

STAKEHOLDER CONSULTATION ON COPYRIGHT LEVIES IN CONVERGING WORLD ASIMELEC POSITION

Question 1:

- A. Do you agree with this description of copyright levies?
- B. Are there elements that you consider should be added?
- C. Do you believe it efficient that the debtor of the copyright levy is not the party that carries out and controls the private copying?

Answer to Question 1:

A: Copyright levies were introduced in Spain in 1992. The description indicated was correct, however, according the description;

“The copyright levy system was introduced on the basis that there were no effective means to monitor and therefore authorise acts of copying by consumers”

if the copyright system was introduced for compensating copying acts made by consumers, why the consumers were not determined as debtors of this compensation, instead of importers, distributors and manufacturers?

This system is indiscriminate, since companies, professionals and government services have to pay levies in spite of the use is totally contrary to indicated description.

B: Additional, Copyright levies could be described as an indiscriminate and disproportionate compensation, that right now, it has been transformed by collecting societies as a business model.

C: As mentioned above, according the responsibility of private copying by the consumer, the definition of debtor, should be modified from ICT industry to retailers, since they are the latest business link before the consumer

Question 2:

- A. Do you agree with this description?
- B. Are there elements that you think should be added?
- C. Are you satisfied with how the collection and distribution of copyright levies functions?
- D. Do you believe that rights holders who are (1) nationals of other Member States or who may be resident in another Member State other than that of which they are nationals; or (2) third country nationals receive a proportion of copyright levies that corresponds to the actual amount of copying of their works or other subject matter (such as phonograms of broadcasts) including in comparison to nationals themselves?
- E. How can current distribution keys reflect the actual amount of copying of works or other subject matter?
- F. Do you think that there should be greater accountability of collecting societies with respect to the application, collection and distribution of copyright and if so, in what form?

Answer to Question 2:

A: Yes, we agree

B,C: We have access only to the official statements that yearly the collecting societies have to report to the authorities, however the scope of this reports are not enough for considering the share systems and administrative costs.

Nevertheless we are sure, that the amount of the administrative cost should be enough for controlling the markets and avoiding the strong fraud bags.

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Independent information confirms, that the fraud in Spain achieves to 50%. The behaviour of collecting societies for avoiding this situation is unacceptable. Day by day the ICT industry reports actions detected in the market for avoiding the payment of the levies, being the results of the pursuit by collecting societies invaluable.

How have we consider this situation?

ICT industry considers that the amounts of levies collected is enough according the expectations, being not foreground to pursuit the cheat companies.

D: We do not have any opinion about.

E: We do not have any opinion about.

F: It is necessary more transparency of the application of copyright levies and specially a rigorous estimation of the harm produced by private copying vs. the levies collected. The collecting societies have avoided to report any information about this.

Question 3:

A. What conclusion can be drawn from the above Table with respect to the relationship between the levy collected and distributed and the administrative cost of distribution?

B. What conclusion can be drawn from the above Table with respect to the ratio of distribution at national level as opposed to distribution to other Member States?

Answer to Question 3:

A: The table shows information of one of the seven Spanish collecting societies. We ignore, the levy collected, distributed and the administrative cost of the rest.

However, according the information provided in the table, the management fees retained by SGAE seems enough to control the 100% of the market with efficient arms.

B: We ignore the fraud rate of other Member States, nevertheless rates of 50% in Spain are totally unacceptable. SGAE does not invest enough for controlling the market. As responsible of the controls, has to assure the normal development of the Spanish market.

Question 4:

A. Do you agree with the above assessment on the growth of digital and technologically protected sales?

B. Are there other elements that you consider relevant?

C. in your opinion, which system can provide better remuneration of right holders –licensing models through digital sales or the copyright levy system?

D. Do you think that the current levy system has an impact on the development of digital sales in Europe?

Answer to Question 4:

A,B: *We could not give any opinion about the mentioned study. However, we consider that the unauthorized downloading should not be compensated by the levies, since it can not be considered as private copying.*

On the other hand if the expectations of sales of music protected will increase from € 108 million to € 594 million in 2009, how will levies be reduced for compensating this increase?

C: *We consider that the DRM and TPMs will be efficient for collecting the remuneration by the right holders. Copyright levies are systems of subsidizing to Collecting societies. Should be the ICT industry and the consumers to carry the costs of them?*

D: *Depending on the expectations of the collecting societies. If the levies compensate only the harm and levies are only considerate for the devices and blank media that can guarantee 100% of private copying, the rates would be very low. Nevertheless, if collecting societies wish to maintain their business model –in spite of, the harm caused- the rates will continue high, this will be a barrier of the developing information society.*

Question 5:

A. Do you agree with the above assessment?

B. Do you believe that private copying causes harm to rights holders and if so, how can this harm be reliably quantified?

C. How can harm to rights holders be identified? Have situations been identified or account been taken of instances where no obligation for payment would arise on the basis that there is no harm?

D. How can harm be quantified where the equipment or media has a dual or multifunction?

E. Are there other elements that you consider relevant?

Answer to Question 5:

A: *TIC industry should not be responsible of demonstrate the harm of private copying. This should be prove by Colleting societies.*

B: *As already mentioned, the collected levies and the future expectations overcome the real harm. DRM and TPMs will avoid the generalization of copying capacity.*

C: *Consumer behaviour studies should guarantee the value of the harms produced. Other kind of damage, like piracy and unauthorized downloading have not be compensated by levies.*

D: *Consumer behaviour studies*

E: *As already mentioned, if the debtor pass to be a retailer, the levies would be only paid by the consumers.*

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Question 6:

- A. Do you believe that levies should be applied to hard disks or removable memory cards as "blank media"?
- B. Do you believe that these items are dedicated to the production of private copies?
- C. Do you believe that the dedicated function of an item or recording device should play a role in deciding whether a levy is applied to it?
- D. Do you believe that levies should only be applied to equipment and/or blank media that are dedicated to the production of private copies?
- E. Do you think that there is an objective and verifiable standard on whether equipment or media is dedicated to the production of private copies?
- F. What kind of legal disputes are you aware of concern the issue of whether certain recording equipment or other items are dedicated for the production of private copies?

Answer to Question 6:

A,B,C,D: Private copying is possible with different digital devices which are being sold in the consumer markets. The consumer uses of them should be considered for fixing levies. We demand that the capacity of copying has not be the bottom line of considering pay or not pay. The TIC industry wish that the dedicated use would be the main point for deciding if the levies are applied.

E: Of course, the main advantages that new devices gives to consumer, are an excellent information of the product dedication.

F: The new Spanish law consider that levies are applied if the devices and blank media are able to make private copies, obviating the main use of them. This regulation could cause a large legal disputes .

Question 7:

- A. Do you agree with the above analysis?
- B. Do you consider that multi-function equipment or multi-purpose of the sort described above should attract a copyright levy and if so which criteria should apply?
- C. Do you consider that infrastructure services should attract a copyright levy in a converging world?
- D. Do you believe that there is a link between levies on multi-function devices (such as a computer hard disk) and the development of the digital economy?
- E. Do you think that copyright levies on multi-function devices have an effect on new business models for the distribution of content?

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Answer to Question 7:

A,B,C,D: The capacity of copying has not be considered as the final use will be private copies. We should not forget, that the developing of the information society have to assure the free and easy access of any economic capacity of all the consumers. Levies applications for multi-function products could represent increase of the end-user prices which will limit the access of the consumer and overcome the amount collected by the collecting societies.

E: Levies applied like current model will represent an important increase of international e-commerce, since the consumer will purchase by internet from on-line retailers based in other States members. The exportations are excluded of paying levies. How can be collected the levies if consumers are the importers?

We have also to consider, that levies applied to multi-functional could limit the future introduction in the local markets of new generation equipments, since the high cost of them (due to the levy rates) will make impossible -for economic reasons- the access of the consumers.

Question 8:

A. Should consumers that buy equipment or blank media from online retailers in other Member States for delivery offline be considered importers?

B. How can online retailers or consumers have certainty in cross border transactions that goods can be marketed and bought at a particular price?

C. Do you consider that selective enforcement of copyright levies distorts competition to the detriment of major producers of equipment or media?

Answer to Question 8:

A: This system is not possible to apply. If collecting societies are not able to control companies, the consumer will be utopian.

B: The European harmonization of products and rates are necessary, also the consideration of the retailers as a debtors instead of importers would be important. The exportations into the EU markets should not be excluded.

C: There are thousands of examples that confirm the distortion of competition. A lot of organizations have found into the consumer electronics a perfect system of fast profits and to whiten money.

Question 9:

A. How do you explain the above discrepancies?

B. Are these discrepancies due to the fact that copyright levies are being litigated in many jurisdictions?

C. Are the above discrepancies due to the fact that enforcement of levies remained selective due to copyright levy avoidance?

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Answer to Question 9:

A: TIC industry estimates the levy amount using the reports of its members. However the collecting societies do not prove the real amounts collected.

B,C: If the collecting societies increase the efforts of collecting the copyright levy avoidance, market distortions will be reduced and they will raise the amounts.

Question 10:

Does the above text correctly reflect the different stakeholders' positions?

Answer to Question 10:

The collecting societies have not yet accepted, that the current levy systems is a "business model"

In the latest ten years, the TIC Industry has invested according with phonogram and film producers for incorporating efficient DRM and TPM's.

For incorporating some DRM systems, the manufacturers have to pay licences of use. If DRM are no sufficiently secure, why has it to pay to install?

We bet to efficient DRM and TPM's systems and no more levies systems in the near future.