



Mr. Enzo Moavero Milanesi
Minister for European Affairs
Italy

Brussels, 17 April 2013

Re: Private copying

Dear Minister Enzo Moavero Milanesi,

EU Member States will be asked to give their views on “private copying levies” at the Competitiveness Council of 29-30 May 2013. In view of this meeting, the undersigned organisations representing authors, performers and producers would like to draw your attention to the recommendations presented by Mr Antonio Vitorino on 31st January.

We strongly disagree with the main orientations recommended by Mr Vitorino which would be highly detrimental to rightholders, to the development of European culture and also to consumers. The parties that would benefit are only importers and manufacturers of recording media/devices, which are mainly non EU companies.

By stating that “copies made by end-users for private purposes from a licensed service do not cause any harm” (and therefore not requiring the corresponding remuneration from private copying levies), Mr Vitorino basically suggests eliminating private copying levies, notably for so called “new business models in the digital environment”.

This appears to represent a gross misconception of the private copying system. Licensed services receive authorisation for the exploitation of works based on the specificities of each business model, while the remuneration for private copying is organised through the levy-based system to guarantee that users are able to make private copies, whatever the service’s business model.

With this recommendation, Mr Vitorino proposes to get rid of the exception when services are licensed, under the assumption that rightholders should include the price of private copying in the authorisation. Such proposal would:

- disconnect the private copying remuneration from the actual private copies made by end-users;
- deprive consumers of their ability to legally make copies for private purposes unless such copies have been authorised by rightholders. This would involve the re-introduction of technological protection measures which consumers have massively rejected in the past;



- imply that rightholders would have to negotiate the remuneration for private copies made by consumers with the corresponding services. Not only are these services in a very dominant negotiation position, but also any supplementary remuneration obtained risks increasing the price paid by consumers to have access to such services. Moreover, without the fair compensation system, some rightholders might even not have the chance to enter into negotiation with the services for a payment of private copying of their works.

Several other proposals recommended by Mr Vitorino who did not consider the rightholders' proposals to improve the levy-based systems would also have significant negative consequence:

- Shifting **liability to pay levies from the limited group of manufacturers and importers to the multitude of retailers** would make the administration and enforcement of the private copying system uncertain, costly and favour the development of fraud.
- The recommendation that **private copying levies should not apply to goods sold to companies** does not take into consideration the fact that devices acquired by legal entities can also be used for private purposes by the employees of such users (e.g. smartphones, tablets); the exemption from the obligation to pay the private copying levy should therefore be based on the effective use made of the media/device, and not on the nature of the user.
- Lastly Mr Vitorino's position that **the decision of whether a product is subject to a levy should be left to Member States** seems to be in contradiction with his own statement that *"the diverging approaches taken by Member States both towards the determination of products subject to levies and towards the methodology for setting the tariffs lie at the heart of the challenges levies pose to the free movement of goods and services in the Internal Market"*.

We are deeply disappointed that the "mediation process" did not appropriately test the ideas concluded by the mediator with the parties of the mediation to find a common understanding before their adoption. It has been observed that the ICT industry has been extremely satisfied with the results of this exercise, while the rightholders jointly reflected their strong disagreements with the recommendations. This clearly illustrates the failure of the "mediation process" as a whole.

Private copying compensation, which finds its justification in European law,¹ the judgments of CJEU,² as well as the international law,³ is a very important source of revenue for rightholders. In the EU, it represents on average around 5% of total copyright revenues of authors and more than 35% of the total amount collected by collective rights management organisations for performers. Private copying remuneration schemes do not only benefit rightholders but also bring substantial advantages for consumers, by legally allowing them to make private copies of protected content. It is also a motivation for the consumer electronics industry to develop new commercial services and products for consumers.

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

² CJEU C-462/09 *Opus* and C-467/08 *Padawan* judgements

³ Berne Convention Art 9.2.

The logo for AEPO-ARTIS features the text 'AEPO-ARTIS' in a blue, sans-serif font. A yellow brushstroke underline is positioned beneath the 'O' in 'AEPO' and extends to the right.The logo for EUROCOPYA consists of the word 'EUROCOPYA' in a blue, serif font. Below it, the text 'European Federation of Joint Management Societies of Producers for Private Audiovisual Copying' is written in a smaller, blue, sans-serif font.

In most EU countries private copying remunerations have a positive role in the development of cultural projects and on the social protection of authors. A number of Member States of the EU, including Italy, specifically mention in their law that a certain percentage of collection should or could be used for cultural and social purposes.

We call on you to reaffirm the importance of private copying levies for the cultural and creative ecosystem, to reconsider Mr Vitorino's recommendations and to envisage a more balanced and positive approach to improve the implementation of private copying remuneration system within the Internal Market.

Yours sincerely,

Xavier Blanc, Secretary General

AEPO-ARTIS

Association of European Performers' Organisations

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European Federation of Joint Management Societies of Producers for Private Audiovisual Copying

Véronique Desbrosses, General Manager

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