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# **DRAFT REPORT**

on private copying levies  
(2013/2114(INI))

Committee on Legal Affairs

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**CONTENTS**

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .....	3

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on private copying levies (2013/2114(INI))

*The European Parliament,*

- having regard to Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society,
  - having regard to the proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market (COM (2012) 0372).
  - having regard to Articles 4, 6, 114 and 118 of the Treaty on the Functioning of the European Union (TFEU),
  - having regard to the judgments of the Court of Justice of the European Union, particularly in cases C-467/08, Padawan v. SGAE, of 21 October 2010, C-457/11 – C-460/11, VG Wort v. Kyocera Mita and others, of 27 June 2013, and C-521/11, Austro Mechana v. Amazon, of 11 July 2013,
  - having regard to the Communication from the Commission of 24 May 2011 entitled ‘A Single Market for IPRs: Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe (COM(2011) 287),
  - having regard to the Commission communication of 18 December 2012 ‘On Content in the Digital Single Market’ (COM(2012)0789),
  - having regard to the recommendations resulting from the mediation on private copying and reprography levies of 31 January 2013,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A7-0000/2013),
- A. whereas culture and artistic creation form the bedrock of the European identity past and present, and will play a vital role in the economic and social development of the European Union in the future;
- B. whereas cultural content plays a pivotal role in the digital economy, whereas Europe’s digital growth will depend in future on having a varied supply of high-quality cultural content, and whereas it has emerged from consultations and several independent surveys that the cultural and creative sectors are facing common challenges from digitisation and globalisation, along with funding problems, and that EU-level action is needed to resolve these problems;
- C. whereas digitisation is having a huge impact on the way in which cultural goods are being produced, distributed, marketed and consumed, and whereas lower distribution costs and

the appearance of new distribution channels can facilitate access to creative works and culture and improve the circulation of those works around the world;

- D. whereas the proposal for a Directive on the collective management of copyright and related rights currently being discussed reinforces that approach to the management of copyright, placing particular emphasis on the transparency of the flows of remuneration collected, distributed and paid to rightholders by collecting societies, including for private copying;
- E. whereas under Directive 2001/29 /EC, Member States may provide for an exception or limitation to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use, accompanied by fair remuneration, and may allow consumers in countries that have introduced that limitation to copy their music and audio-visual collections from one medium or type of multimedia material to another freely and as frequently as they wish, without seeking authorisation from the rightholders, provided this is for their private use; whereas any levies should be calculated on the basis of the possible harm to the rightholders resulting from the private copying act in question;
- F. whereas the sum total of private copying levies collected in 23 of the 28 EU Member has more than tripled since Directive 2001/29/EC came into force and, according to the Commission's estimates, now stands at over EUR 600 million, and whereas this constitutes a considerable amount for the artists;
- G. whereas these levies only constitute a small proportion of the turnover of manufacturers and importers of traditional and digital recording media and material;
- H. whereas manufacturers and importers of traditional and digital recording media and material have brought numerous legal actions since the entry into force of Directive 2001/29/EC, at both national and European level;
- I. whereas Directive 2001/29/EC and the case law of the Court of Justice of the European Union do not require Member States to see that rightholders receive direct payment of the full levy collected for private copying, and whereas the Member States have broad powers of discretion to establish that part of that remuneration should be paid indirectly;
- J. whereas the private copying levy is paid by consumers when purchasing recording or storage media or services and they are therefore entitled to know of its existence and quantum;
- K. whereas media and material prices do not vary according to the different rates of private copying levy applied across the Union, and whereas the abolition of private copying levies in Spain in 2012 has had no impact on media and material prices;
- L. whereas disparities exist between the various models and collection rates for private copying levies and between their impact on consumers and the single market; and whereas a European framework should be created that guarantees that equivalent conditions apply to rightholders, consumers, manufacturers and importers of equipment and service providers across the Union;

- M. whereas the exemption and reimbursement arrangements for professional uses which have been introduced in the Member States are far from satisfactory and the judicial decisions adopted in some Member States have not been applied;
- N. whereas in the case of online music sales, licence-granting practices are being viewed as an alternative to the system of private copying levies;

#### **A virtuous system in need of modernisation and harmonisation**

1. Points out that the cultural sector provides 5 million jobs in the EU and 2.6 % of its GDP, that it is one of the main drivers for growth in Europe and a wellspring for new and non-relocatable jobs, and that it stimulates innovation and offers an effective means of combating the current recession;
2. Emphasises that in times of budget austerity, private copying levies constitute a vital source of revenue for the cultural sector, and particularly for the performance arts;
3. Believes that the private copying system is a virtuous system that balances the right to copying for private use with fair remuneration to rightholders, and that it is a system worth preserving;
4. Emphasises that the major disparities between national systems for the collection of levies, especially as regards the types of product subject to the levy and the rates of levy, can distort competition and give rise to ‘forum shopping’ within the internal market;
5. Invites the Member States to decide on a common definition of the private copying levy, to look for common ground as regards which products should be subject to the levy and to harmonise the negotiating arrangement for the rates applicable to private copying; calls on the Commission to facilitate that process;

#### **Single collection procedure, clearer consumer information and more efficient reimbursement procedures**

6. Considers that the private copying levy should apply to all material, media and services whose value resides in their private recording and storage capacity;
7. Considers that private copying levies should be payable by manufacturers or importers; notes that, if the levy were transferred to retailers, this would result in an excessive administrative burden for small and medium-sized distribution companies and collective rights management organisations;
8. Recommends that, in the case of cross-border transactions, private copying levies be collected in the Member State in which the product is placed on the market and that the product then be allowed to circulate freely in the internal market without being subject to additional levies;
9. Takes the view that, accordingly, private copying levies cannot be collected by a collective management organisation of a Member State if remuneration of the same kind has already been collected in another Member State;

10. Calls on the Member States, in consultation with all stakeholders, to simplify procedures for setting the levies in such a way as to ensure fairness and objectivity;
11. Stresses the need to make clear to consumers the role of the private copying system with regard to remuneration of artists and cultural dissemination; urges Member States and rightholders to replace their anti-piracy campaigns with 'positive' campaigns highlighting the benefits of private copying levies;
12. Takes the view that consumers must be informed of the amount of the levy paid by them; urges the Commission and Member States accordingly, in consultation with manufacturers, importers, retailers and consumer associations, to ensure that this information is indicated on packaging and, as far as possible, on invoices and receipts issued to consumers;
13. Urges Member States to adopt more transparent exemption arrangements regarding professional uses;
14. Calls on the Member States to introduce efficient arrangements for the reimbursement of private copy levies where the media in question is used for professional purposes;

#### **Transparency regarding allocation of revenue and cultural policy**

15. Welcomes the proposal for a directive on collective management of copyright and related rights currently being negotiated which calls for greater transparency with regard to the flow of remuneration collected, allocated and paid to rightholders by collective management organisations, for example through the publication of an annual transparency report with a special report on the use of amounts deducted for social and cultural purposes;
16. Urges Member States to ensure greater transparency regarding the allocation of revenue from private copying levies;
17. Calls on the Member States to earmark at least 25% of revenue from private copying levies to promote the creative and performance arts;
18. Calls on the Member States to publish reports on allocation of proceeds in open source format with interpretable data;
19. Urges the organisers of cultural events and performances receiving funding from private copying levies to make their public more aware of this by means of additional publicity;

#### **Technical protection measures**

20. Points out that private copying exemption arrangements enable consumers to copy freely their musical and audio-visual material from one medium or type of multimedia material to another without the need to seek the authorisation of rightholders, provided that this is for private use;
21. Calls for the elimination of technical protection measures causing an imbalance between freedom to copy and fair remuneration for rightholders under private copying

arrangements;

### **Licences**

22. Points out that the implementation of exclusive rights does not guarantee all rightholders, and in particular performance artists, a fair and proportional share of revenue arising from the use of their works;
23. Observes that, despite permanent access to online works, downloading, storage and private copying for offline use is continuing; takes the view that a private copying levy system cannot therefore be replaced by a licencing system;
24. Stresses that, as for online services, contractual authorisations cannot be allowed to prevail to the detriment of private copying exception arrangements;

### **New business models in the digital environment**

25. Takes the view that private copies of protected works made using cloud computing technology may have the same purpose as those made using traditional and/or digital recording media and materials; considers that these copies should be taken into account by the private copying compensation mechanisms;
26. Calls on the Commission to assess the impact on the private copying system of the use of cloud computing technology for the private recording and storage of protected works, so as to determine how these private copies of protected works should be taken into account by the private copying compensation mechanisms;
27. Calls on the Commission and Member States to examine the possibility of legalising works sharing for non-commercial purposes so as to guarantee consumers access to a wide variety of content and real choice in terms of cultural diversity;
28. Instructs its President to forward this resolution to the Council and Commission and to the governments and parliaments of the Member States.