



October 2013
AK Position Paper

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.

With this respect, the draft motion takes a very conservative approach, **excluding the evaluation of new, alternative levy systems.**

With such approach, it is very doubtful that any of the current questions – leading constantly to law suits on national and EU-level – can be avoided in the future, as it does not offer any solution for the problem of double payments in the digital single market nor to the problem of payment obligations in cases where no damage within the sense of the Copyright Directive occurred.

It is important to recall that the Copyright Directive is neutral as to the system of fair compensation. It is also crucial to clarify that copyright levies are only due for acts of legal copying and have nothing to do with illegal privacy. Up to now, questions arising from digital technologies and their impact on users handling are mostly considered under the aspect of piracy. Important users re-

quests, as for example the right for digital private copies or consumers rights which go without saying with regard to physical goods, remain unheard. This causes a distorted balance of interests not only to the detriment of consumers/prosumers but also of creatives.

Having said this, we consider that the present draft motion should be amended in such a way that it can serve as an innovative basis for the harmonisation of the digital market which in the current version is not the case.

Therefore, we propose

- to support points 8 and 9 enhancing transparency for consumers and avoiding double payment
- to support points 20 and 21 relating to technical protection measures
- to support point 24 endorsing consumers' rights with regard to unfair licensing conditions.
- to delete points G, K, 6 and 7, cementing the current levy system not operable in the digital world

and ask you, dear Member of the European Parliament, to endorse the following amendment proposals:

EP-Motion	Amendment
E. whereas under Directive 2001/29 /EC, Member States may provide for an exception or limitation to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use, accompanied by fair remuneration, and may allow consumers in countries that have introduced that limitation to copy their music and audio-visual collections from one medium or type of multimedia material to another freely and as frequently as they wish, without seeking authorisation from the rightholders, ...	... freely and as frequently as they wish (delete), without seeking authorisation from the rightholders ...
<i>Reason: According to the Copyright-Directive (2011/29) the right is limited by the "three-step-test" -Article 5.4 EU 2001/29. Moreover, the manifold rules relating to technical protection measures restrict the right for private copying considerably.</i>	

EP-Motion	Amendment
G. whereas these levies only constitute a small proportion of the turnover of manufacturers and importers of traditional and digital recording media and material;	Delete the whole point
<i>Reason: 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 de-coupled 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.</i>	

EP-Motion	Amendment
I. whereas Directive 2001/29/EC and the case law of the Court of Justice of the European Union do not require Member States to see that rightholders receive direct payment of the full levy collected for private copying, and whereas the Member States have broad powers of discretion to establish that part of that remuneration should be paid indirectly;	...be paid indirectly. Within this context no discrimination between national and EU creators is allowed with regard to access to social or cultural distributions from social or cultural funds established in favour of creators.
<i>Reason: Many collecting societies include into their mostly intransparent regulations - which normally are not decided by the general assembly - that certain or all remunerations from social and cultural funds can only be called upon by national creators; whereas these funds are supplied by the royalties deriving from all creators.</i>	

EP-Motion	Amendment
K. whereas media and material prices do not vary according to the different rates of private copying levy applied across the Union, and whereas the abolition of private copying levies in Spain in 2012 has had no impact on media and material prices;	Delete whole point
<i>Reason: This point aims at maintaining the current system of copyright levies based on storage media. Contrary to the opinion stated here, 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.</i>	

EP-Motion	Amendment
N. whereas in the case of online music sales, licence-granting practices are being viewed as an alternative to the system of private copying levies;	Delete the whole point. N (new) Whereas in the case of online music sales the mere storage on other technical devices does not induce further levies.
<i>Reason: It must be clarified that the licensing system shall not be implied additionally to copyright levies.</i>	

EP-Motion	Amendment
2. Emphasises that in times of budget austerity, private copying levies constitute a vital source of revenue for the cultural sector, and particularly for the performance arts;	...constitute a small part of revenue for the cultural sector, ...
<i>Reason: 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.</i>	

EP-Motion	Amendment
6. Considers that the private copying levy should apply to all material, media and services whose value resides in their private recording and storage capacity;	Delete whole point 6 a (new) Considers that no remuneration is due if no or only minimal damage is caused.
<i>Reason: 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.</i>	

EP-Motion	Amendment
7. Considers that private copying levies should be payable by manufacturers or importers; notes that, if the levy were transferred to retailers, this would result in an excessive administrative burden for small and medium-sized distribution companies and collective rights management organisations;	Delete whole point
<i>Reason: This wording excludes any alternative levy system.</i>	

EP-Motion	Amendment
23. Observes that, despite permanent access to online works, downloading, storage and private copying for offline use is continuing; takes the view that a private copying levy system cannot therefore be replaced by a licencing system;	...takes the view that all options for private copying levy systems should be assessed by the Commission with a view for further harmonisation;
<i>Reason: Outright exclusion of certain levy systems goes against point 5 of the present motion.</i>	

EP-Motion	Amendment
25. Takes the view that private copies of protected works made using cloud computing technology may have the same purpose as those made using traditional and/or digital recording media and materials; considers that these copies should be taken into account by the private copying compensation mechanisms;	Takes the view that cloud-computing is a totally new technology not comparable to the analogue world. Calls on the Commission to assess the purposes of use of this technology as well as eligible compensation mechanisms.
<i>Reason: 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</i>	

EP-Motion	Amendment
27. Calls on the Commission and Member States to examine the possibility of legalising works sharing for non-commercial purposes so as to guarantee consumers access to a wide variety of content and real choice in terms of cultural diversity;	27. Takes the view that the digital world has changed the relationship between creator and consumer. Consumers have become prosumers sharing creative works and adding new creative parts transforming them to a new work. Calls on the Commission and Member States to legalise works sharing for non-commercial purposes by a system of statutory licencing so as ...
<i>Reason: 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.</i>	

We kindly request you, dear Member of the Parliament, to support the proposed amendments of the draft motion in order to achieve a level playing field between rightholders` and consumers`/prosumers` in the digital world.

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

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