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DIGITALEUROPE's Comments on the Commission's Communication on Copyright from December 9

Brussels, 2 February 2016

1. Link between compensation and harm to right holders

Our members are suffering daily due to inconsistent and non-transparent harm assessment and tariff setting processes for all products in many Member States. Without transparency in the harm assessment and the tariff setting processes, it is impossible to Digital Europe's members to determine if the harm assessment is fair, or if there is, for example, a mistake on the counting of private copies that are allegedly causing harm which leads to the setting of grossly inflated levy tariffs and, once again, a situation of over-payment of the levies by consumers for illusory harm.

An even worse situation arises in some Member States, where collecting societies arbitrarily claim tariffs retrospectively, either based on unilateral publication by collecting societies of products that they believe should be subject to levies, or because of making a re-interpretation of existing laws making a broad definition of products (e.g. "devices technically suitable for private copying") subject to levies. In such cases, importers and manufacturers have been denied the opportunity to "pass-on" the levy cost through their distribution chains.

A survey conducted by one of our members shows that, in the case of mobile phones, the range of levies imposed on manufacturers/importers for a 16 GB mobile telephone goes from a 0.48 EUR levy tariff in Slovenia to a 10.5 EUR levy tariff published by the collecting society in Hungary, which is about 20 times higher. It is simply impossible to believe that the copying habits of EU citizens are so different in individual Member States.

The incredible differences in tariffs combined with a multitude of diverse criteria for levy payments concerning the same products among the Member States fortifies our belief that there should be harmonized processes for harm assessment and setting tariffs at the EU level. This is not to suggest that all tariff levels in all Member States should be harmonized, but that underlying principles and methodology used in accessing harm and setting tariffs for the same products or product categories should be same.

We believe that there are no justified reasons for tariffs on the same products to be so different as to make a product uncompetitive in a Member State market due to an excessively high levy tariff imposed on a particular product by a particular Member State. These unjustified and inflated levy tariffs provide enhanced incentives for unfair competition by unscrupulous traders selling products without paying levies. As companies selling basically the same products in different Member States, we believe that the approach on how to assess the alleged harm of private copying should be the same in every Member State. Inasmuch as the EU Copyright Directive provides for a uniform concept of "fair compensation" at EU level, it is only logical and prudent that the harm assessment, which is fundamental to this harmonized definition, should be recognized as an EU methodology applicable to all Member States.

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This objective is aligned with recommendations made by Mediator Vitorino about the need for harmonised harm assessment processes:

"More coherence with regard to the process of setting levies should by assured by: Defining 'harm' uniformly across the EU as the value consumers attach to the additional copies in question (lost profit); [and] Providing a procedural framework that would reduce complexity, guarantee objectiveness and ensure the observance of strict time-limits."[1]

We strongly agree with Mediator Vitorino that a uniform notion of (actual) harm and its quantification based on sound economics is essential for a correct understanding and definition of the level of fair compensation, regardless of the practical arrangements adopted by Member States in order to put compensation systems into practice. In particular, we agree with Mediator Antonio Vitorino that:[2]

1) *"There must be an explainable and clear correlation between* [the level of the compensation] *and the definition of 'harm'."*

2) *"To determine the 'harm' sustained by rightholders because of the copies made within the scope of the private copying and the reprography exceptions one needs to look at the situation which would have occurred had the exception not been in place. In particular, one needs to assess the value that consumers attach to the additional copies of lawfully acquired content that they make for their personal use. It would allow the estimate of losses incurred by rightholders due to lost licensing opportunities ('economic harm'), i.e. the additional payment they would have received for these additional copies if there were no exception. I think it is fair to say that, in the majority of cases, this amount would neither reach the level comparable to the value of the initial copy nor would it be so negligible that it could be completely ignored."*

3) *"It would be necessary to assess not the actual number of copies made but rather the hypothetical (lower) number of copies that could have been licensed in the absence of the exception."*

4) *"Measuring all the copies actually made by virtue of the exception without taking into account the consumers' willingness to pay for these copies if there were no exception could lead to compensating to a greater degree than EU law actually requires."*

A notion of harm as copyright royalties that are actually – and not hypothetically - lost by holders of the right of reproduction - and not profits lost by other parties, such as publishers - as a result of legitimate copying made without its authorization ("lost profit") would be consistent with case law of the CJEU.

In such regard, recent jurisprudence of the CJEU in Reprobel case (C-572/13, para. 69 and 73) settles the controversy about whether harm should be assessed as actual or potential harm, by providing that the "*fair compensation is, in principle, intended to compensate for the harm suffered resulting from the copies actually produced ('the criterion of actual harm suffered')"* and that whilst it may be legitimate to presume use for

[1] "Recommendations resulting from the Mediation on Private Copying and Reprography Levies" by Antonio Vitorino (31 January 2013), page 5.

2 "Recommendations resulting from the Mediation on Private Copying and Reprography Levies" by Antonio Vitorino (31 January 2013), pages 20-22.

private copying (only) when reproduction devices are made available to natural persons acting for private purposes, "*by contrast, it cannot be inferred from the case law (…) that all persons to whom those devices are made available are to be deemed to take full advantage of the technical capacity of those devices, that capacity corresponding to the maximum number of copies which can technically be produced within a given period*." And then, it provides that *"the introduction of a levy fixed prior to the making of copies cannot, in principle, be authorised except in the alternative, in the event that it is impossible to identify the users and, consequently, to assess the actual harm suffered by the rightholders."* (Reprobel, para. 82).

The recent Opinion of Advocate General Szpunar delivered on January 19, 2016 in Egeda and Others case (C-470/14) is explicit on this point when indicating that harm derived from private copying exception must be conceived as a "*lucrum cessans*" to be calculated not individually but globally for all right-holders (see para. 23 and 60).

This case law results in:

1) Requiring that a prior assessment of the average amount of copies made within the scope of the relevant exception and the calculation of actual harm derived from that legitimate copying is completed.

2) Precluding copyright levy systems, such as the one disputed in the Reprobel case, where a lump-sum levy is set solely by reference to the speed at which a device is technically capable of producing copies or by reference to similar technical specifications (e.g. storage capacity), and is not based on the actual harm derived from average legitimate copying by end-users.

3) Precluding the implementation of a copyright levy system where alternative means are available to assess the actual harm suffered by the rightholders, as it is the case in connection with the reprography exception when operator fees based on the real number of copies produced may be available as an alternative scheme of compensation, or, for instance, in those other situations where compensation may be provided as part of the price paid by users to download contents.

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In this respect, as an example of best practice for harm quantification, we draw your attention to the newly adopted amendments of copyright legal framework in Spain, which defines in Article 3[3] of the Spanish Royal Decree 1657/2012 a transparent process measuring the economic harm to right-holders based on the actual effect on the market of copyrighted works resulting from the making of legitimate private copies.

These amendments are the latest stage in the evolution of the private copying levy system in Spain which was abolished and replaced with a state-funded compensation scheme for rights holders. Finland has also recently replaced its levy system with a state-funded compensation system. The ending of the levy systems in Spain resulted in a notable reduction of prices that were formerly subjected to levies.[4]

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[3] Art. 3 – Amount of Compensation: (…)

2. The amount of compensation is calculated on the basis of the loss actually caused to the holders of intellectual property rights as a result of reproduction by individuals, in any medium, from works already disclosed to those lawfully accessed, on the terms provided for in Article 31 of the revised text of the Copyright Act.

For the estimation of this damage shall be taken into account, inter alia, the following objective criteria:

a) The estimated number of copies made under the terms provided for in Article 31 of the revised text of the Copyright Act, excluding those reproductions made using equipment, digital devices and media playback that are not made available to users private and are clearly reserved for uses other than private copying, and also excluding cases where the payment of compensation is exempt by law.

b) The impact of private copying on the sale of copies of works, considering the degree of real substitute for them by private copies made and the effect which means that the acquirer of a copy or original copy has the possibility of make private copies.

c) The average unit price of each playback mode, the percentage of the price of the original copy that is designed to remunerate the intellectual property rights and the enforcement of intellectual property rights of works reproduced and benefits.

d) The different prejudice to the establishment of private copying limit depending, among other criteria, the digital character or analog reproductions made under the exception, or the quality and shelf life of the reproductions.

e) The availability and use of effective technological measures that Article 160.3 of the revised text of the Copyright Act refers.

3. Subject to the provisions of the preceding paragraph, shall not give rise to a clearing obligation those situations where the prejudice to the rightholder would be minimal play.

4. For the purposes of the provisions of this Royal Decree, without prejudice to the provisions of Article 37 of the revised text of the Copyright Act, no consideration of the following reproductions for private use:

a) made in dedicated to the making of reproductions to the public, or who are publicly available equipment, devices and materials for performing stores.

b) They are subject to collective use or profit, or distribution by price.

c) those made using equipment, devices and supports digital playback which have not been made available to private users and are clearly reserved for uses other than private copying.

[4] In response to unsubstantiated statements by numerous collecting societies concerning the effects to consumer pricing caused by the abolition of the levy system in Spain, Digital Europe requested KPMG to investigate such pricing effects and to prepare a report regarding the same. Digital Europe also requested KPMG to also extend their investigation to Finland, to the extent possible. Main finding in KPMG's report ("Analysis of prices after the elimination of copyright levies in Spain and Finland", 7 December 2015) are the following:

- *"The price of reproduction devices in Spain has fallen after the elimination of copyright levies in January 2012. In particular, the price index of recording media shows a 14% drop in its average value before and after 2012.*
- *Under a reasonably conservative scenario, we find that the average price reduction explained by the abolition of the levies could range, at least, between 5% and 12%.*

The CJEU also acknowledges[5] that the Directive 2001/29 permits "*Member States to provide, in certain cases covered by the private copying exception* (and *mutatis mutandis* by the reprography exception), *for an exception from the payment of fair compensation, provided the prejudice caused to rightholders in such cases is minimal*". Moreover, "*it is within the discretion of the Member States to set the threshold for prejudice, it being understood that the threshold must, inter alia, be applied in a manner consistent with the principle of equal treatment.*" However, no Member State has legislated clear thresholds for such an exoneration.

In such regard, we believe that in order to be consistent with the principle of equal treatment, there should be some harmonized thresholds established for "*de minimis*" harm, which are based on objective criteria, even if their implementation is left to the discretion of the Member States.

To sum up, given the significant Single Digital Market distortions caused by incredible differences in levy tariffs among the Member States, we strongly believe that there are no justified reasons for tariffs on the same products to be so different as to make a product uncompetitive in a Member State market due to an excessively high levy tariff imposed on a particular product by a particular Member State that is not attributed to objective reasons but is mainly driven by the bargaining position of concerned rightholders.

We believe that the Commission should define harmonized harm assessment processes (aimed at determining actual harm, measured as actual IP rights revenues lost as a consequence of legitimate copying above the "*de minimis*" harm threshold) and tariff setting processes (such as uniform time limits for defining and implementing tariffs with no retroactivity) that would be applicable in all Member States.

OUR REQUEST: Commission to provide harmonized harm assessment and tariff setting processes applicable in the EU that are transparent, with strict time limits, no retroactivity, and, reflecting the actual harm (lost profit or "*lucrum cessans*") to right-holders. Tariffs are not based on technical specifications of devices but result from a prior assessment of actual use within the scope of the concerned exception of each category of devices. No levies when alternative means of compensation (e.g. operator fees) are available. Harmonized thresholds are set for "de minimis" harm.

- *In particular, the price of reproduction devices in Spain registered a 5% drop during 2012 as compared to the price of devices sold in France, where copyright levies are still in place.*
- *Consequently, we conclude that the observed price reduction in Spain can be attributed to the levy elimination and is not attributable to mere market trends.*
- *In Finland, recording media prices have registered a 5.5% drop in a yearly average basis since the abolition of copyright levies.*

Our conclusion is consistent with the expected behaviour of the markets under discussion and is also supported by statistical evidence."

[5] See judgments of the CJEU in case C-463/12 (Copydan, paragraphs 56-62) and case C-572/13 (Reprobel, paragraphs 37 and 56).

2. Relation between contractual agreements and sharing of levies

Recent decision of the CJEU in the Reprobel case (C- 72/13; para. 44–49) makes explicit that only holders of the right of reproduction (as outlined under art. 2 of the Directive 2001/29, in conformity with the relevant international treaties) are eligible for fair compensation and that allocation of a share of the fair compensation (either in the form of levies or otherwise) to any other than the original rightholder does not conform with EU law.

Following Martin Luksan case (C-277/19, para. 100), "*it is clear (…) that the European Union legislature did not wish to allow the persons concerned to be able to waive payment of that compensation to them"*.

Thus, publishers may be eligible for fair compensation only in case they had the original condition of authors (e.g. in the context of collective works), but not in their condition of publishers. Any contractual agreement between authors and publishers in order to allocate a share of the fair compensation payable under the private copying and reprography exceptions should be deemed null and void. The same treatment should apply to provisions contained in national law or by-laws of collecting societies that may result in a similar sharing of fair compensation between authors and publishers.

Therefore, national legislations[6] that allocate collected levies not only to authors but also to publishers are precluded by the Directive 2001/29 (and other legal instruments) and must be immediately amended.

This does not mean that authors should be automatically eligible for 100% of the amounts that were previously allocated as fair compensation both to authors and publishers, but an individual assessment of harm suffered specifically by authors should be completed to determine what the correct level of compensation is under the respective private copying and reprography exceptions, as applicable. In such regard, given that "*publishers do not suffer any harm for the purposes of those two exceptions"* [7], it may be the case that a reduction on the rates should be made if any harm to publishers was considered originally to set the level of compensation under existing legislation.

On the other hand, we believe that EU law would prevent Member States to establish a "sui-generis" compensation in favour of publishers, additional to the one owed to authors under art. 5.2(a) or (b) of the Copyright Directive:

- Firstly, following the rationale provided by the CJEU in ACI Adam case (C-435/12, para. 55-58), any such additional payment would imply an additional burden for users to make legitimate copies under the exception that would not conform with the principle of fair balance provided by the Directive 2001/29.

[6] However, there are still several Member States that allocate a share of the levies / fair compensation in favour of publishers, in most of the cases following a tradition they had in place before the transposition of the Copyright Directive 2001/29. Those countries include Belgium, Bulgaria, Czech Republic, Estonia, Greece, Hungary, Lithuania, Poland, Portugal, Romania, Slovenia and Spain.

[7] Reprobel case (C-572/13), para. 48.

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- Secondly, it is also necessary to recall that the objective of the Directive is "*to ensure competition in the internal market is not distorted as a result of Member States' different legislation*". In such regard, whilst the Directive 2001/29 provides Member States with certain discretion on the definition of "*the form, detailed arrangements for financing and collection, and the level of that fair compensation*" (Padawan, para. 37), the Directive 2001/29 must be considered as an exhaustive regulation on the exceptions or limitations to the right of reproduction and the related compensation.

- Thirdly, the Directive 2001/29 permits Member States to "*provide for fair compensation for rightholders also when applying the optional provisions on exceptions or limitations which do not require such compensation*" (recital 36). However, this authorization is restricted firstly to "rightholders" and secondly, to the exhaustive list of exceptions or limitations listed in Articles 5.2 and 5.3 which do not require such compensation [those other than paragraphs (a), (b) and) of Article 5.2]. The provision of a separate compensation in favour of another interested party – the publishers – would infringe such provision.

- Fourthly, the payment of a lump sum amount in favour of publishers by the manufacturers, importers and intra-Community acquirers of devices suitable for reprographic reproduction of copyrighted works upon introduction of the devices in market would contravene Article 34 TFEU (*ex Article 28 TEC*), which prohibits all measures having an equivalent effect resulting in quantitative restrictions on imports. In such regard, is well-known that the CJEU has interpreted Article 34 TFEU broadly and held that its prohibition covers all Member State measures that are "*capable of hindering, directly or indirectly, actually or potentially*" trade in goods among Member States.[8]
  Any such payment can also not be justified under Article 36 TFEU (*ex Article 30 TEC*), not only because any such compensation would not be part of the "*specific-subject matter*"[9] of copyright, but clearly because publishers are not rightholders, as commented above. Moreover, any such provision of additional compensation would not conform with the requirements of necessity and proportionality imposed by Article 36 TFEU, as application it has been broadly argued about when dealing with the existence of less onerous alternatives to secure compensation. In addition any such provision does not conform with Article 36 TFEU as the provision can be construed as "*a means of arbitrary discrimination or a disguised restriction on trade between Member States*".

- Finally, any such "sui-generis" compensation will conflict with the Charter of Fundamental Rights of the EU (2000/C 364/01), in particular with rights protected under art. 17 (right to property), art. 16 (freedom to conduct a business) and art. 11 (right to access to information) and the requirements to limit those rights provided in art. 52 of the Charter.

[8] Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5.

[9] See judgments of the CJEU in *Deutsche Grammophon* (case C-78/70, 1971) and *Phil Collins* (joined cases C-92/92 and C-326/92, 1993).

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Thus, we agree with Opinion issued by the European Copyright Society[10] in the context of the Reprobel case, which concludes not only that the Directive 2001/29 prohibits a system which automatically allocates a part of the reprography or private copying fair compensation to persons other than the authors, but also that Member States should not be free to grant publishers a remuneration right as a related right, as this would seriously reduce the harmonizing effect of the Directive 2001/29.

Moreover, we believe that in the field of reprography, publishers (and authors) can easily provide licenses (either under the form of collective licensing schemes administered by collecting societies or otherwise) and secure a remuneration for reproduction of their published works. In fact, this approach is the predominant situation in Member States, which have opted in their majority to facilitate enforcement of exclusive rights in the field of reprography, phasing out the archaic reprography exception, so that a broad reprography exception is now a relic of the past that is present only in very few Member States (e.g. Belgium). We do not find any justification to keep a general reprography exception subject to compensation, when remuneration for those reproductions (e.g. those made by companies or repro centres) may be easily administered by mean of licenses, enabling that publishers may also get a fair share of those remunerations.

OUR REQUEST: Commission to mandate reforming national systems of fair compensation where a share of the compensation is allocated to publishers, either by law, contracts or otherwise and to prevent that Member States provide for "sui-generis" compensations in favour of publishers additional to the ones to be received by authors. Commission to recommend Member States to opt for exercise of exclusive rights (licensing) in the context of reprography and discontinue broad reprographic exceptions under Art. 5.2.a) of the Directive 2001/29.

[10] Available at http://www.ceipi.edu/fileadmin/upload/DUN/CEIPI/Documents/Opinion_in_Case_C572_13_HP_Belgium_Reprobel_2015-1.pdf

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3. <u>Double payments</u>

Double payments or "over-compensation" may exist in different scenarios, including (i) when products are sold cross-border and there is a levy system in place in the country of origin and the country of destination, and (ii) when cumulative systems of compensation exist (e.g. levies and operator fees).

Similarly, overcompensation also exist when no compensation should be payable – but is paid - because there is no harm.

Furthermore, those situations where right-holders licensed end-users to make copies for private purposes can be assimilated to situations of double payment or overcompensation.

Finally, overcompensation may result from inexistent or ineffective "ex-ante" exemptions, or "ex-post" refund systems, as analysed in Section 5 below.

As it has been provided recently by the CJEU in the Reprobel case (C-572/13, para. 86), *"'overcompensation' would not be compatible with the requirement, set out in recital 31 in the preamble to Directive 2001/29, that a fair balance be safeguarded between the rightholders and the users of protected subject-matter".*

a) Intra-community transactions

Amazon case (C-521/11, para. 56-66) provides the principles that compensation is payable in the country where the end-user of the devices resides and that person who has previously paid a levy in another Member State may request its repayment.

Levy refund schemes upon exportation (in the sense of intra-community sale) do not always exist in a given country. Further, it may happen that refund is only available for manufacturers / importers that originally paid the levy and not to 2nd tiers / resellers that were charged the levy as part of products and face a "double-payment" of levies in case they cannot get reimbursement of the levy paid on the country of origin either for legal or practical reasons, for example because administrative arrangements necessary for obtaining refund are so burdensome that discourage requests either for refunds or exports; either situation is bad for consumers:

- If levy in the country of origin is not reimbursed, then consumers are effectively paying twice levies as part of the product price (one levy from the country of origin, another one from the country of destination);

- If goods are not "exported", then consumers are deprived of the opportunities provided by the Internet to create a competitive single market.

Moreover, even if repayment of the levy upon exportation was effective and did not make excessively difficult to repay the levy – which is not the case –, it is clear that barriers to cross-border trade are not removed with a "pay & refund" system, but only in case no payment occurs first (so that no need to refund will exist).

Therefore, in order to minimize cross-border trade issues, we agree with recommendation proposed by Mediator Vitorino[11] to shift the liability to pay levies from the manufacturer's or importer's level to the level of last point of sale to end-user (retailer). In this way, the products can circulate freely cross-border across the EU and be only levied at last point of sale.

This solution is also aligned with the jurisprudence of the CJEU that compensation should occur (only) in the country with the end-user resides, and with the case law mentioned in Section 5 below about exemption of levy on sales through resellers until reaching last point of sale, which can identify whether purchaser is a consumer or a business user, in order to determine the applicability or exoneration of private copying levies.

b) Co-existence of various compensations

Overcompensation also exists when two forms of compensation are cumulatively applied. This was the scenario addressed by the CJEU in the Reprobel case (C-572/13, para. 81-88) in the context of the reprography exception in Belgium, where both copyright levies and operator fees co-exist, and where the CJEU declared the inappropriateness of using both forms of compensation.

Moreover, the CJEU also acknowledges a very important principle in Reprobel case (C-572/13, para. 82) when recalling that a levy system can be introduced only when it is impossible to identify the users and, consequently, to assess the actual harm suffered by the rightholders. This means that when operator fees are a viable option to secure fair compensation, then no levy system should be authorized. And this should also mean that when compensation may be secured in the form of a license payment, then levies should be avoided.

This principle is aligned with the recommendation provided by Mediator Vitorino when indicating that, in the field of reprography, more emphasis must be made on compensation by mean of operator levies instead than hardware-based levies.

Secondly, overcompensation could also exist when compensation is secured in the form of levies that are applied in various products that form part of a chain of devices interconnected to make the copy (e.g. a scanner, plus a PC, plus a printer; a removable recording media and a hardware device; …). This is precisely the scenario that was addressed by the CJEU in the VG Wort (Cases C-457/11 to C-460/11) and in Copydan (C-463/12) cases.

From those cases, in combination with the jurisprudence set by the CJEU about the “actual harm” principle in the Reprobel case, results that:

- In case a device in isolation is used to make private copies eligible for compensation, the level of compensation should commensurate to actual harm resulting from use of that device, but if they may be used as part of a chain of devices, Member States should consider the level of compensation to be assigned to the other devices in the chain in order to secure that no overcompensation exists.
- Member States may opt for applying compensation only on one device among the various in the chain, provided that the principle of equal treatment is not infringed.

[11] Recommendations resulting from the Mediation on Private Copying and Reprography Levies” by Antonio Vitorino (31 January 2013), pages 11-14.

c) *No harm*

Given that the "*fair compensation is, in principle, intended to compensate for the harm suffered resulting from the copies actually produced ('the criterion of actual harm suffered')"* (see Reprobel, para. 69) and that harm should assessed as lost profit or "*lucrum cessans*"[12], an overcompensation will exist if a payment is seek in situations where either:

(i) No copies are made within the scope of the relevant exception (or copies made do not have an effect on the amount of original copies sold).

This is the case of devices that notwithstanding being technically capable of making private copies, they are not actually used for those purposes[13], and is also the case of unauthorized copies made outside the scope of the private copying or reprography exception as transposed into national law, which are not subject to fair compensation in conformity with settled case law of the CJEU.[14]

Moreover, this would be the case of devices that notwithstanding being used for making legitimate private copies, those reproductions do not have any impact on the market of original works, simply because users won't have bought those original works in case of not having made such private copies.

(ii) The right-holder has consented that no compensation should be payable for such reproduction.

In this regard, we believe that there needs to be a connection between harm and the rights holder's willingness to exploit their work for money. Many authors make their work publically available not to necessarily make maximum profit but to reach a widest possible audience. This has been greatly assisted by the web where increasing among of content is made available by means of user-generated content or through Creative Commons licenses, which allows for non-commercial copying/use of content.

Moreover, it should be considered that there is significant amount of content where the intellectual property has elapsed and is now in the public domain – i.e. classical books. Copying this content does not result in any economic harm to the creator and should therefore not require payment of compensation.
Finally, as outlined in Section 1 above, we believe that the Commission should set some harmonized thresholds of "*de minimis*" harm based on objective criteria, where no compensation might be due, even if their implementation is left to the discretion of the Member States.

d) *Licensed content*

The CJEU[15] has dealt with the issue of payment of fair compensation when right-holder has authorized an act of reproduction covered by an exception by providing that "a*ny authorisation given by a rightholder for the use of files containing his works can have no bearing on the fair compensation payable in accordance with the exception*" but also that those reproductions cannot "*give rise to an obligation on the part of the user of the files concerned to pay remuneration of any kind to the rightholder*".

[12] See Opinion of Advocate General in Egeda and Others (C-470/14, para. 23 and 60).
[13] See Amazon (C-521/11, para. 44) and Reprobel (C-572/13, para. 73) cases.
[14] See ACI Adam (C-435/12, para. 58), Copydan (C-463/12, para. 79) and Reprobel (C-572/13, para. 64) cases.
[15] See VG Wort (Cases C-457/11 to C-460/11, para. 30-40) and Copydan (C-463/12, para. 63-67) cases.

In the context of the private copying exception, this means that it is not possible to exclude fair compensation based on the sole grounds that right-holder has provided authorization to make a private copy, but it also means that no payment[16] should have been made by end-users to make those private copies.

Therefore, in those situations where a payment can be made by the individual end-user in consideration of the possibility / right to make private copies of the work, such payment should be considered either as an invalid payment, or as a valid payment being the equivalent to the payment of "fair compensation for private copying" under the form of a license fee.

We believe that the legal solution is that such payment under the form of a license fee should be deemed to be a payment of "fair compensation" under art. 5.2.b) of the Directive 2001/29 and that no separate payment should be due in the form of copyright levies.

This solution is consistent not only with the Recital 35 of the Copyright Directive ("*In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due*"), but also with principle explicitly set in recent Reprobel case[17] that levies are an option for Member States only when it is impossible to identify the users and, consequently, to assess the actual harm suffered by the rightholders.

In the context of online downloading services, there is a perfect identification not only of the user that makes the copy, but also of the work that is downloaded and the rightholders that are concerned by such specific act of reproduction, making perfectly possible an individualization of the harm caused by such individual behaviour and to provide fair compensation as part of the price paid by user to download the concerned work (an e-book, a digital song or film for instance).

Therefore, no separate compensation should be payable in form of levies in the context of services where a 1-1 licensing scheme is feasible.

OUR REQUEST: Commission to provide Member States with guidance to avoid double-payments and/or overcompensation in all relevant scenarios (namely, exports, accumulative forms of compensation, no harm situations, and licensed contents). Specifically, in the context of the reprography exception under art. 5.2.a) of the Directive 2001/29, levies must be avoided and emphasis must be placed on operator fees.

[16] See Copydan (C-463/12, para.66): "*Since, in circumstances such as those set out in paragraph 65 above, such authorisation is devoid of legal effects, it cannot, of itself, give rise to an obligation to pay remuneration of any kind in respect of the reproduction, for private use, by the user of the files concerned to the rightholder who authorised such use.*"

[17] Reprobel case (C-572/13), para. 82.

4. Transparency towards consumers

The CJEU's jurisprudence in its Padawan (C-467/08), Amazon (C-521/11) and Copydan (C-463/12) rulings is clear that when a levy system is chosen to provide fair compensation for private copying, then the burden of compensation is placed upon the final purchasers of recording equipment, devices, and media, i.e. private consumers. However, rarely do consumers know that they are paying levies or how much they are paying. This lack of transparency as to who paid the levy, how much was paid, and when the levy was paid, is an obvious reason why "double" levy payments continue to occur.

We believe that transparency to consumers of the levies that are included in the prices of recording equipment, devices and media is an important consumer right and protection. With levy transparency mandated on invoices to consumers, it becomes clear who paid the levy, how much was paid, and when it was paid. Without transparency, consumers are in the "dark" and are unable to effectively exercise their basic EU democratic participatory rights to complain to their representatives if they believe that the private copying levies imposed on their purchases are too high or unjustified. Keeping levy charges off invoices makes levies a "secret consumer tax" being collected from consumers and distributed to copyright holders without consumers having any conscious knowledge of this "sleight of hand." There is no legitimate justification for this deceit to continue.

In addition, by making levies visible to consumers on their invoices, it becomes clear that the financial burden of compensating rightholders through the collection of private copying levies falls upon them as the beneficiaries of private copying (as mandated by the CJEU). In this way, it enables private consumers, who are the only ones entitled to make private copies, to understand their actual costs for maintaining this privilege of private copying. To the best of our knowledge, France is the only Member State which has reformed their legislation to require the amounts of levies to be separately itemized in sales to consumers. However, although this itemization is required in all sales to consumers, it has not been uniformly implemented and lacks enforcement. Similarly, the law in Austria has recently been changed (but not yet effective) to itemize levies in sales to consumers.

Also, levy transparency on consumer invoices would be of enormous help in solving the issue of exemptions for professional use. By having the levy amounts itemized on invoices, professional persons who have paid levies when purchasing recording media and/or devices would be better equipped to ask for an exemption or establish their right of reimbursement which, the CJEU in its Amazon ruling specified, must be "*effective and does not make the repayment of those levies excessively difficult*."[18] Without the amount of the levy specified on the invoice, the processes for obtaining reimbursement are, by definition, less effective and more burdensome for professional users than they need to be.

Likewise, although the CJEU has once again clarified in Copydan[19] that a "*levy cannot be applied to the supply of reproduction equipment, devices and media to persons other than natural persons for purposes clearly unrelated to private copying*", Member States continue to burden importers and intermediary resellers with levy payment obligations -- even though they are not supplying "recording equipment, devices and media" to natural persons. As discussed below, the CJEU has mandated exemptions for these business entities who are

[18] Amazon (C-521/11) at paragraph 34.

[19] Copydan (C-463/12) at paragraph 47.

not selling to natural persons. However, where Member States continue to ignore the CJEU's jurisprudence on this issue, it is necessary for the Commission to mandate levy transparency so that the amounts of any levies paid by these legal entities is itemized on all invoices throughout the distribution chain.

OUR REQUEST: Commission to recommend to all Member States to mandate transparency of levies (itemized) on all invoices in the distribution chain, in particular at retail level, whenever and wherever levies are included in the purchase price of recording equipment, devices, and media products.

5. Exemptions and principles governing refund schemes

CJEU jurisprudence (see Amazon and Copydan) is clear that the persons responsible for payment of levies must be exempted from the levy if they can establish that they have supplied the devices to persons other than natural persons for purposes other than private copying ("ex ante" exemptions). Moreover, the CJEU has established that such exemptions cannot be restricted to the supply of recording equipment, devices and media by and/or to business customers registered with the collecting societies, but to anyone that is objectively eligible[20].

In concept, "ex ante" exemptions are a way to assure that commercial resellers, business users, and professional persons would not be liable for levy payments. However, the selective administration of "ex ante" exemption systems established by several collecting societies which require pre-registration of business sellers and/or purchasers run afoul of the EU equal treatment principles. For this reason, the CJEU in Copydan invalidated the use of "ex ante" exemptions that require pre-registration. In addition, the CJEU found that all purchases by legal entities are exempt from levies and only when a legal entity sells to a natural person is a levy chargeable. Therefore, all legal entities (importers, intermediary resellers, and even last resellers) should be exempted from payment of levies unless they are a "last reseller" selling to natural persons.

In this regard, as discussed below, there are only two ways (options) for a Member State's levy system that indiscriminately imposes levies upon importation to be compliant with the CJEU jurisprudence's for professional use: (1) to have a simultaneous right of reimbursement which amounts to an automatic exception to the obligation to pay levies for all commercial purchases (by importers, resellers, and professional persons); or, (2) to have an "ex ante" block exemption which is non-discriminatory for all commercial purchasers (importers, resellers, and professional persons). Both of these options are discussed below:

Option (1) – An automatic exception for legal entities and professional person.

One way is to continue the indiscriminate charging of the levy at importation (which was the case examined by the CJEU in Copydan), but applying an automatic exception for levy payment throughout the distribution chain for all levy purchases by legal entities (which can be easily evidenced by their VAT registration).

This methodology would apply an exception for all business customers in the distribution chain from paying the levy on their purchases of recording equipment, devices and media. This automatic exception is justified since there are only three reasons for their purchases: (i) to consume them in their own business activities; (ii) to resell the purchased products to other legal entities; or, (iii) to resell these purchased products to private persons. However, in the latter case (iii), this "last reseller" would be excepted from paying the levy on its purchases of recording equipment, devices, and media, but, would be liable to pay the applicable levy when reselling the recording equipment, devices, and media, to private persons (natural persons Copydan (C-463/12) at paragraph 47.). In this manner, the levy is only paid once at the time when the recording equipment, devices and media are sold to private persons in the "country of destination."[21]

[20] Copydan (C-463/12) at paragraph 51.

[21] By implementing this "last reseller" model for levy liability, "cross-border portability" is achieved when selling recording equipment, devices and media across borders because the levies paid only once in the "country of destination" by the final private consumers. This is the solution recommended by Mr. Vitorino in his

Option (2) – An "ex ante" block exemption for legal entities and professional persons.

Alternatively, another solution would be for a Member State to mandate an "ex ante" block exemption from the payment of levies for purchases of recording equipment, devices and media by all legal entities and professional persons (as evidenced by a VAT registration). This is essentially what the CJEU has mandated in Copydan, i.e., purchases of recording equipment, devices and media by legal entities and professional persons are exempt. However, by the CJEU permitting the indiscriminate application of the levy at importation (albeit, only if it can be justified by practical considerations) to continue, the importer and other resellers remain legally liable for levy payment unless they can "except" themselves from the obligation to pay the levy.

In principle, an "automatic exception" (as explained above) would have the same practical effect as an "ex ante" exemption (legal entities and professional persons do not make levy payments when purchasing recording equipment, devices, and media) but an exemption means that the obligation to pay never arises provided that the company acts within the scope of the exemption. In comparison, an exception means that the obligation to pay arises unless the company can prove an exception from the imposed obligation to pay.

From a business viewpoint, this distinction means that companies may have to reserve (accrue) for levy payments until they have validation from the local collecting societies that their purchases and sales of recording equipment, devices, and media can be "excepted" from the payment of levies. With an "exemption," companies would not have to reserve for payment of levies unless there was prima facie evidence that they were not acting within the scope of the exemption. Given that the CJEU has invalidated pre-registration of legal entities to receive "ex ante" exemptions because this practice violates EU equal treatment principles, a sensible solution would be for Member States to implement an "ex ante" block exemption covering all purchases of recording equipment, devices, and, media by legal entities and professional persons.

Professional users, who in most Member States may have VAT registrations but may not be defined as legal entities in their Member State, should be also exempted when purchasing recording media and devices for use in their professions. However, recognizing that purchases by professional users may be made in retail environments where the practical distinction between purchases for professional or consumer use is difficult or impossible, there must be an "ex post" reimbursement process that is simple and effective to allow for the correction of these practical difficulties and guarantees professional users full and speedy recoupment of the levy amounts that they should have not been obligated to pay. The transparency of the levy amounts (itemized on invoices), as discussed above, is essential to having an effective "ex post" reimbursement process.

Recommendations. See "Recommendations resulting from the Mediation on Private Copying and Reprography Levies" by Antonio Vitorino (31 January 3013), pages 11-16.

By having a levy system that exempts ("ex ante") all purchases by legal entities and professional persons of recording equipment, devices, and media in a Member State, cross-border "double payments" are eliminated -- because the obligation to pay a levy only arises one time; in the "country of destination;" when the recording equipment, devices and media are sold to natural persons. Furthermore, in combination with such "ex-ante" exemption scheme, there must be a simple and effective ("ex post") reimbursement system that allows for professional persons and/or legal entities to receive a full and speedy recoupment of levy amounts that they should not have paid.

For the avoidance of doubt, it must be explicitly noted it that Member States cannot freely opt between either "ex-ante" exemption and/or "ex-post" refund systems:

1) When there are no practical difficulties associated with the identification of the final users or when such difficulties are not sufficient, then an "ex-ante" exemption scheme must be articulated (see Amazon, para. 33-35).

2) The application of such exoneration cannot be subject to prior registration of the business users with the collecting society (see Copydan, para. 51).

3) Only when practical difficulties exist "in all cases", it is possible to consider as second choice a system of reimbursement of levies paid by business users, which must be effective and do not make repayment of the levies paid excessively difficult (see Amazon, para. 35-37).

OUR REQUEST: **Commission to recommend to all Member States to mandate an "ex ante" block exemption of all purchases of recording equipment, devices and media by legal entities and professional persons, and, in addition, to establish a complementary simple and effective "ex post" reimbursement processes for professional persons and legal entities to fully and speedily recoup levy amounts that they should have not been obligated to pay. Such system of exemption and reimbursement should be not subject to prior registration of business user with collecting society.**

6. Non-discrimination between nationals and non-nationals in the distribution of any levies collected

Article 18 of the Treaty of the Functioning of the European Union[22] enshrines the prohibition of any discrimination on grounds of nationality.

In its Communication to the Council, the European Parliament and the European Economic and Social Committee on the Management of Copyright and Related Rights of 16.04.2004[23], the Commission already acknowledged that in order to achieve an Internal Market for both the off-line and on-line exploitation of intellectual property, more common ground on several features of collective management was required. According to the Commission, "*achieving more common ground on collective management should be guided by copyright principles and the needs of the Internal Market. It should result in more efficiency and transparency and a level playing field on certain features of collective management*". Moreover, legislative action was recommended over soft law to achieve these goals.

The need to improve the functioning of collective management organisations was already identified in Commission Recommendation 2005/737/EC[24]. That Recommendation set out a number of principles, such as the freedom of rightholders to choose their collective management organisations, equal treatment of categories of rightholders and equitable distribution of royalties. In this regard, it established that "royalties collected on behalf of right-holders should be distributed equitably and without discrimination on the grounds of residence, nationality, or category of rightholder. In particular, royalties collected on behalf of right-holders in Member States other than those in which the right-holders are resident or of which they are nationals should be distributed as effectively and efficiently as possible"[25].

Directive 2014/26/EU[26] acknowledges the fact that "*there are significant differences in the national rules governing the functioning of collective management organisations, in particular as regards their transparency and accountability to their members and rightholders. This has led in a number of instances to difficulties, in particular for non-domestic rightholders when they seek to exercise their rights, and to poor financial management of the revenues collected. These Problems with the functioning of collective management organizations lead to inefficiencies in the exploitation of copyright and related rights across the internal market, to the detriment of the members of collective management organisations, rightholders and users*"[27].

The Directive establishes that a collective management organisation should not, when providing its management services, discriminate directly or indirectly between rightholders on the basis of their nationality, place of residence or place of establishment[28].

[22] Official Journal of the European Union C 326/47, of 26.10.2012.

[23] COM(2004) 261 final

[24] Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services (OJ L 276, 21.10.2005, p. 54).

[25] Recital 12.

[26] Directive of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

[27] Recital 5.

[28] Recital 18.

On the basis of the foregoing, we believe that the same non-discrimination principle must apply in the distribution of levies.

In such regard, it should be noted the practice set either under national legal framework or through by-laws of some collecting societies to authorize the allocation of a share of collected levies (in some cases in levels as higher as 50%)[29] to fund activities in promotion of cultural development or for equivalent activities. We believe that these provisions are a seed for potential discrimination in favor of national rightholders, which will be more likely benefited from those activities (apart from being an issue also from the perspective of ensuring an effective distribution of compensation to rightholders).

As provided by the CJEU[30], levies must be intended to provide fair compensation to concerned rightholders and can only be used to benefit entitled rightholders through detailed arrangements that are not discriminatory. Furthermore, it is not consistent with EU law to benefit to persons other than those entitled or to exclude, *de jure or de facto*, those who do not have the nationality of the Member State concerned.

Thus, we believe that the Commission should provide appropriate guidance on what type of activities are acceptable and what conditions must be met in the administration of those funds, if any.

OUR REQUEST: **Commission to recommend to all Member States to mandate that principle of non-discrimination on the grounds of residence or nationality is effectively protected. Commission to provide guidance about how to make effective such principle in the management of "culture-promotion funds" created from collected levies.**

[30] See judgment of 1 July 2013, case C-521/11 (Amazon), para. 53-54, and "International Survey on Private Copying Law & Practice 2015" by Thuiskopie and WIPO (page 13).

7. How levies can be more effectively distributed to right-holders.

The functioning of some collective management organisations has raised concerns as to their transparency, governance and the handling of revenues collected on behalf of rightholders[31]. Cases of risky investment by certain collective management organisations of royalties that should have gone to rightholders highlighted the lack of oversight and influence of rightholders on the activities of a number of collective management organisations, contributing to irregularities in their financial management and investment decisions.

In the last few years we have observed a rapid proliferation of national levies on digital copying equipment and media. Rightholders are also asking to extend those levies to Cloud-based business models (e.g. virtual back-up systems). Even though national collecting societies have claimed increasingly higher remuneration for private copying, to the detriment of consumers and the ICT industry, they have failed to ensure transparency in relation to collection and distribution of levies among right-holders often showing monopolistic tendencies and behaviours to the detriment of others, and without even substantiating that reproductions made within the scope of the exception cause more than minimal harm but relying on the mere suitability of the devices to make copies in order to enforce their applicability.

In its Communication of 2004, the Commission recognized that since usually only one collecting society operates for each group of rightholders in a given territory as their trustee, they are the only gatekeeper of their market in respect of the collective management of their rights. The principles of good governance, non-discrimination, transparency and accountability of the collecting society in its relation to rightholders are, therefore, of particular importance. These principles should apply to the acquisition of rights (the mandate), the conditions of membership (including the end of that membership), of representation, and to the position of rightholders within the society (rightholders' access to internal documents and financial records in relation to distribution and licensing revenue and deductions, genuine influence of rightholders on the decision-making process as well as on the social and cultural policy of their society).

Consequently, already in 2005 the Commission invited Member States to take all the necessary steps to ensure equitable distribution and deductions[32]. In this sense, the following principles should be respected:

(i) collective rights managers should distribute royalties to all rightholders or category of rightholders they represent in an equitable manner

(ii) contracts and statutory membership rules governing the relationship between collective rights managers and rightholder for the management, at Community level, of musical works for online use should specify whether and to what extent, there will be deductions from the royalties to be distributed for purposes other than for the management services provided; and

(iii) upon payment of the royalties, collective rights managers should specify vis-à-vis all the right-holders they represent and the deductions made for purposes other than for the management services provided.

[31] As an example, Spanish CNMC's case S/0466/13 SGAE AUTORES.

[32] Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services (OJ L 276, 21.10.2005, p. 54).

Directive 2014/26/EU[33] provides for a set of principles that should be respected to ensure that the amounts collected and due to rightholders are effectively distributed. These are, inter alia:

(i) Separation: these amounts should be kept separately in the accounts from any own assets the organisation may have. Without prejudice to the possibility for Member States to provide for more stringent rules on investment, including a prohibition of investment of the rights revenue, where such amounts are invested, this should be carried out in accordance with the general investment and risk management policy of the collective management organisation.

(ii) Transparency of management fees: they should not exceed justified costs of the management of the rights. Any deduction other than in respect of management fees (for example, a deduction for social, cultural or educational purposes, should be decided by the members of the collective management organization). The collective management organisations should be transparent towards rightholders regarding the rules governing such deductions.

(iii) Timely distribution and payment of due amounts.

(iv) Non-discrimination between own members and members of other collective management organization managed under representation agreements.

(v) Transparency reports: on the use of amounts dedicated to social, cultural and educational services.

According to these principles, Chapter 2 set up the following rules:

(i) A collective management organisation shall not be permitted to use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rightholders, except where it is allowed to deduct or offset its management fees in compliance with a decision taken in accordance with point (d) of Article 8(5) or to use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with Article 8(5). This means that rightholders shall decide upon this, including on the use of non-distributable amounts, which otherwise could have been a source of potential abuses or deviation from the original use of the revenues collected, i.e. its distribution to rightholders.

(ii) The general assembly of members of a collective management organisation shall decide on the use of the non- distributable amounts in accordance with point (b) of Article 8(5), without prejudice to the right of rightholders to claim such amounts from the collective management organisation in accordance with the laws of the Member States on the statute of limitations of claims.

(iii) Member States may limit or determine the permitted uses of non-distributable amounts, inter alia, by ensuring that such amounts are used in a separate and independent way in order to fund social, cultural and educational activities for the benefit of rightholders.

We believe that the same principles should apply, *mutatis mutandi*, to the distribution of copyright levies. The general rule is that the amounts collected should go to the rightholders, and that any use other than that has to be transparent, justified by objective reasons and subject to democratic decision by rightholders.

[33] Cited above.

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This is particularly important because there are examples in some Member States where legislation deviates from the rationale behind copyright levies, i.e. compensating rightholde8rs for the harm caused by private copying:

a) This is clearly the case of Portuguese Law 49/2015, which added a new Article 5-A to the Law nº 62/98 and establishes that all collected levies above 15 million euros must be allocated to the State-managed *Fundo de Fomento Cultural* (FCC), created under the *Direcção-Geral dos Assuntos Culturais, "as a contribution to support programs of encouragement to the promotion of cultural activities and the cultural and artistic creation, having as a priority the investment in new talents."*

This dangerously borders the concept of taxes and deviates from the original purpose that the levies collected should serve. Although such public policy objectives may be legitimate, it is at least questionable that such objectives should be funded by means of funds collected for the sole purpose of compensating a harm suffered by rightholders. Moreover, it is evident that such allocation benefits to persons other than those entitled to the fair compensation (rightholders harmed by private copying) and is particularly favorable to national creators.

b) The same reasoning is valid for Italy, where the Camera dei Deputati has just passed via the *Legge de Stabilita 2016* an amendment to *Legge 22 Aprile 1941* whereby 10% of the levies collected by the SIAE shall be transferred to the budget of the *Ministerio dei Beni et delle Atività Culturali* for the funding of national and international cultural promotion. Another example of deviation from the purpose which copyright levies were conceived for.

As we have already mentioned, these developments have to be read in conjunction with the principle of non-discrimination between members and non-members of a given collecting society, as well as of non-discrimination the basis of nationality or residence. If a non-Portuguese rightholder, for example, is paying via this system for the promotion of Portuguese culture and an equivalent provision does not exist in its country of residence or nationality, this rightholder would be paying for something it cannot benefit from to the detriment of its own culture.

OUR REQUEST: Commission to recommend to all Member States to mandate that any copyright levy distribution system must preclude the use of the revenues collected for purposes other than distribution to rightholders. When, exceptionally, a part of those revenues is reserved for purposes other than rightholders compensation, such as social, cultural and educational services: (i) list of eligible activities should be clearly defined; (2) there should be total transparency as to such uses, and details must be disclosed as to the exact activities and amounts used for such purposes; (3) it should be the rightholders themselves who democratically decide on such uses; and (4) and a maximum threshold (possibly no higher than 10-20%) must be set. This involves that Member States shall not unilaterally decide on the allocation of a part of these revenues to uses other than the compensation of rightholders.

CONCLUSIONS

In conclusion, we reiterate our strong belief that the current device-based levy system is outdated and no longer fit for the realities of the digital economy. As an immediate step towards its much-needed reform, we believe that some of the internal market distortions caused by the current dysfunctional levy paradigm can be mitigated by implementing the interim "fixes" listed below:

(i) Providing harmonized harm assessment processes (aimed at determining actual harm, as lost profit or "*lucrum cessans*") and tariff setting processes (such as uniform time limits for defining and implementing tariffs with no retroactivity) that would become applicable in all Member States. No levies based solely on technical specifications of the device but on actual use and resulting harm. Guidance to be provided on "de minimis" rule.

(ii) Mandating to reform national systems to preclude allocation of a share of the fair compensation to publishers. In the context of reprography for commercial purposes, Member States to be recommended to opt for exercise of exclusive rights (licensing).

(iii) Providing guidance to avoid double-payments and/or overcompensation in all relevant scenarios (namely, exports, accumulative forms of compensation, no harm situations, and licensed contents), requiring that in the context of the reprography exception, levies must be avoided and emphasis must be placed on operator fees.

(iv) Mandating transparency on all invoices in the distribution chain when levies are charged.

(v) Exempting "ex ante" all purchases by legal entities and professional persons, and, providing a complementary simple and effective "ex post" reimbursement process for full and speedy recoupment in situations where the levy should have not been paid. No prior registration to be required to be eligible for exemption and/or refund.

(vi) Providing guidance on how to make effective the principle of non-discrimination in the distribution of levies and management of "cultural promotion funds".

(vii) Revenues collected should be dedicated to compensate right-holders for harm caused by private copying and not to the benefit of Governmental agencies and/or collecting societies. Social, cultural and educational funds should be exceptional and be set and managed following guidelines to be provided by the Commission.

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DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

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