



November 2013
AK Position Paper

UPCOMING VOTE IN THE LEGAL COMMITTEE OF THE EUROPEAN PARLIAMENT (CASTEX REPORT)

Draft motion for a European Parliament resolution on private
copying levies (2013/2114(INI))

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
President

Werner Muhm
Director

The AK position in detail

The AK welcomes the initiative of the European Parliament to call on the Commission to introduce a harmonized approach for copyright levies. Whereas in general, many of the proposals are worth supporting especially those relating to **transparency of levies with respect to consumers**, AK regrets that the proposal endorses the current system of copyright levies.

As we already pointed out in our previous letter of 15.10.2013, the draft motion takes a very conservative approach, **excluding the evaluation of new, alternative levy systems**. Having said this, we kindly request you, dear Member of the Parliament, to **endorse** the following **amendments** for the reasons as elaborated below:

Amendment n°	Reason
18	Enhances transparency
22	According to the ECJ Padawan decision, the harm to the rightholders has to be included into the calculation of levies. Not including this consideration equals violation of EU case-law.
25	It is adamant to put the expectations on income from private copying levies into the right economic context
26 and 27	The copyright levy often represents an important part of the purchase price of the product the consumers have to pay. Opting for this wording induces to favor a system of a levy on storage media decoupled from the factual use of these media for private copying. Many studies come to the result that most of the modern storage media are not used for copying but just for storing own digital material or already licensed copyright works thus leading to double payment. The same problem arises in case of hardware chains where all devices are supposed to underlie a copyright levy. This approach goes against the wording of the Copyright Directive and its notion of fair compensation. The present motion should remain open for new levy systems.

30	see reasoning to amendment 26
33	Discrimination between national and EU-creatives is unacceptable within the single EU market and therefore has to be avoided from the expressly excluded.
36	This point of the draft report aims at maintaining the current system of copyright levies based on storage media. Contrary to the opinion stated in the draft report, all cost, also those for copyright levies, are included into the purchase price. If not into the price for the relevant storage media, then on other products not exposed to heavy price competition. Moreover, for the time being it is difficult to measure the roll-over of copyright levies as they are not transparently shown on the invoice. Consumers, being the last part of the chain, always pay the copyright levies.
48	It must be clarified that the licensing system shall not be implied additionally to copyright levies.
53	The harmonisation of certain aspects of copyright and related rights especially of exceptions and limitations with regards, inter alia, to private copying is adamant prior to any considerations about levies on private copying.
54, 71	Clarification of the new technologic background which is the root for the need of a recast of copyright law. Not every private copying process equals harm within the definition of the ECJ rulings.
55, 56	Private copyright levies were supposed to offer fair compensation for a damage that is not negligible in the analogue world. However, they do not represent a vital source of remuneration for the mass of creators but only for an infinitesimal part of them. This is due to the fact that the distribution of copyright levies follows the principle "the winner takes it all", which might only be cushioned by the establishment of social and cultural funds.
75, 76 and 81	The wording of paragraph 6 of the draft report precludes any alternative levy system and alternative business models, which are more compatible with the digital world. Moreover, the wording aims at implementing multiple payment for the same and single private copying procedure, e.g. in a chain of media (hard disc, scanner, printer). Finally, the introduction of the notion "value of storage capacity" goes against the considerations in point E (compensation for damage). Capacity is no indicator for the amount of works protected by copyright.
83, 84	The wording of the motion excludes any alternative business model, therefore, point 7 should be deleted.
100,101,102	A single EU market has to provide for the reimbursement of double payment.
146	All options for private copying levy systems should be assessed by the Commission with a view for further harmonisation. Outright exclusion of certain levy systems goes against paragraph 5 of the present motion.

163 and 164	The right to private copying has to be guaranteed in a way that consumers can make use of it.
166, 167, 168, 169 and 170 ,173	Cloud-computing applications are manifold. Not all of them are compatible to produce private copies. Cloud computing is also used for outsourcing of computing capacities, to make available synchronization between different media and so on. The same accounts for cloud-computing services. Cloud storage offers at the moment only limited storage capacities, which are used in a totally different manner than local storage. It mainly serves to simplify the work on one's own documents at different end-user media and to produce security copies. Therefore, cloud storage services are in principle not comparable to analogue storage devices. Thus, in general private copyright damage within the sense of the Copyright Directive does not occur as it is used for the storage of own documents and not of copyright protected works.
172, 174, 175 and 176,177	Cloud computing is a totally new technology not comparable to the analogue world. See also reasoning above.
188 and 190	Non-commercial creative and transformative use of works is part of every day's life in the digital world. Access to use should therefore be subject to a statutory licence and exempt of any additional legal preconditions.

Whereas we ask you, dear Member of the Parliament, to reject the following amendments for the reasons we elaborate below:

15 and 20	The wording „equitable remuneration“ does not comply with the principle of „fair compensation“ of the Copyright Directive. By contrast, it deviates from the principle of harm being a precondition for remuneration by reversing it.
28 and 32	The copyright levy often represents an important part of the purchase price of the product the consumers have to pay. Opting for this wording induces to favor a system of a levy on storage media decoupled from the factual use of these media for private copying. Many studies come to the result that most of the modern storage media are not used for copying but just for storing own digital material or already licensed copyright works thus leading to double payment. The same problem arises in case of hardware chains where all devices are supposed to underlie a copyright levy. This approach goes against the wording of the Copyright Directive and its notion of fair compensation. The present motion should remain open for new levy systems, therefore, we propose to delete this point.

29	The copyright levy often represents an important part of the purchase price of the product the consumers have to pay. Opting for this wording induces to favor a system of a levy on storage media decoupled from the factual use of these media for private copying. Many studies come to the result that most of the modern storage media are not used for copying but just for storing own digital material or already licensed copyright works thus leading to double payment. The present motion should remain open for new levy systems.
43, 44, 45, 46 and 47	In the case of online music sales additional levies should not give rise to double payments.
AM 52:	The precondition „legally acquired content“ brings about legal uncertainties as to the extent of the right to private copying and thus throws the gates wide open for law disputes.
77, 78 and 79	This wording precludes any alternative levy system and alternative business models, which are more compatible with the digital world. Moreover, the wording aims at implementing multiple payment for the same and single private copying procedure, e.g. in a chain of media (hard disc, scanner, printer). Finally, the introduction of the notion “value of storage capacity” goes against the considerations in point E (compensation for damage). Capacity is no indicator for the amount of works protected by copyright.
85,86,87	These proposals exclude any alternative business model.
88	The wording aims at introducing the consumers’ liability for the payment of the levies. Moreover, it proposes to levy each device at any point of the device chain.
89	Double payment of fair compensation in respect of the same medium is not permitted (Padawan C-467/08; opinion of the advocate general Mengozzi C- 521/11).
98, 99	Double payment for copyright levies is unacceptable within an integrated EU single market.
106, 107, 108, 109, 110 and 111	Consumers’ information should be secured by showing the amount of copyright levies on the bills, thus by enhancing transparency and not by expensive public relations campaigns.
32, 133	The wording points out the particular importance of the application of technical measures in the Directive 2001/29/EG and weakens the right to private copying.
134, 135,136, 137, 138, 139	The Directive 2001/29/EG is not able to create the required balance between freedom to copy and fair compensation.
140	The wording weakens the right to private copying thus counteracting the elaboration of an acceptable solution for creative and consumers.
147, 148, 149, 150, 151, 152 and 153	Outright exclusion of certain levy systems goes against paragraph 5 of the present motion. All options for private copying levy systems should be assessed by the Commission with a view for further harmonisation.

160	Outright stipulation of compensation obligations for cloud computing is counterproductive. All possible solutions have to remain open for assessment.
156, 157, 158, 159,161 and 162	Prior exclusion or weakening of the right to private copying counteracts the elaboration of an acceptable solution for both, creatives and consumers.
180, 181, 182, 183, 184, 185, 186 and 187	Non-commercial creative and transformative use of works is part of every day's life in the digital world. Access to use should therefore be subject to a statutory licence and exempt of any additional legal preconditions.
189	This motion aims at enhancing the Commission to propose new solutions for a digital world. Time consuming impact assessments hinder this process.
40, 72, 74, 85, 105, 127 and 128	Phasing out the levy system equals the abolishment of the right to private copying. The wordings lack any provisions to maintain this right.

We kindly request you, dear Member of the Parliament, to consider the assessments as to the reasons for supporting or rejecting the amendments to the draft motion at stake for the upcoming vote in the Legal Committee.

Should you have any further questions
please do not hesitate to contact

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