



## Joint statement on copyright levies in the digital single market

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AFDEL (France), AGEFE (Portugal), ANITEC (Italy), APDETIC (Romania), Bitkom (Germany), FFTI (Finland), ITAS (Slovakia) IT&Telekomföretagen (Sweden), Nederland ICT (Netherlands), PIIT (Poland), SEPE (Greece), SFIB (France), techUK (UK) and ZIPSEE Digital Poland (Poland) all support the fundamental right of creators to fair compensation. Intellectual property is a vitally important resource. Cultural creativity & technological innovations are catalysts driving the development of new business models and income streams for creators and right holders.

Yet, the **current private copying levy schemes in France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Romania and Sweden are broken beyond the point of repair**<sup>1</sup>. Legislative decision makers are called upon to fundamentally reform such levy models.

Technological and social changes within our information society demand that Copyright Law needs to be adjusted to reflect a fair balance of involved interests. Copyright Law has to also provide a legal framework in which new business models can flourish. Technology driven innovation cycles are constantly becoming shorter in a digitized and highly convergent world. Hence copyright legislation is faced with ever shorter intervals with the task of finding real-time, equitable responses to new usage scenarios and business models.

Copyrighted works represent a valuable good. Efforts must go on to raise awareness of the value of copyright in our society. Especially our children and young people who are surrounded with file sharing services and peer-to-peer networks have to be provided with legitimate offers which lead away from an 'everything is free' mentality. Therefore, legislative conditions must be created to meet the needs of today's consumer who must be enabled to get tailored services fitted to their demands.

In comparison to this, private copying levy schemes were created in the 1960's as an auxiliary legal construction to legitimate copyright infringements. It is an exception solution invented in an analogue world to deal with the impossibility for the creators to authorise and track the distribution of their work. Now digitization provides rights holders and creators with completely new possibilities and distribution channels. As a matter of fact we see new disruptive business models are gathering momentum in the digital marketplace and in time, will replace the old archaic systems that have been unable to keep up with the speed of innovation and usage models.

Private copying has become redundant in an increasingly digitised world with its comprehensive "anytime, anywhere" possibilities for consumers. Harm for the rightholders declines as private copying declines. One factor to this is the success of "access over ownership" models like streaming. In case harm still exists but is minimal, then no compensation shall be due ("de minimis" rule).



National levy systems are fragmenting the EU market<sup>2</sup>. Device and media based private copy levy schemes create significant barriers to the digital single market<sup>3</sup>. This leads to significant economic damage across the EU<sup>4</sup>. Private copy levy schemes have become a heavy burden for consumers and economic growth and are no longer appropriate for the 21<sup>st</sup> century.

Current levy systems which lack transparency and are unfair for consumers should be reformed as soon as possible. AFDEL, AGEFE, ANITEC, APDETIC, Bitkom, FFTI, ITAS, IT&Telekomföretagen, Nederland ICT, PIIT, SEPE, SIFB, techUK and ZIPSEE all commit to help overhaul the current systems for a short-term transitional period. It will not solve the overall systemic problem if we make only incremental changes. **New alternative models must be considered to replace old levy schemes!**

Meaningful alternatives to private copy levy schemes already exist. The time has come to follow those countries that have already modernised copyright levy regimes; e.g. Finland, Norway, Spain.

Let us not forget that the EU Copyright Directive requires “fair compensation” but not a device & media based copyright levy system.

What we need now is the political will to bring archaic private copying compensation into the digital present. AFDEL, AGEFE, ANITEC, APDETIC, Bitkom, FFTI, ITAS, IT&Telekomföretagen, Nederland ICT, PIIT, SEPE, SIFB, techUK and ZIPSEE call for an open and forward-looking discussion on this.

<sup>1</sup> In France, the Council of State has canceled 6 decisions from the organization in charge of setting the tariffs. Despite that, the EU notion of harm is still not transposed into the French law. In Germany nearly each product with claimed copyright levies is disputed. For each device or storage medium must be separate negotiations and litigation with costly empirical investigations without a chance of a quick result. Since 2008 (change in the law in Germany) no final verdict has been rendered. With each new product afflicted with copyright levy-claims the system metastasizes.

<sup>2</sup> “Private Copying and Fair Compensation: An empirical study of copyright levies in Europe” by Prof. Kretschmer in 2011; an independent report commissioned by the Intellectual Property Office (IPO) in the UK.

<sup>3</sup> “A Single Market for Intellectual Property Rights - Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe” a Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions in 2011; “Recommendations resulting from the Mediation on Private Copying and Reprography levies” by António Vitorino in 2013 for the European Commission

<sup>4</sup> “Assessing the economic impacts of adapting certain limitations and exceptions to copy-right and related rights in the EU” by Julian Boulanger, Alexandre Carbonnel, Raphaël De Coninck and Gregor Langus from Charles River Associates in 2014, prepared for DG Market (European Commission); “Compensation for private copying: an economic analysis of alternative models” by Prof. José Luis Ferreira in 2010, commissioned by ENTER - IE Business School in Spain; “Is there a case for Copyright Levies? An economic impact analysis” by Oxera Consulting Ltd in 2011.