



**Independent  
Retail Europe**

**PUBLIC CONSULTATION  
ON THE REVIEW OF THE EU COPYRIGHT RULES  
- COMMENTS OF INDEPENDENT RETAIL EUROPE -**

**28 FEBRUARY 2014**



*Directive 2001/29/EC enables Member States to implement in their national legislation exceptions or limitations to the reproduction right for copies made for private use and photocopying (1). Levies are charges imposed at national level on goods typically used for such purposes (blank media (USB sticks, CDs), recording equipment, photocopying machines, mobile listening devices such as mp3/mp4 players, computers, etc.) with a view to compensating rightholders for the harm they suffer when copies are made without their authorisation by certain categories of persons (i.e. natural persons making copies for their private use) or through use of certain technique (i.e. reprography). In that context, levies are important for rightholders.*

*With the constant developments in digital technology, the question arises as to whether the copying of files by consumers/end-users who have purchased content online - e.g. when a person has bought an MP3 file and goes on to store multiple copies of that file (in her computer, her tablet and her mobile phone) - also triggers, or should trigger, the application of private copying levies. It is argued that, in some cases, these levies may indeed be claimed by rightholders whether or not the licence fee paid by the service provider already covers copies made by the end user. This approach could potentially lead to instances of double payments whereby levies could be claimed on top of service providers' licence fees (2) (3).*

*There is also an on-going discussion as to the application or not of levies to certain types of cloud-based services such as personal lockers or personal video recorders.*

## **21. In your view, is there a need to clarify at the EU level the scope and application of the private copying and reprography exceptions (4) in the digital environment?**

---

### **NO**

The digital environment is causing fundamental changes in the way media is stored, and copied. Media is frequently transferred between many personal devices, often via the cloud. This makes it impractical to track when, and where, a copying levy should, or should not, be charged.

In addition, it is not possible for a distributor, importer, or manufacturer of a device, to carry out such tracking. Data protection legislation alone would be a major obstacle to such an activity. Moreover, there is no certainty whether or not a device will be used for the storage of copyrighted material.

For these reasons, the question of clarifying the scope of private copying and reprography exceptions in the digital environment is not relevant. A more relevant approach would be to replace the entire private copying and reprography regime with a system of licenses suited to the digital environment.

---

(1) Article 5. 2)(a) and (b) of Directive 2001/29.

(2) Communication "Unleashing the Potential of Cloud Computing in Europe", COM(2012) 529 final.

(3) These issues were addressed in the recommendations of Mr António Vitorino resulting from the mediation on private copying and reprography levies. You can consult these recommendations on the following website: [http://ec.europa.eu/internal\\_market/copyright/docs/levy\\_reform/130131\\_levies-vitorino-recommendations\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf).

(4) Art. 5.2(a) and 5.2(b) of Directive 2001/29/EC.

**22. Should digital copies made by end users for private purposes in the context of a service that has been licensed by rightholders, and where the harm to the rightholder is minimal, be subject to private copying levies? (5)**

---

**NO**

We believe that private copying and reprographic levies will disappear in the near future as a result of technological progress, the discussions on a transatlantic market, and the current economic crisis which already puts a lot of strain on retailers, particularly SME retailers in this sector. The current system should be replaced by a simple licensing regime, as explained above.

With this in mind private copying and reprographic levies should be withdrawn for all digital, and ultimately physical, copies.

**23. How would changes in levies with respect to the application to online services (e.g. services based on cloud computing allowing, for instance, users to have copies on different devices) impact the development and functioning of new business models on the one hand and rightholders' revenue on the other?**

---

Not applicable for an association.

**24. Would you see an added value in making levies visible on the invoices for products subject to levies? (6)**

---

**NO**

There is no added value in making levies visible on invoices for relevant products.

Invoicing systems are expensive to develop, and to change. If levies need to be made visible on an invoice this would be costly for retailers, who would be forced to make the necessary changes to their invoicing systems. SME retailers, of which there are many in this sector, would suffer disproportionately from such cost burdens. Due to the lower scale, turnovers and margins of SME electronics retailers, and the ever increasing pressure from online sales, they are unable to absorb such costs.

Ultimately the costs of invoicing changes will be passed onto consumers. It is doubtful that consumers would appreciate price rises, just to have a copying levy visible on their invoice. This is especially the case given that many consumers don't even know what a copying levy is.

*Diverging national systems levy different products and apply different tariffs. This results in obstacles to the free circulation of goods and services in the Single Market. At the same time, many Member States continue to allow the indiscriminate application of private copying levies to all transactions irrespective of the person to whom the product subject to a levy is sold (e.g. private person or business). In that context, not all Member States have ex ante exemption and/or ex post*

---

(5) This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies

(6) This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

*reimbursement schemes which could remedy these situations and reduce the number of undue payments (7).*

**25. Have you experienced a situation where a cross-border transaction resulted in undue levy payments, or duplicate payments of the same levy, or other obstacles to the free movement of goods or services?**

---

**YES**

Today we see that cross-border transactions are regularly executed not respecting the levy-laws in the country where the product is sold. Thus regular national sales have to compete with cross-border sales, where regularly no levies are charged or paid. This is an open door for fraud and results in an uneven playing field between companies selling nationally and those selling into a jurisdiction from across a border.

If levies are not abolished, as we recommend, a unique EU-wide levy % would be welcomed, which should be charged at manufacturer/importer level. This would bring more clarity to retailers when purchasing goods outside of their Member State.

**26. What percentage of products subject to a levy is sold to persons other than natural persons for purposes clearly unrelated to private copying? Do any of those transactions result in undue payments? Please explain in detail the example you provide (type of products, type of transaction, stakeholders, etc.).**

---

Not applicable for an association.

**27. Where such undue payments arise, what percentage of trade do they affect? To what extent could a priori exemptions and/or ex post reimbursement schemes existing in some Member States help to remedy the situation?**

---

Not applicable for an association.

**28. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved?**

---

Under the existing system, a retailer only has to organize himself when purchasing goods outside of his Member State, which is the case for the large majority of the retailers. If this were to be changed as recommend by Mr Vitorino, at retailer level this would put an even heavier burden on retailers all over Europe, including many SMEs. It would require more investment than under the current system to ensure that the levies are properly collected and reported on all products sold. If the Vitorino recommendations were to be implemented, we would have serious doubts as to how these levies

---

(7) This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

are to be charged and controlled for online sales, both from within, and outside, the EU. Moreover in this scenario, retailers would be forced to know all local levy laws.

Again in relation to the recommendations elaborated by Mr Vitorino, certain Member States formerly have used similar reporting systems to the one proposed by him, where retailers had to report the sales of radio & TV units with the objective of controlling the presence of those products at consumer level, for the collection of Radio & TV taxes (in order to support national broadcasting). Given the heavy burden this placed on retailers, we support the abolition of these archaic systems. Indeed many of these systems were eliminated 10 years ago and we oppose their reintroduction.

If such systems were to be re-introduced, we foresee only additional red tape. We will evolve from a monitoring system of a controllable amount of manufacturers and importers in the EU to a multitude of controlling points, all retailers in the EU, which will easily amount to at least 200,000 points of reporting on a monthly basis, or 12 times a year which equals 2,400,000 reports. It is pertinent to ask the question, who is going to control all this?

What is more, many of these retailers are specialized SMEs, operating in a highly competitive market where retail margins are known to be small and continue to recede as a result of high competition, particularly from online retailers.

It is in the advantage of manufacturers and wholesalers to rid themselves of the burden of reporting, but they are by far the biggest and most powerful players in this supply chain and hence they are in the optimum position for fulfilling these administrative requirements at the same time this would result in lower costs for consumers.

---

Original version: English – Brussels, 28 February 2014

*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for the main groups of independent retailers in the food and non-food sectors.*

*Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.*

*Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.*

*Independent Retail Europe represents over 355,000 independent retailers, who manage more than 545.000 sales outlets, with a combined retail turnover of more than 641 billion euros and generating a combined wholesale turnover of more than 320 billion euros. This represents a total employment of more than 5.000.000 persons.*

*More information about Independent Retail Europe under [www.independentretaileurope.eu](http://www.independentretaileurope.eu)*