (hereinafter also referred to as “authors”). According to Section 54 (5) of the Copyright Law, this argumentation shall be applied also to subjects of related rights.

Consequently, in the present case it is of no substantial importance whether protection of related rights pertains on not to the scope of Article 113 of the Satversme, and the Constitutional Court shall not assess this issue.

**12.2.** Article 113 of the Satversme does not disclose the content of the term “copyright” or that of the duty to protect copyright; therefore the Constitutional Court shall assess the content of fundamental rights included in the particular article.

Article 89 of the Satversme provides that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. It has been concluded in case-law of the Constitutional Court that when interpreting the norms of basic rights established in the Satversme, one has to take into account international liabilities of Latvia in the field of human rights. International norms of human rights and the practice of their application serve as means of interpretation on the level of constitutional law to determine the content and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights included in the Satversme (*see, e.g.: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Findings and judgment of 18 October 2007 in the case No. 2007-03-01,*

*Para 11*). Consequently, when establishing the content of Article 113 of the Satversme, it is necessary to take into account the meaning of the term “copyright” established in international acts on human rights and the content of the duty of protection of copyright.

The 9 September 1996 Berne Convention for the Protection of Literary and Artistic works (hereinafter – the Berne Convention) regulates, among the rest, different exclusive rights of authors, for instance, the right of translation of a work, its reproduction, broadcast, public performance and all kinds of adaptation etc. All these rights shall be regarded as material rights of an author that might bring material wealth in case of exercise thereof. Article 6 *bis* of the Berne Convention provides that independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation. Consequently, the Berne Convention requires protection of material and non-material or individual rights of subjects of copyright.

A similar meaning of the term “copyright” and content of rights to be protected follow from other international acts on human rights binding on Latvia. Article 15 (1) “c” of the 16 December 1966 International Covenant on Economic, Social and Cultural Rights provides that the States Parties to the present Covenant recognize the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. However, the second part of the same article provides that the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. Similar duties of a state in the field of protection of copyright are established in international treaties of the World Intellectual Property Organization (WIPO) and normative acts of the European Union, for instance, Directive 2001/29/EC and

Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and certain related rights.

**Consequently, the duty to protect copyright included in Article 113 of the Satversme concerns protection of individual and material rights of subjects of copyright.**

**12.3.** Non-material or individual rights of an author ensure protection of spiritual (non-material) interests of the author by assuring a tight link between his or her works and by guaranteeing protection of honour and dignity for life (*see: Grudulis M. Ievads autortiesībās. Rīga: Latvijas Vēstnesis, 2006, pp. 97*).

Individual rights of an author are the right to authorship, the right to take a decision on notification on a work, the right to revoke a work, the right to inviolability of or counteraction against the name and a work.

The present case is related to the right of a subject of copyright to receive a fair compensation for reproduction of his or her works for personal needs. Therefore there is no dispute on restriction of individual rights of subjects of copyright. Consequently, the Constitutional Court shall only assess restrictions of material rights of subjects of copyright.

**12.4.** The minimum content of material right of authors has been established in the Berne Convention, and namely Article 11 *bis* thereof provides that authors shall enjoy exclusive right to use and reproduction of their works. This means that an author shall have the right to receive author's fee for use of the object of copyright. However, certain exceptions and restrictions have been established to material rights of an author. Article 9 (2) of the Berne Convention provide a list of special cases when the countries of the Union have the right to establish restrictions to material rights of an author. It has been emphasized in legal literature that restrictions of material rights are an indispensable part of copyright. They are necessary to ensure the possibilities of the society to use intellectual works created by authors. However, these restrictions should not impact the will of the author to create new works or aimed at ensuring profit to users of works (*see: Davies C. Copyright and public interests. London: Sweet & Maxwell, 2001, pp. 277 - 290*).

Consequently, the protected material rights of subjects of copyright consist of two elements: exclusive material rights that confers an author the right to receive author's fee and limited material rights or exceptional rights when the State, based on a law, restrict the right of an author to deal with his or her work. Respectively, the function of material rights of authors is to guarantee protection of material interests of a rightful person, namely, to control economic use of a work.

Section 15 of the Copyright Law also regulates the content of material rights. The first paragraph of the above mentioned section provides that an author has the following material rights: to communicate the work to the public, to publish the work, to publicly perform the work, to distribute the work, to broadcast the work, to retransmit the work, to make the work available to the public, to lease, rent or to publicly lend originals or copies of a work, directly or indirectly, temporarily or permanently reproduce the work. However, the fourth paragraph of the same section provides that the author has the right to use his or her work in any manner, to permit or prohibit its use, receive remuneration for permission to use his or her work and for the use of the work except in cases provided for by law.

It has been recognized in case-law of the Constitutional Court that fundamental values are not absolute because each fundamental right shall be exercised taking into account interests of other persons and the entire society (*see: Judgment of 22 October 2002 by the Constitutional Court in the case No. 2002-04-03, Para 2 of the findings*). Material rights of authors are neither absolute. Each basic right can be restricted pursuant to the general principles regulating restriction of fundamental rights. The Constitutional Court has reiterated that restriction of a fundamental right shall be regarded as constitutional if it has been adopted based on a law, it has a legitimate aim and it is proportional (*see, e.g.: Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 8 or judgment of 18 March 2011 in the case No. 2010-50-03, Para 9*).

**Consequently, the duty to protect material rights of subjects of copyright included in Article 113 of the Satversme include the right of authors to gain material wealth from use of their works; however, this rights is not absolute.**

**13.** The content of material rights of an author established in Article 113 of the Satversme shall be assessed in conjunction with the extent of liabilities undertaken by the legislator and concretized in the Copyright Law. The Constitutional Court shall assess whether this task has been fulfilled in accordance with the will of the legislator and whether the Contested Norms do ensure an appropriate protection of the fundamental rights included in Article 113 of the Satversme.

Para 1 of Regulation no. 321 establishes the amount of compensation for blank tapes and reproduction equipment, the procedure for its collection, repayment and disbursement, as well as the procedure for proportional distribution of it among authors, performers and producers of photograms and films. Consequently the Contested Norms shall be assessed in conjunction with Section 34 of the Copyright Law that establishes basic principles for application of the blank tape levy and authorizes the Cabinet of Ministers to issue the Contested Norms.

**13.1.** What the legislator has aimed at when conferring rights to the Cabinet of Ministers to regulate the respective issue is understood as the objective of the authorization (*see: Judgment of 9 October 2007 by the Constitutional Court in the case No. 2007-04-03, Para 19*).

Section 34 of the Copyright Law provides: “Without the permission of the author, a natural person shall be permitted to reproduce (including in a digital format) in one copy works that have been included in lawfully acquired films or phonograms or in other form of expression that is to be protected, as well as visual works for personal use without direct or indirect commercial purpose. Third persons shall not be involved in the production of such copy. The author is

entitled to receive a fair compensation (blank tape levy) for the production of such copy.”

The above mentioned norm establishes several legal relations. First, it permits a private person to reproduce objects of copyright without consent of the author. Second, it establishes the procedure for exercise of the reproduction right. Third, it confers subjects of copyright the right to receive a fair compensation for the restriction to their rights.

Consequently, the first part of Section 34 of the Copyright Law establishes restriction to the rights of subjects of copyright and the right of them to receive blank tape compensation for possible detriment caused to their material rights.

**Consequently the Contested Norms should ensure a fair compensation for the restriction of material rights of copyright subjects.**

**13.2.** The Constitutional Court has recognized that the legislator has no possibilities to decide all issues that need a specific regulatory framework by means of legislation. Such action of the legislator would often appear to be dilatory because the legislation process is complex and time-consuming. In order to ensure an effective implementation of the public power, it is possible to depart from the requirement that the legislator is the only one who has the right to decide all issues. The effectiveness is assured when the legislator takes decisions on the most important issues, though authorizing elaboration of more detailed regulations and norms regulating introduction of legal norms into practice to the Cabinet of Ministers or other institutions. Such action not only renders legislative procedure more effective but also ensures a more rapid and adequate reaction to necessity to introduce amendments into existent normative regulatory framework (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-05-0306, Para 7*).

The second part of Section 34 of the Copyright Law provides that the blank tape levy for reproduction for personal use shall be paid by manufacturers and persons who import into Latvia equipment used in such reproduction and blank recording media (audio recording cassettes, videotapes or video cassettes, laser discs, compact discs, minidisks and the like).

This norm provides a separate list of blank tapes, which is not exhaustive, though should be taken into account by the Cabinet of Ministers when establishing the procedure for collection of the blank tape levy. The legislator has not established any criteria that the Cabinet of Ministers should apply when deciding on inclusion of certain blank tapes and equipment into the Contested Norms. Therefore it can be concluded that the legislator did grant the Cabinet of Ministers the right to establish criteria for drawing up an exhaustive list of blank tapes and equipment and did commission the Cabinet of Ministers to elaborate such a list.

Section 34 (7) of the Copyright Law provides that the amount of the blank tape levy, procedures for collection, repayment and payment of the levy, as well as proportional distribution among authors, performers and phonogram and film producers shall be determined by the Cabinet.

This norm, in fact, ensures implementation of rights enshrined in the first and Section 34 (2) of the Copyright Law because it would not be possible to collect blank tape levy should there be no Cabinet of Ministers regulation that establish a certain amount of compensation for blank tapes and equipment. However, this norm also establishes the duty of the Cabinet of Ministers to act in accordance with aims set forth by the legislator when assuring protection of material interests of copyright subjects.

**The legislator has failed to establish an exhaustive list of blank tapes and equipment that is subject to blank tape levy; neither has it determined any criteria for elaboration of such a list. Fulfilment of these functions has been delegated to the Cabinet of Ministers.**

**3.3.** The Constitutional Court has recognized that the limits of the authorization mean the limits, at which the Cabinet of Ministers may act when elaborating and issuing legal norms (*see: Judgment of 23 September 2008 by the Cabinet of Ministers in the case No. 2008-01-03, Para 17*).

The Constitutional Court has indicated that the word “procedures” mentioned in the formulation of the authorization clearly indicates the procedural nature of regulations of the Cabinet of Ministers, namely, elaboration of a certain

procedure. However, this does not exclude the possibility that the procedure regulated in the Cabinet of Ministers regulations concretizes will of the legislator insofar as it complies with the content and aim of the authorization. In separate cases, the content of regulations of the Cabinet of Ministers can be formed by material norms, however these must be passed based on a special authorization by the legislator (*see: Judgment of 9 October 2007 by the Constitutional Court in the case No. 2007-04-03, Para 16 and 20*).

This is the legislator who is primarily responsible for compliance of an authorization with legal norms of a higher legal force. The legislator has left the authorization included in Section 34 (7) of the Copyright Law unchanged. Consequently, it is possible to conclude that the legislator had no doubt that the Cabinet of Ministers had adopted the Contested Norm in accordance with the authorization. The Commission also drew attention to the particular opinion (*see: Case materials, Vol. 2, pp. 48*).

The right of copyright subjects to receive a fair compensation for reproduction of their works for personal needs is regulated not only by norms of the Copyright Law but also the European Union law. After having ratified the Treaty on Accession of Latvia to the European Union, the European Union law has become an integral part of the Latvian law. Consequently, legal acts of the European Union and interpretation established in case-law of the Court of Justice of the European Union should be taken into consideration when applying national normative acts in order to prevent possible contradictions between the Latvian and the European Union law. When assessing the content of authorization included in Section 34 (7) of the Copyright Law, it is necessary to take into account requirements of directives transposed into the Latvian legislation and interpretation of directives established in case-law of the Court of Justice of the European Union.

Consequently, the rights included in Article 34 of the Copyright Law shall be assessed in conjunction with norms of Directive 2001/29/EC and interpretation of the directive suggested by the Court of Justice of the European Union. When interpreting norms of Directive 2001/29/EC, the Court of Justice of

the European Union has not only recognized the general principle stating that copyright subjects have the right to receive blank tape compensation due to damage caused because of reproduction exception, but also drawn attention to exceptions established in Clause 31 and Clause 35 of Preamble of Directive 2001/29/EC when the blank tape levy can be exempted (*see: Judgment of 21 October 2010 by the Court of Justice of the European Union in the case No. 467/08, Para 43 – 50*). Consequently, the Court of Justice of the European Union has recognized that such criteria as proportionality with general interests, possibilities of authors to gain material wealth from reproduction in other ways, level of use of technological protection measures and gravity of infringement of rights can be applied when assessing the necessity to apply blank tape levy to certain blank tapes and equipment and establishing the amount of blank tape levy.

Taking into account the above mentioned or any other clearly defined criteria, application of which the Cabinet of Ministers considers as legally grounded, the Cabinet of Ministers shall have the right to make a legal decision on inclusion of certain blank tapes and equipment into the Contested Norms. Consequently, the Cabinet of Ministers has to ensure inclusion of corresponding blank tapes and equipment into the Contested Norms.

**Consequently, the Cabinet of Ministers is entitled and committed to assess the necessity to establish a more detailed list of blank tapes and equipment into the Contested Norms; however, it has to guide itself by clearly defined criteria.**

**14.** The Contested Norms provide a list of all blank tapes and equipment, for which blank tape levy should be paid, as well as indicates a particular amount of blank tape levy to be paid for each blank tape and equipment. Such approach, in fact, does not differ from the procedure existing in several other states, according to which blank tape levy is collected based on exhaustive lists of blank tapes and equipment (*see: Batchelor B., Jenkins T., Butter T. Copying levies: Moving towards harmonisation? The European Court rules on the concept of fair*

compensation for rightholders. *European Competition Law Review*, 2011, Vol. 32, Issue 6, p. 277; *Kretschmer V. Private Copying and Fair Compensation: An empirical study of copyright levies in Europe, A Report for the UK Intellectual Property Office*. 2011, available at: [http://www.wipo.int/edocs/mdocs/mdocs/en/wipo\\_ip\\_econ\\_ge\\_1\\_12/wipo\\_ip\\_econ\\_ge\\_1\\_12\\_ref\\_kretschmer.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_econ_ge_1_12/wipo_ip_econ_ge_1_12_ref_kretschmer.pdf), consulted on 17 April 2012). An exhaustive list not only determines the amount of blank tape levy per each blank tape and equipment referred to in the Contested Norms but also excludes the possibility to collect blank tape levy for any other blank tape or equipment. Consequently, the Constitutional Court has to assess whether the Cabinet of Ministers has acted according to the duty established in Section 34 of the Copyright Law.

**14.1.** The Contested Norms have been adopted on 10 May 2005 and remained in force unchanged up to now. Disregarding the rapid development of information technologies, in the result of which the way use of copyright objects has changed, the list of imposable blank tapes and equipment has not been amended.

The Constitutional Court has reiterated that the legislator is committed to regularly consider whether effective legal regulatory framework is still effective, appropriate and necessary and whether it should or should not be improved (*see, e.g.: Judgment of 11 November 2005 by the Constitutional Court in the case No. 2005-08-01, Para 9.5 and judgment of 2 June 2008 in the case No. 2007-22-01, Para 18.3*). This duty also applies to the Cabinet of Ministers, namely, it is committed to follow development of technologies and improve the list of blank tapes and equipment of the Contested Norms. Should the Cabinet of Ministers fail to fulfil the duty, this threatens ensuring of the fundamental rights enshrined in Article 113 of the Satversme.

When examining a similar case on reprographic reproduction, the German Federal Constitutional Court also concluded that legal regulatory framework once compliant with legal norms of a higher legal force may become outdated due to technological development, which may result in ungrounded infringement

of material rights of authors (*see: Judgment of 30 August 2010 by the German Federal Constitutional Court in the case No. 1 BvR 1631/08, Para 64*).

It is possible to agree with the opinion of a summoned person Mr I. Gobāns stating that the list of blank tapes and equipment included into the Contested Norms have become outdated and fail to comply with the range of blank tapes used for copying and reproduction of works nowadays (*see: Case materials, Vol. 3, pp. 103*). Consequently, the list of blank tapes and equipment included into the Contested Norms fails to comply with modern requirements as to its content.

**14.2.** The following has been indicated in the minutes of the meeting of 10 May 2005 of the Cabinet of Ministers: “In order to ensure coordination of the amount of blank tape levy with consumers, subjects of copyright and related rights, as well as with interests of market of blank tape levy and equipment, the Minister of Culture shall once a year organize a work group that would review the list of blank tapes and equipment and blank tape levy rates” (*see: Minutes of the meeting of 10 May 2005 of the Cabinet of Ministers NO. 28, Clause 2 of Paragraph 17*). Consequently, the Cabinet of Ministers has acknowledged the necessity to review the legal regulatory framework included into the Contested Norms on annual basis. However, disregarding the above mentioned decision, the list of blank tapes and equipment has remained unchanged for seven years already.

According to Section 34 (7) of the Copyright Law, responsibility for revision of the content of the Contested Norms should be undertaken by the Cabinet of Ministers. The Cabinet of Ministers has commissioned the Ministry of Culture to fulfil this function, where the latter had organized a work group by involving collective organization for administration of material rights of authors and those representing manufacturers and importers of blank tapes and equipment. The Ministry of Culture admitted that for several years it has failed to reach any consensus on possible amendments to the Contested Norms. This has been due to the fact that interests of persons concerned were completely opposite (*see: Transcript of the court hearing, Case materials, Vol. 5, pp. 66*).

The fact that persons concerned have failed to agree on improvement of the Contested Norms does not release the Cabinet of Ministers and the Ministry of Culture from their duties. Disregarding opinions of participants of the work group the Ministry of Culture and the Cabinet of Ministers had to assess the necessity to amend the Contested Norms. Although hearing of persons concerned is a useful and positive part of procedure for elaboration of legal acts, legislative procedure may not depend on the positive or negative attitude of individuals in respect to a draft law.

**Consequently, the Cabinet of Ministers has failed to fulfil its duty to reassesses the list of blank tapes and equipment included into the Contested Norms on regular basis.**

**14.3.** The Constitutional Court has already indicated that the Cabinet of Ministers has the right and the duty to assess the necessity to include certain blank tapes and equipment into the Contested Norms; however, this should be based on clearly defined criteria insofar as they comply with the objective of the authorization established in Section 34 of the Copyright Law. According to the above mentioned procedure, the Cabinet of Ministers has to ensure balance between general interests and material rights of copyright subjects.

The Ministry of Culture has tried to coordinate interests of organization for collective administration of authors' material rights and those representing manufacturers and importers of blank tapes and equipment. However, this process has not been related with elaboration or application of certain criteria when assessing the necessity to introduce amendments to the Contested Norms. Neither case materials nor considerations of case participants or the summoned persons testify that the Cabinet of Ministers or the Ministry of Culture has established such criteria or assessed the necessity to include other blank tapes and equipment into the Contested Norms and thus concluded that the Contested Norms should be amended or no amendments are needed. Consequently, the Contested Norms fail to comply with the authorization established in Section 34 of the Copyright Law and fail to assure an adequate protection of material rights of copyright subjects as established in Article 113 of the Satversme.

**Consequently, the Contested Norms fail to comply with Article 113 of the Satversme because the Cabinet of Ministers has failed to assess impact of technology development onto blank tapes and equipment to be used for reproduction and thus imposable with blank tape levy.**

15. In case-law of the Constitutional Court it has been concluded that after having established non-compliance of a contested norm with any article of the Satversme, it is not necessary to assess its compliance with other articles of the Satversme (*see, e.g.: Judgment of 9 October 2007 by the Constitutional Court in the case No. 2007-04-03, Para 25*).

The Constitutional Court has recognized the Contested Norms as non-compliant with Article 113 of the Satversme of the Republic of Latvia.

**Consequently, it is no more necessary to assess compliance of the Contested Norms with Article 64 and Article 105 of the Satversme.**

16. The Applicants ask recognizing the Contested Norms as null and void as from 1 January 2008 (*see: Application case materials, Vol. 1, pp. 22 – 23*). This request has been substantiated by the fact that the Applicants would have the right to bring an action against the State to recover losses (*see: Explanatory note of the Applicant after having got acquainted with case materials; Case materials, Vol. 3, pp. 194*).

According to Article 32 (3) of the Constitutional Court Law, a legal norm (act) that the Constitutional Court has declared as non-compliant with the norm of a higher legal force, shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, if the Constitutional Court has not determined otherwise. Exercising the right granted in Article 32 (3) of the Constitutional Court Law, the Constitutional Court shall see to it that the situation, which might develop from the moment the impugned norms lose validity, to the moment while the Saeima passes new norms, violates neither the fundamental rights of individuals, guaranteed by the Satversme, nor creates

relevant harm to state or public interests (*see, e.g.: Judgment of 16 December 2005 by the Constitutional Court in the case No. 2005-12-0103, Para 25*).

The claim of the Applicants is, in fact, related with the rather narrow scope of the Contested Norms and the necessity to broaden them by including therein blank tapes and equipment appropriate to modern technologies and reproduction activities. The Constitutional Court has concluded in its case-law that the legislator enjoys a broad margin of appreciation when selecting the most appropriate legal regulatory framework to ensure exercise of the fundamental rights established in the Satversme. The Constitutional Court cannot replace the freedom of action of the legislator by its opinion on a more reasonable solution (*see: Judgment of 19 December 2011 by the Constitutional Court in the case No. 2011-03-01, Para 20*).

The Constitutional Court is not entitled to refer to blank tapes and equipment to be included into the Contested Norms. Due to certain legal considerations the Cabinet of Ministers may not include a particular blank tape or equipment into the Contested Norms. Consequently, legal grounds for collection of blank tape levy for certain blank tapes and equipment can be established only in Cabinet of Ministers regulations.

The Constitutional Court has declared the Contested Norms as non-compliant with Article 113 of the Satversme because the Cabinet of Ministers has failed to fulfil its duty to improve content of the Contested Norms. Recognition of the Contested Norms as invalid with retroactive effect or as on the date of publishing of the present judgment would cause more disadvantageous consequences to the Applicants if compared to the situation assured by the present wording of the Contested Norms. In order to assess compliance of the Contested Norms with the Satversme, the Cabinet of Ministers is committed to reassess the list of blank tapes and equipment included into the Contested Norms. To fulfil this duty, the Cabinet of Ministers needs time; therefore the most appropriate solution of the present situation is recognition of the Contested Norms as invalid as from a certain date in future.

**Consequently, the Cabinet of Ministers is committed to assess the necessity to include other blank tapes and equipment into the Contested Norms.**

### **The Constitutional Court**

Based on Article 30 – 32 of the Constitutional Court Law

**holds:**

**Section 3 and 4 of 10 May 2005 Cabinet of Minister Regulation No. 312 “Regulations regarding the Amount of the Blank Tape Levy and the Levy of Equipment Used for Reproduction and the Procedures for the Collection, Repayment, Distribution and Payment Thereof” fails to comply with Article 113 of the Satversme of the Republic of Latvia and shall become invalid as on 1 November 2012 if the Cabinet of Ministers would fail to reassess validity of the list of blank tapes and equipment based on changes introduced by technology development according to the authorization established in Section 34 of the Copyright Law.**

The Judgment is final and not subject to appeal.

The Judgment shall come into force as on the date of publishing it.

Presiding Judge

G. Kūtris