



European Federation of Journalists

EFJ response to the EU Consultation on « Fair compensation for Acts of Private Copying »

The European Federation of Journalists (EFJ) is Europe's largest organisation of journalists, representing about 260,000 journalists in over thirty countries. It defends press freedom and social justice through strong, free and independent trade unions for journalists.

The EFJ is highly involved in the defense of solid authors' rights systems in Europe. In particular, we share the view that journalists and press photographers must receive an equitable remuneration for secondary uses of their works.

We take the opportunity of this "*Second call for comments on Fair compensation for Acts of private Copying*" for raising a number of concerns which we believe should be taken into account in the current debate over private copying.

General remarks

Fair compensation for private copying as stated in article 5. 2 b) of the EU Directive 2001/29/EC provides journalists and press photographers with a just financial return for the secondary use that is made of their work (audiovisual, print, photographs) be it saved on an ipod, a computer hard disk, a USB key or a CD Rom.

In this respect, the EFJ believes that the wording "fair compensation" referred to in Article 5.2 b) means "equitable remuneration" because recital 35 of this directive rules that the rightholder must receive a payment

We believe that the system of levies to compensate for private copying functions well. Levies enable the reproduction of journalistic works and wide use and access for all consumers, including creators, to copyright protected works. Levies therefore play a crucial role in maintaining the circulation of information, especially in new media.

Moreover, the distribution of copyright levies functions well. Collecting societies ensure that the amount collected are duly distributed to all right holders at low costs and journalists, photographers and their representatives take part in the decision making process over fees' distribution. The equal participation of all rightholders in collecting societies' decisions ensures that these organizations function democratically.

A) Main characteristics of the private copying system

The private copying systems are organized nationally. As stressed in the background document provided by the European Commission on this consultation, the majority of EU countries opted for remuneration for private copying and a few did not (UK, Ireland, Luxembourg, Cyprus and Malta).

Remuneration in the form of a levy should be paid for any device which allows for the private copy of a copyright-protected work, either alone or in conjunction with other devices. This should be done according to objective, transparent and non discriminatory criteria. The criterion for imposing a levy on a device should only depend on whether the equipment or media can be used for private copying.

The fairest method to determine the private copy levy rate should take into account the stocking capacity of the device and the importance of the use of such device for making private copy.

We note with concern the UK government proposal that the "fair compensation" referred to in Article 5.2 b might be zero. This is, we believe, contrary to EU law.

B) Economic, social and cultural dimension of private copying levies

Part of the money collected via levies is used by collecting societies for developing journalism training, including offering scholarships and grants (see also information on VG Bild Kunst, Germany, at <http://www.bildkunst.de/>).

Decisions on the organization of such activities are made by collective societies' boards, which represent the interests of all right-holders. A Community-wide threshold for cultural fund deduction is therefore not necessary when decisions are taken democratically, within collecting societies, involving all rightholders.

Recent facts on levies systems can be found in the 2007 Econlaw study commissioned by GESAC, available at <http://www.econlaw.es/ingles/pdf/PCR.pdf>. In the Netherlands, a survey shows that consumers prefer levies to Technical Protection Measures (TPMs). Computer club HCC surveyed its members in October 2006. Results show that only 16 per cent wanted to scrap the levy and strengthen the security features on media like DVDs (see www.nu.nl/news.jsp?n=845275&c=54).

D) Professional users

To distinguish between professional and non-professional users is not appropriate. It is difficult to prove that a professional user is not making a copy for his/her private use, or *vice versa*. Professional users should not therefore be exempted from payment in the first place, nor should they be entitled to a refund after payment.

F) Consumers' issues

Remuneration for private copying should reflect reality. Consumers' surveys should be encouraged to support this.

Media convergence is not an argument against levying the different elements in a chain of equipment used for copying journalistic works. Convergence is a constant evolution from the beginning of analogous copying techniques. It is therefore important to assess what consumers do with the media/equipment especially in the case of multifunctional devices.

G) Double payment

A distinction is to be made between the initial download of a journalistic work, for which rights-holders are remunerated through a DRM-based payment, and the subsequent copies that a consumer may make from the purchased work and for which the EU directive 2001/29/EC provides for a fair compensation. This distinction illustrates two different uses of a work.

H) Alternative licensing

Journalists may wish to refer the licensing of their rights to Creative Commons and decide whether to make their work available for free or upon payment of a fee and monitor its uses.

Levies can apply to a device aimed at private copying even though the journalist has agreed to make his/ her work accessible for free. Since this is a different use from the exclusive right for which the journalist has given his consent to, remuneration for private copying is not an issue.

I) Distribution issues

Annual levy payment distributions work well. First, more frequent payments would unnecessarily increase administrative costs. Second, sums to be allocated must be decided within collecting societies' general meetings, which cannot convene too often for practical reasons.

Cross-border distribution requires that bilateral agreements are signed between collecting societies. These issues can be directly addressed amongst collecting societies. No Community-wide action is necessary.

The average administrative cost (including collection and distribution) represents about 10% of the collected revenue.

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