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Private copying levies

European Parliament resolution of 27 February 2014 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 society¹,
- 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), and to the accompanying impact assessment,
- 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 of 21 October 2010 in Case C-467/08, Padawan v SGAE [2010] ECR I-10055, of 16 June 2011 in Case C-462/09, Stichting de ThuisKopie v Opus Supplies Deutschland GmbH and others [2011] ECR I-05331, of 9 February 2010 in Case C-277/10, Martin Luksan v Petrus van der Let (not yet reported), of 27 June 2013 in Joined Cases C-457/11 to C-460/11, VG Wort v Kyocera Mita and others (not yet reported), and of 11 July 2013 in Case C-521/11, Austro Mechana v Amazon (not yet reported),
- having regard to the Commission communication of 24 May 2011 entitled ‘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’ (COM(2011)0287),
- having regard to the Commission communication of 18 December 2012 ‘On Content in the Digital Single Market’ (COM(2012)0789),
- having regard to António Vitorino’s recommendations of 31 January 2013 resulting from the mediation process on private copying and reprography levies,
- having regard to the Committee on Legal Affairs working document entitled ‘Copyright in the music and audiovisual sectors’, approved on 29 June 2011,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs (A7-0114/2014),

¹ OJ L 167, 22.6.2001, p. 10.

- 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 culture and artistic creation are integral to the digital economy, whereas expression of both high-end and mundane cultural content relies on equal access to Europe's digital growth, and whereas it has emerged from consultations that the European digital market has still not delivered on the promises of effective distribution, fair remuneration for creators and fair and effective distribution of income within the cultural sector in general, 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 identities are expressed, distributed and developed, and whereas lower barriers to participation and the emergence of new distribution channels are facilitating access to creative works and culture, improving the circulation, discovery and rediscovery of culture and artistic creation around the world and providing opportunities for creators and artists; whereas the market opportunities for new services and businesses have increased enormously as a result;
- D. whereas authors' claim to protection of their creative work, and their right to equitable remuneration for that work, must also exist in the digital age;
- E. whereas digital private copying has taken on major economic importance as a result of technological progress and the shift to the internet and cloud computing, and whereas the existing system of private copying levies does not take sufficient account of developments in the digital age; whereas there is currently no alternative approach in this area that would ensure appropriate remuneration for the rightholder and at the same time make private copying possible; whereas a discussion nevertheless needs to be conducted with a view to updating the private copying mechanism, making it more efficient and taking greater account of technological progress;
- F. whereas the Directive of the European Parliament and of the Council on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, which was adopted by Parliament and the Council on 4 February 2014, reinforces the fact that the management of copyright requires particular emphasis on the transparency of the flows of remuneration collected, distributed and paid to rightholders by collecting societies, including for private copying;
- G. whereas under Directive 2001/29/EC Member States may provide for an exception to, or limitation on, 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 having introduced such a 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 that 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;
- H. whereas the sum total of private copying levies collected in 23 of the 28 Member States 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 represents a considerable amount for the artists;

- I. whereas these levies only constitute a minute proportion of the turnover – estimated to total more than EUR 1 000 billion – of manufacturers and importers of traditional and digital recording media and material;
- J. whereas many mobile terminals allow copying for private purposes in theory but are in fact not used for this purpose; calls, consequently, for long-term discussions to be conducted with a view to developing a more efficient and up-to-date approach that may not necessarily be based on a flat-rate levy on equipment;
- K. whereas when the prices at which material sells in a country that charges the levy are compared with those in one that does not, it becomes clear that the private copying levy has no appreciable impact on product prices;
- L. 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;
- M. 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 this remuneration should be paid indirectly;
- N. whereas the private copying levy is paid by consumers when purchasing recording or storage media or services, and whereas they are therefore entitled to know of its existence and amount; whereas the amount of the private copying levy should reflect the actual use of such equipment and services for the purpose of private copying of audio, visual and audio-visual material;
- O. 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;
- P. whereas disparities exist between the various models and collection rates for private copying levies, including as regards their impact on consumers and the single market; whereas a European framework needs to be laid down in order to afford a high degree of transparency for rightholders, manufacturers and importers of equipment, consumers and service providers across the Union and whereas, to preserve the underlying stability of the system in the digital age in these days of the single market, the royalty arrangements in many Member States should be modernised and a European framework created in order to guarantee the application of equivalent conditions to rightholders, consumers, manufacturers and importers of equipment and service providers across the Union;
- Q. whereas the exemption and reimbursement arrangements for professional uses which have been introduced in the Member States have to be effective; whereas in some Member States these arrangements are necessary and whereas the judicial decisions adopted in some Member States have not always been applied;
- R. whereas in the case of online works, in terms of both access and sales, licence-granting practices are complementary to the system of private copying levies;

- S. whereas in the digital field in particular, the classic copying process is being replaced by streaming systems in which no copy of the copyrighted works is placed on the user's terminal, and whereas preference should therefore be given to licensing models in these cases;

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, is one of the main drivers of growth in Europe and a wellspring of new and non-relocatable jobs, stimulates innovation and offers an effective means of combating the current recession;
2. Recalls that copyright law should balance the interests of, inter alia, creators and consumers; considers, in this connection, that all European consumers should have the right to make private copies of legally acquired content;
3. Calls on the Commission, therefore, to present a legislative proposal to review Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, including a provision on the full harmonisation of exceptions and limitations, inter alia with regard to private copying;
4. Emphasises that the current fragmented copyright regime needs to be reformed in order to facilitate access to, and increase (global) circulation of, cultural and creative content, in such a way as to enable artists, creators, consumers, businesses and audiences to benefit from digital developments, new distribution channels, new business models and other opportunities, especially in times of budget austerity;
5. Notes that private copying levies currently constitute a source of income which is of varying importance for different categories of rightholder, and that its importance varies significantly between Member States;
6. Believes that the private copying system is a virtuous system that balances the exception for copying for private use with the right to fair remuneration for rightholders, and that it is worth preserving, especially in cases where rightholders are not in a position to license directly the right of reproduction on multiple devices; considers that there is no alternative to this balanced system in the short term; stresses, however, that discussions need to be held in the long term with a view to continually assessing the private copying system in the light of digital and market developments and consumer behaviour and, if possible, exploring potential alternatives that would fulfil the objective of striking a balance between the exception for copying by consumers and the compensation of creators;
7. 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;
8. Invites the Member States and the Commission to conduct a study on the essential elements of private copying, in particular a common definition, the concept of 'fair compensation' – which at present is not explicitly regulated by Directive 2001/29/EC – and the concept of 'harm' to an author resulting from unauthorised reproduction of a rightholder's work for private use; calls on the Commission to look for common ground as regards which products should be subject to the levy and to establish common criteria for the negotiating

arrangement for the rates applicable to private copying, with a view to enforcing a system that is transparent, equitable and uniform for consumers and creators;

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

9. Considers that the private copying levy should apply to all material and media used for private recording and storage capacity where private copying acts cause harm to creators;
10. Stresses that the concept of private copies should be clearly defined for all materials and that the user should be able to access copyright content on all media on the basis of a single payment; calls for arrangements already in force in Member States, such as exceptions and levy exemptions, to be respected and for it to be possible for them to apply in parallel on the market;
11. 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;
12. Recommends, in the case of cross-border transactions, that private copying levies be collected in the Member State in which the end user having purchased the product resides, in line with the judgment in Case C-462/09 (Opus), cited above;
13. Takes the view, therefore, that in order to preclude any double payment in the event of cross-border transactions, private copying levies for the same product should only be able to be collected once by a collective management organisation of a Member State, and that levies unduly paid in a Member State other than that of the end user should be reimbursed;
14. Takes the view that Member States in which levies are currently charged or collected should simplify and harmonise their levy rates;
15. 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;
16. 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 the Member States and rightholders to launch 'positive' campaigns highlighting the benefits of private copying levies;
17. Takes the view that consumers must be informed of the amount, purpose and use of the levy they pay; urges the Commission and the Member States, therefore, in consultation with manufacturers, importers, retailers and consumer associations, to ensure that this information is clearly available to consumers;
18. Urges the Member States to adopt transparent exemption rules for professional uses in order to ensure that they are exempt, including in practice, from private copy levies in compliance with the case law of the Court of Justice;
19. Calls on the Member States to ensure that private copy levies never have to be paid where the media in question are used for professional purposes, and that various arrangements for

the reimbursement of levies paid for professional users are replaced with systems which guarantee that these users are not liable to pay the levy in the first place;

Transparency regarding allocation of revenue

20. Welcomes the directive on collective management of copyright and related rights recently adopted by Parliament and the Council 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 including a special section on the use of amounts deducted for social and cultural purposes;
21. Urges the Member States to ensure greater transparency regarding the allocation of proceeds from private copying levies;
22. Calls on the Member States to earmark at least 25 % of revenue from private copying levies to promote the creative and performance arts and their production;
23. Calls on the Member States to publish reports on the allocation of proceeds in open source format with interpretable data;
24. Urges the organisers of cultural events and performances receiving funding from private copying levies to make their target audience more aware of this by means of additional publicity;

Technical protection measures

25. Points out that the private copying exemption gives citizens the right 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;
26. Stresses that, particularly in the digital age, it is necessary to authorise the deployment of technical protection measures in order to restore the balance between freedom to make copies for private use and exclusive copying rights;
27. Stresses that technical protection measures should not prevent consumers from making copies or rightholders from being fairly remunerated for private copying;

Licences

28. Observes that, despite some streaming access to works, downloading, storage and private copying continue; takes the view that a private copying levy system is therefore still relevant in the online environment; stresses, however, that preference should always be given to licensing models benefiting all rightholders if no copies of the copyright work are permitted on media and devices;
29. Stresses that private copying exception arrangements should apply to certain online services, including certain cloud computing services;

New business models in the digital environment

30. 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 whether these private copies of protected works should be taken into account by the private copying compensation mechanisms and, if so, how this should be done;

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31. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.