

Statement by Mr. António Vitorino on the mediation process concerning private copying and reprography levies

I am happy to announce the start of the mediation process on private copying and reprography levies, over which Commissioner Barnier has given me the honour to preside.

In the framework of my appointment, I have been analysing the various issues at stake in this complex and important matter. This has reinforced my conviction that the good functioning of the Single Market requires that we try to ensure the greatest possible coherence, effectiveness and legitimacy in the implementation and application of the principles and legal framework underpinning it. We must find a way to reconcile the national private copying and reprography levy systems in place today with the smooth cross-border trade in goods and services in the Single Market. Moreover, in setting our sights on this ambitious target, it is essential to take proper account of the opportunities offered by the current development of new business models. Such models deliver new forms of authorised access to copyright protected content. They should at the same time enable rightholders to better control the use of their content and the manner in which they are remunerated for it.

Significant efforts have been made over the years on this sensitive subject. This has resulted in a considerable wealth of information and ideas that I can, and will, build on in order to take this issue forward in an efficient and pragmatic manner. I must stress, however, that the purpose of this mediation is to move beyond well-known and entrenched positions and to find workable and mutually acceptable solutions to issues that could not be resolved in past discussions.

My objective is twofold. Firstly I aim to identify possible ways to tackle the issue of disparate levy systems negatively affecting the functioning of the Single Market. At the same time I aim to assess the functioning and the scope of the private copying and the reprography exceptions in today's fast evolving digital environment. Both aspects may lead me to formulate recommendations for legislative action, as appropriate. As of this month, I will begin my talks with those whom I have identified as key stakeholders. My intention is to start, in the first instance, by holding these discussions on an individual basis as, in my view, this is a more effective and efficient way to achieve progress.

So far, I have identified the following core issues that will form the basis for my engagement with stakeholders:

1. Methodology for setting levy tariffs
2. Cross-border sales
3. Determination of the person or entity liable to pay the levy
4. Visibility of the levy
5. Private copying and reprography in the context of new digital forms of distribution of copyright-protected content and the implications for levy systems.

I also invite stakeholders and organisations which have a keen interest in finding workable solutions to the above-mentioned issues to send me their succinct and constructive

contributions in writing. Contributions should be based on the questionnaire in Annex and sent to markt-levies-mediation-2012@ec.europa.eu by 31 May 2012.

I expect to finalise my consultations in the course of the summer and to present my conclusions and recommendations to Commissioner Barnier during autumn 2012.

ANNEX

1. Methodology for setting levy tariffs

- 1) *How could methodological coherence in tariff setting for private copying levies be achieved across the EU?*
- 2) *How could methodological coherence in tariff setting for reprography levies be achieved across the EU?*

2. Cross-border sales

- 1) *How should levies be collected in cross-border transactions?*
- 2) *How should double payment be avoided in cross-border sales?*

3. Determination of the person or entity liable to pay the levy

- 1) *Who should be liable to pay private copying levies?*
- 2) *Who should be liable to pay reprography levies?*

4. Visibility of the levy

- 1) *Should an obligation be introduced to display the levy on each invoice in the sales chain, including on the consumer's invoice?*

5. Private copying and reprography in the context of new digital technologies

- 1) *In what way are levy systems affected by new business models and technological developments? Do such developments allow rightholders to control and license copying by private individuals to such an extent that it could have a material impact on the way private copying and reprography is dealt with at EU level?*

Background

According to Directive 2001/29/EC (the Information Society Directive) authors and other rightholders have the exclusive right to authorise or prohibit the reproduction of their works or other protected subject matter. Member States may provide for exceptions to this exclusive right of reproduction. The private copying exception and the reprography exception are two such exceptions. Both exceptions may only be provided on condition that rightholders receive fair compensation. Most Member States provide for fair compensation by imposing a levy on certain goods that are typically used for the production of the above mentioned copies (blank media, recording equipment, photo-copying machines, etc.). The Court of Justice of the European Union (CJEU) has clarified that fair compensation should compensate for the harm suffered by rightholders as a result of the unauthorised reproduction of their works (made possible by the introduction of an exception to their exclusive right of reproduction). Given the practical difficulties in identifying private users, the CJEU has considered private copying levies to be a valid form of providing for fair compensation.