



MEDIATION IN PRIVATE COPYING LEVIES DIALOGUE

Letter sent on 5 January 2012 to Mr. Antonio Vitorino,
Mediator in Copyright Levies Dialogue

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 EC register for interest representatives: identification number 9505781573-45 

Dear Mr Vitorino,

On behalf of the European Consumer Organisation (BEUC), I would like to congratulate you for your appointment by Commissioner Barnier as mediator in the dialogue on private copying levies. I am confident that your experience as former European Commissioner will be crucial in ensuring that the inefficiencies of the current levies system are addressed to the benefit of both consumers and creators, while ensuring the development of a Digital Single Market.

BEUC has long been involved in the debate on copyright levies and has participated in the stakeholder dialogue established by the European Commission in 2008. Our position has been that the current fragmentation of national rules on copyright levies is not compatible with the objective of establishing a Digital Single Market to the detriment of both consumers and creators.

Due to the current divergences in the scope of the private copyright exception and in the methodology used for the calculation of the levies' tariffs, consumers may have to pay different prices for the same product depending on their nationality and/or place of residence. In addition, copyright levies constitute a system of "rough justice", since all consumers have to pay irrespective of whether they engage in acts of private copying or not.

A recent independent report by the UK Intellectual Property Office¹ described the "the system as deeply irrational", while Prof. Mario Monti in his report on the "A new strategy for the Single Market"² stressed the need for urgent reform of the copyright levies system.

We therefore urge you to adopt a holistic approach and examine all aspects related to copyright levies and not only those where agreement between stakeholders can be achieved. A substantial reform is required to enable the development of a Digital Single Market and to reflect the legal and technological challenges raised in the digital environment.

BEUC considers that the reform of the current system should reflect the following principles:

- **Transparency:** Copyright levies are paid by consumers who are not informed that a levy for private copyright is integrated in the final price. A visible fee must become mandatory, in the format of a clear breakdown of the price. Consumers have an undeniable right to know what they are paying for.
- **Convergence:** With the convergence of digital technologies, devices and media are used for multiple purposes; this is the case with personal computers, mobile phones, MP3 players which provide for different functions that are not related to private copying. Only those devices that are primarily used for private copying should bear a levy.

¹ "Private copying and fair compensation: an empirical study of copyright levies in Europe" October 2011, available at <http://www.ipo.gov.uk/ipresearch-faircomp-201110.pdf>

² http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf

- **Actual use:** copyright levies should reflect the actual use consumers make of devices, as well as the purpose of private copying.
- **Actual economic harm:** In order to determine the level of that compensation, account must be taken of the actual harm suffered by the author as a result of the act of reproduction concerned, while prejudice which is 'minimal' must not give rise to a payment obligation. This principle has been endorsed by the European Court of Justice in the Padawan case³.

It is equally important that you look at **alternative models of fair compensation**, beyond the copyright levies. We remain confident that the progressive phasing out of copyright levies would be beneficial both to consumers and creators. Consumers would buy devices at lower prices and consume more legal digital content legally. Creators will receive direct compensation from the licensing of their work for online consumption through a variety of business models. The benefits of removing copyright levies would create a benefit for the European economy of between €975m and €1880m per year⁴.

We strongly hope that you will adopt an ambitious approach in your role as mediator in an effort to create a rational and balanced system that reflects the digital reality and responds to consumers' expectations.

We remain at your disposal to further discuss the issue with you at your best convenience.

Yours sincerely,

Monique Goyens
Director General

Cc: Mrs Kerstin Jorna, Deputy Head of Cabinet of Commissioner Michel Barnier;
Mrs Maria Martin-Prat, Head of Unit D1 on Copyright, DG Internal Market.

³<http://curia.europa.eu/juris/document/document.jsf?text=&docid=82644&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=239275>

⁴ "Is there a case for copyright levies?, an economic impact analysis, April 2011, Oxera available online at : <http://www.oxera.com/cmsDocuments/Is%20there%20a%20case%20for%20copyright%20levies%20May%202011.pdf>