Private copying levies

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The Committee on Legal Affairs adopted the own-initiative report by Françoise CASTEX (S&D, FR) on private copying levies.

Digital private copying has taken on major economic importance as a result of technological progress and the shift to the internet and cloud computing. Authors' claim to protection of their creative work, and their right to equitable remuneration for that work must also exist in the digital age.

Modernised and harmonised system: the Commission is called upon to **present a legislative proposal to review Directive 2001/29/EC** on the harmonisation of certain aspects of copyright and related rights in the information society, including a provision on the full harmonisation of exceptions and limitations, inter alia with regard to private copying. Members emphasised that the current fragmented copyright regime needs to be reformed in order to facilitate access to, and increase (global) circulation of, cultural and creative content, in such a way as to enable artists, creators, consumers, businesses and audiences to benefit from digital developments, new distribution channels, new business models and other opportunities, especially in times of budget austerity.

Members stated that the private copying system is a **virtuous system that balances the exception for copying for private use with the right to fair remuneration for rightholders**, and that it is worth preserving, especially in cases where rightholders are not in a position to license directly the right of reproduction on multiple devices. They considered that there is no alternative to this balanced system in the short term. They stressed, however, that discussions need to be held in the long term with a view to continually assessing the private copying system in the light of digital and market developments and consumer behaviour and, if possible, exploring potential alternatives that would fulfil the objective of striking a balance between the exception for copying by consumers and the compensation of creators.

The report emphasised that the **major disparities** between national systems for the collection of levies, especially as regards the types of product subject to the levy and the rates of levy, can distort competition and give rise to '**forum shopping**' within the internal market.

The Member States and the Commission are invited to conduct a study on the essential elements of private copying, in particular a common definition, the concept of 'fair compensation' – which at present is not explicitly regulated by Directive 2001/29/EC – and the concept of 'harm' to an author resulting from unauthorised reproduction of a rightholder's work for private use. The Commission is called upon to look for common ground as regards which products should be subject to the levy and to establish common criteria for the negotiating arrangement for the rates applicable to private copying, with a view to enforcing a system that is transparent, equitable and uniform for consumers and creators.

Single collection procedure, reimbursements and clearer consumer information: the report stressed that the concept of private copies should be clearly defined for all materials and that the user should be able to access copyright content on all media on the basis of a **single payment**. It called for arrangements already in force in Member States, such as exceptions and levy exemptions, to be respected and for it to be possible for them to apply in parallel on the market. Members stated that **private copying levies should be payable by manufacturers or importers**. In the case of cross-border transactions, private copying levies should be collected in the Member State in which the end user having purchased the product resides. Member States in which levies are currently charged or collected should simplify and harmonise their levy rates. The report stressed the need to make clear to consumers the role of the private copying system with regard to remuneration of artists and cultural dissemination. Consumers must be informed of

the amount, purpose and use of the levy they pay. In this respect, the Commission and the Member States are urged, in consultation with manufacturers, importers, retailers and consumer associations, to ensure that this information is clearly available to consumers.

Member States are urged to adopt transparent exemption rules for professional uses in order to ensure that they are exempt, including in practice, from private copy levies. The committee called on the Member States to ensure that private copy levies never have to be paid where the media in question are used for professional purposes, and that various arrangements for the **reimbursement** of levies paid for professional users are replaced with systems which guarantee that these users are not liable to pay the levy in the first place.

Transparency regarding allocation of revenue: Member States are urged to ensure greater transparency regarding the allocation of proceeds from private copying levies. They should earmark at least 25 % of revenue from private copying levies to promote the creative and performance arts and their production and publish reports on the allocation of proceeds in open source format with interpretable data.

Technical protection measures: Members considered that it is necessary to authorise the deployment of technical protection measures in order to restore the balance between freedom to make copies for private use and exclusive copying rights. These protection measures should not prevent consumers from making copies or rightholders from being fairly remunerated for private copying.

Licences: Members noted that, despite some streaming access to works, downloading, storage and private copying continue. They took the view that a private copying levy system is therefore still relevant in the online environment and that preference should always be given to licensing models benefiting all rightholders if no copies of the copyright work are permitted on media and devices. Private copying exception arrangements should apply to certain online services, including certain cloud computing services.